

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:

the travaux préparatoires and selected documents

III.3. Drafts, and Members' Amendments and Contributions

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3. Drafts, and Members' Amendments and Contributions

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CHARTE 4103/00	Proposition de Charte Européenne des droits fondamentaux soumise par le de M. Georges Berthu (MPE)	07/01/2000	FR	1040
CHARTE 4111/00	Secretariat paper: Horizontal Questions	20/01/2000	EN	1067
CHARTE 4112/00	Presidency Note: Draft list of fundamental rights	26/01/2000	EN	1074
CHARTE 4112/1/00 REV 1	Note de la Présidence: Projet de liste des droits fondamentaux	27/01/2000	FR	1080
CHARTE 4112/2/00 REV 2	Presidency Note: Draft list of fundamental rights	27/01/2000	EN	1088
CHARTE 4117/00	Contribution of Mr. Paavo Nikula (Personal representative of the Government of Finland)	28/01/2000	EN	1097
CHARTE 4118/1/00 REV 1	Letter from Mr. Buttiglione to Mr. Mendez de Vigo, Chairman of the European Parliament delegation (dated 26/01/00)	02/02/2000	EN	1105
CHARTE 4121/00	Contribution de M. Guy Braibant (Représentant personnel de la France)	07/02/2000	EN	1111
CHARTE 4122/00	Contribution and intervention made by Lord Goldsmith, QC at the meeting of 1 and 2 February 2000	07/02/2000	EN	1115
CHARTE 4123/1/00 REV 1	Praesidium Note: Draft articles	15/02/2000	EN	1126
CHARTE 4125/00	Discours prononcé par Mme Anne-Marie Sigmund (rapporteur du Comité économique et social) lors de la réunion du 2 février 2000	09/02/2000	FR	1138
CHARTE 4131/00	Speech of Mr. Jacob Söderman (European Ombudsman) at the meeting of 1/2 February 2000	17/02/2000	EN	1142
CHARTE 4135/00	Observations sur CHARTE 4123/1/00 REV 1 de M. Guy Braibant (Représentant personnel du Gouvernement de la France)	21/02/2000	EN	1148
CHARTE 4136/00	Contribution by Messers Fischbach and Krüger (Council of Europe observers)	21/02/2000	EN	1155
CHARTE 4137/00	Praesidium Note: Proposed Articles (Articles 10 to 19)	24/02/2000	EN	1160
CHARTE 4138/00	Due lettere di P'On. Elena Paciotti (MPE) al Presidium (datate 14/02/00 e 28/02/00)	28/02/2000	IT	1168
CHARTE 4139/00	Statement of Mr Marc Fischbach (Council of Europe observers), at the meeting on 24/02/00	28/02/2000	EN	1171
CHARTE 4140/00	Secretariat Note: Comparative table (CHARTE 4123/1/00 REV 1, CHARTE 4137/00 and the ECHR)	28/02/2000	EN	1175
CHARTE 4141/00	Note from Mr Roman Herzog (Chairman and Personal representative of the Government of Germany): Proposed structure and new draft articles 1-9 (see CHARTE 4123/1/00 REV 1)	28/02/2000	EN	1182
CHARTE 4141/1/00 REV 1	Note de M. Roman Herzog (Président): Structure proposée et nouvelle version des propositions des articles 1-9 (voir CHARTE 4123/1/00 REV 1)	28/02/2000	FR	1188
CHARTE 4142/00	Lettera di P'On. Elena Paciotti (MPE) al Presidium datata 28/02/00	29/02/2000	IT	1194
CHARTE 4145/00	Contribution of Mr Frits Korthals Altes (Personal Representative of the Dutch Government)	08/03/2000	EN	1196
CHARTE 4146/00	Draft Charter of Lord Goldsmith (Personal Representative of the Government of the United Kingdom)	06/03/2000	EN	1203
CHARTE 4149/00	Praesidium Note: New proposal for Arts 1-12 (now 1-16). Reference docs: CHARTE 4123/1/00 REV 1 and CHARTE 4137/00	08/03/2000	EN	1210
CHARTE 4150/00	Anmerkungen der deutschen Länder zu CHARTE 4123/1/00 REV 1 - Vorschläge für die Artikel 1 bis 9 überbracht durch Jürgen Gnauck	07/03/2000	DE	1228
CHARTE 4151/00	Letter from Mr. Buttiglione (MEP) to Mr. Herzog (President of the Convention)	07/03/2000	EN	1235
CHARTE 4152/00	Contribution de M. José Barros Moura (Parlement du Portugal)	07/03/2000	FR	1239
CHARTE 4156/00	Praesidium Note: Amendment Procedure for CHARTE 4149/00	09/03/2000	EN	1258
CHARTE 4160/00	Contribution of Mr Guy Braibant (Personal representative of the Government of France)	13/03/2000	EN	1260

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CHARTE 4170/00	Praesidium Note: Proposed Articles on the rights of citizens (Articles A to J)	20/03/2000	EN	1263
CHARTE 4176/00	Proposed amendment to art.16(1) submitted by Mr. Graham Watson (MEP)	28/03/2000	EN	1272
CHARTE 4177/00	Änderungsvorschläge Herrn Jürgen Meyer zu Dokument Chartre 4149/00 Convent 13	28/03/2000	DE	1273
CHARTE 4178/00	Observations of Mr Fischbach and Mr. Krüger (Council of Europe observers) on CHARTE 4149/00 (dated 16/03/00)	28/03/2000	EN	1281
CHARTE 4179/00	Draft amendments to CHARTE 4149/00 of Lord Goldsmith, QC (Personal representative of the Government of the United Kingdom) (dated 17/03/00)	28/03/2000	EN	1284
CHARTE 4180/00	Observations de M. Guy Braibant (Représentant personnel du Gouvernement de la France) sur CHARTE 4149/00 (datées le 17/03/00)	28/03/2000	FR	1297
CHARTE 4181/00	Contribution of Mr. Erling Olsen (Personal representative of the Government of Denmark) on CHARTE 4149/00 (dated 17/03/00)	28/03/2000	EN	1300
CHARTE 4182/00	Contribution of Prof. Dr. George Papadimitriou (Personnel representative of the Government of Greece) on CHARTE 4149/00 and 4170/00 (dated 24/03/00)	30/03/2000	EN	1304
CHARTE 4183/00	Anmerkungen der Arbeitsgruppe der deutschen Länder zu Chartre 4149/00 vorgelegt von Herrn Jürgen Gnauck	28/03/2000	DE	1313
CHARTE 4184/00	Contribution of Mr. Gunnar Jansson (Finnish Parliament) on CHARTE 4149/00 (dated 17/03/00)	28/03/2000	EN	1320
CHARTE 4185/00	Contributions of Mr. Paavo Nikula (Personal Representative of the Finnish Government) and Mrs Tuija Brax (Finnish Parliament) on CHARTE 4149/00 (dated 17/03/00)	28/03/2000	EN	1323
CHARTE 4186/00	Propositions d'amendements à la CHARTE 4149/00 de M. Ben Fayot (Parlement luxembourgeois) (datées le 17/03/00)	28/03/2000	FR	1328
CHARTE 4187/00	Observations de M. Stefano Rodotà (Représentant personnel du Gouvernement de l'Italie) sur CHARTE 4149/00	28/03/2000	FR	1331
CHARTE 4188/00	Comments and draft amendments to CHARTE 4149/00 of Mr. Andrew Duff (MEP) (dated 17/03/00)	28/03/2000	EN	1334
CHARTE 4189/00	Contribution of Mrs Sylvia Kaufmann (MEP): Motion tabled by the PDS grouping in the German Bundestag (dated 27/09/95)	24/03/2000	EN	1339
CHARTE 4191/00	Änderungsanträge von Herrn Ingo Friedrich zu CHARTE 4149/00	30/03/2000	DE	1349
CHARTE 4192/00	Praesidium Note: Proposals for social rights	27/03/2000	EN	1353
CHARTE 4193/00	Praesidium Note: Proposals for social rights (draft Articles on health and social protection)	29/03/2000	EN	1366
CHARTE 4195/00	Änderungsvorschläge von Herrn. Jürgen Meyer zu CHARTE 4170/00 und CHARTE 4137/00	29/03/2000	DE	1367
CHARTE 4196/00	Contributo di M. Andrea Manzella (Parlamento Italiano): Risoluzione della Giunta Per Gli Affari Delle Comunità europee del Senato Italiano (datata 15/03/00)	31/03/2000	IT	1372
CHARTE 4199/00	Resolution of the European Parliament adopted on 16 March 2000 (Report by Mr Duff and Mr Voggenhuber)	05/04/2000	EN	1379
CHARTE 4200/00	Contribution de M. Hubert Haenel (Parlement français) (datée le 17/03/00)	29/03/2000	FR	1386
CHARTE 4201/00	Änderungsanträge von Herrn Ingo Friedrich zu CHARTE 4170/00	04/04/2000	DE	1389

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CHARTE 4202/00	Observations au document CHARTE 4159/00 de M. Alvaro Rodriguez Bereijo (Représentant personnel du Gouvernement d'Espagne) (datées le 17/03/00)	05/04/2000	FR	1393
CHARTE 4203/00	Anmerkungen der Arbeitsgruppe der deutschen Länder, vorgelegt von Herrn Jürgen Gnauck zu CHARTE 4137/00 und CHARTE 4170/00	04/04/2000	DE	1408
CHARTE 4204/00	Contribution of Mr. Gunnar Jansson and Mrs Tuija Brax (Finnish Parliament)	04/04/2000	EN	1416
CHARTE 4205/00	Contribution of Mr. Paavo Nikula (Personnel representative of the Government of Finland) and Mr. Gunnar Jansson and Mrs. Tuija Brax (Finnish Parliament)	04/04/2000	EN	1419
CHARTE 4206/00	Contribution of Mrs. Charlotte Cederschiöld (MEP) on articles 10 and 16	06/04/2000	EN	1424
CHARTE 4207/00	Proposition d'amendements au document CHARTE 4170/00 de Mme Claude Du Granrut (membre du Comité des Régions)	04/04/2000	FR	1426
CHARTE 4214/00	Observations sur CHARTE 4192/00 et 4193/00 de M. Guy Braibant (Représentant personnel du Gouvernement de la France) (datées le 03/04/00)	07/04/2000	FR	1428
CHARTE 4221/00	Observations sur CHARTE 4123/00 de M. Guy Braibant (Représentant personnel du Gouvernement de la France)	07/04/2000	FR	1433
CHARTE 4221/00 COR 1	Corrigendum à la note de transmission de CHARTE 4221/00	10/04/2000	FR	1439
CHARTE 4222/00	Comments on CHARTE 4192/00 and 4193/00 by Mr. George Papadimitriou (Personal representative of the Government of Greece)	12/04/2000	EN	1440
CHARTE 4225/00	Contribution of Mrs. Johanna Maij-Weggen (MEP) on CHARTE 4192/00	12/04/2000	EN	1444
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CHARTE 4235/00	Praesidium Note: Horizontal clauses	18/04/2000	EN	1451
CHARTE 4238/00 ADD 1	Amendments to CHARTE 4193/00 and 4192/00 of Mrs Pervenche Berès, Mrs Elena Paciotti and Mrs Ieke van den Burg (MEPs)	23/05/2000	EN	1455
CHARTE 4261/00	Comments on CHARTE 4170/00 and 4137/00 of Mr. Jens-Peter Bonde (MEP)	02/05/2000	EN	1464
CHARTE 4269/00	Commentaires sur CHARTE 4192/00 et 4193/00 des Lands allemands soumis par M. Jürgen Gnauck (Bundsrat) (datés le 08/05/00)	05/05/2000	FR	1466
CHARTE 4270/00	Observations sur les droits économiques et sociaux (CHARTE 4192/00, 4193/00 and 4227/00) de M. Guy Braibant (Représentant personnel du Gouvernement de la France)	02/05/2000	FR	1474
CHARTE 4271/00	Proposed amendment to the structure of social rights by Mr. Jürgen Meyer (Bundestag)	04/05/2000	EN	1478
CHARTE 4272/00	Propositions de dispositions horizontales soumises par MM. Fischbach et Krüger (observateurs du Conseil de l'Europe) (datées le 17/04/00)	02/05/2000	FR	1484
CHARTE 4280/00	Contribution de M. Guy Braibant (Représentant personnel du gouvernement français) sur les droits sociaux	02/05/2000	FR	1488
CHARTE 4284/00	Note du Présidium: Proposition pour les articles 1 à 30 (Droits civils et politiques et droits du citoyen (i.e. '...et droits du citoyen)	05/05/2000	FR	1491

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CHARTE 4284/00	Praesidium Note: New proposal for Articles 1 to 30 (Civil and political rights and citizens' rights)	12/05/2000	EN	1521
CHARTE 4285/00	Comments and amendments to CHARTE 4192/00 of Mr. Jens-Peter Bonde (MEP)	08/05/2000	EN	1550
CHARTE 4295/00	Proposition d'amendements aux CHARTE 4149/00, 4137/00 et 4170/00 de M. Jean-Luc Dehaene (Représentent personnel du Gouvernement de la Belgique)	08/05/2000	FR	1554
CHARTE 4297/00	Proposal on including minority rights by Mr. Jens-Peter Bonde (MEP)	10/05/2000	EN	1559
CHARTE 4299/00	Propositions d'amendements aux clauses horizontales (CHARTE 4235/00) de M. Jean-Luc Dehaene (Représentent personnel du Gouvernement de la Belgique)	10/05/2000	FR	1591
CHARTE 4303/00	Praesidium Note: Amendment Procedure for CHARTE 4284/00	12/05/2000	EN	1594
CHARTE 4308/00	Draft preamble by Mr. Stefano Rodotà (Personal representative of the Government of Italy), Mr. Andrea Manzella (Italian Parliament) and Mrs. Elena Paciotti (MEP)	17/05/2000	EN	1596
CHARTE 4309/00	Contribution of Mr. Frits Korthals Altes (Personal Representative of the Government of the Netherlands)	17/05/2000	EN	1598
CHARTE 4310/00	Anmerkungen der Arbeitsgruppe der deutschen Länder zu CHARTE 4227/00 und CHARTE 4235/00 sowie Diskussionsvorschläge der deutschen Länder für die Sitzung des Konvents am 11./12. Mai 2000	17/05/2000	DE	1605
CHARTE 4316/00	Praesidium note: New Proposals for the Articles on Economic and Social Rights and for the Horizontal Clauses	16/05/2000	EN	1612
CHARTE 4322/00	Contribution de M. Guy Braibant, Représentant personnel du Gouvernement de la France	23/05/2000	FR	1624
CHARTE 4330/00 ADD 1	Contribution de MM. Fischbach et Krüger, observateurs du Conseil de l'Europe (datée le 05/06/2000)	22/06/2000	EN	1630
CHARTE 4332/00	Praesidium Note: Amendments submitted by the members of the Convention regarding civil and political rights and citizens' rights - Reference: CHARTE 4284/00	25/05/2000	EN	1635
CHARTE 4332/00 ADD 1	Addendum to Praesidium note: amendment 545b submitted by Rodríguez Bereijo, representative of the Spanish Prime Minister	05/06/2000	EN	2364
CHARTE 4332/00 ADD 2	Addendum to Praesidium note: amendments 599-604 on civil and political and citizens' rights	07/06/2000	EN	2367
CHARTE 4332/00 ADD 3	Addendum to Praesidium note: amendments 605-606 on civil and political rights and citizens' rights	27/06/2000	EN	2376
CHARTE 4333/00	Note du Présidium: Projet d'articles 1 à 30, propositions d'amendements de compromis présentés par le Présidium	04/06/2000	FR	2377
CHARTE 4344/00	Contribution by Lord Goldsmith Q.C, personal representative of the government of the United Kingdom	31/05/2000	EN	2389
CHARTE 4352/00	Comité des régions: Propositions d'amendement concernant les droits civils et politiques et droits des citoyens	08/06/2000	FR	2395
CHARTE 4360/00	Praesidium note: Summary of amendments presented by the Praesidium	14/06/2000	EN	2403
CHARTE 4367/00	Ergänzungsvorschlag zu den Identitätsrechten von Herrn Wilhelm Brauneder, Vertreter des Österreichischen Parlaments	15/06/2000	DE	2448
CHARTE 4371/00	Praesidium note: contribution from the former President of the Federal Republic of Germany, Roman Herzog, relating to Articles 1-7	15/06/2000	EN	2452

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CHARTE 4372/00	Praesidium note: amendments submitted by the Members of the Convention regarding social rights and the horizontal clauses	16/06/2000	EN	2460
CHARTE 4373/00	Praesidium note: compromise proposal for Articles 31 to 40 (social rights and horizontal clauses)	23/06/2000	EN	2944
CHARTE 4383/00	Praesidium note: summary of amendments received and of Praesidium compromise amendments on economic and social rights and on the horizontal clauses	03/07/2000	EN	2949
CHARTE 4385/00	Complementary suggestion to article 34 of document CHARTE 4316/00 CONVENT 34, by Mr. Daniel Tarchys, personal representative of the Government of Sweden.	26/06/2000	EN	2979
CHARTE 4392/00	Contribution de Mme Anna Benaki-Psarouda, membre du Parlement grec	27/06/2000	FR	2981
SN 3340/00	Praesidium note: Proposals for Horizontal Articles	29/06/2000	EN	2985
CHARTE 4393/00	Ergänzung des Änderungsantrags zu Artikel 47 von Herrn Jürgen Gnauck, Mitglied des deutschen Bundestags	30/06/2000	EN	2991
CHARTE 4397/00	Contribution by Mr. Hirsch Ballin relating to the horizontal clauses, representative of the Parliament of the Netherlands (dated 29/06/00)	03/07/2000	EN	2993
CHARTE 4399/00	Praesidium note: Compromise proposal for Articles 41 to 44	04/07/2000	EN	2996
CHARTE 4400/00	Praesidium note: Draft Preamble	14/07/2000	EN	2999
CHARTE 4401/00	Compromise proposal on economic and social rights by Mr. Guy Braibant, Representative of the Government of France and Mr. Jürgen MEYER, Representative of the German Parliament (dated 13/06/00)	04/07/2000	EN	3001
CHARTE 4402/00	Contribution on Articles 20-30 by Mr Caspar Einem, representative of the Austrian Parliament (dated 02/07/00)	04/07/2000	EN	3006
CHARTE 4405/00	Proposal for amendments by Dr Sylvia-Yvonne Kaufmann, Member of the European Parliament	06/07/2000	EN	3010
CHARTE 4406/00	Letter to the Convention by Mr. Frits Korthals Altes, Representative of the Government of the Netherlands, relating to horizontal articles (dated 28/06/00)	06/07/2000	EN	3034
CHARTE 4408/00	Contribution by Mr. Daniel Tarschys, representative of the Swedish government	07/07/2000	EN	3036
CHARTE 4411/00	Intervention by M. Marc Fischbach, observer of the Council of Europe, in the debate on the horizontal provisions (dated 30/06/00)	13/07/2000	EN	3041
CHARTE 4412/00	Praesidium note: Structure of the Charter	13/07/2000	EN	3045
CHARTE 4413/00	Contribution by M. Guy Braibant, representative of the French government, on a Charter Plan (dated 07/07/00)	11/07/2000	EN	3046
CHARTE 4414/00	Contribution de M. Rodriguez Bereijo Représentant du gouvernement d'Espagne on economic and social rights	12/07/2000	FR	3049
CHARTE 4417/00	Letter to Mr Roman Herzog by Mr Caspar Einem, member of the Austrian National Council	13/07/2000	EN	3053
CHARTE 4421/00	Stellungnahme von Herrn Jo Leinen, Mitglied des Europäischen Parlaments, zum Artikel 24	17/07/2000	DE	3056
CHARTE 4422/00	Praesidium note: Complete Text of the Charter proposed by the Praesidium	28/07/2000	EN	3058
CHARTE 4423/00	Praesidium note: Text of the Explanations relating to the Complete Text of the Charter	31/07/2000	EN	3075
CHARTE 4427/00	Contribution by Dr. Erling Olsen, representative of the Danish government, relating to a horizontal article concerning the relation between the Charter and the ECHR	14/07/2000	EN	3112

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CHARTE 4428/00	Contribution by Lord Goldsmith QC, personal representative of the Government of the United Kingdom, on the structure of the draft Charter (dated 18/07/00)	20/07/2000	EN	3114
CHARTE 4429/00	Contribution by Lord Goldsmith QC, personal representative of the government of the United Kingdom, on the Preamble (dated 18/07/00)	20/07/2000	EN	3118
CHARTE 4430/00	Stellungnahme von Herrn Jürgen Gnauck, Vertreter des Deutschen Bundestages, zu den sozialen Rechten	20/07/2000	DE	3121
None	Observations reçues relatives au Document CHARTE 4422/00	07/09/2000	MULTI	3125
None	Addendum à la Note – Observations reçues relatives au Document CHARTE 4422/00	09/09/2000	MULTI	3547
CHARTE 4470/00	Praesidium note: Complete Text of the Charter proposed by the Praesidium following the meeting held from 11-13/09/00	14/09/2000	EN	3559
CHARTE 4470/00 COR 1	Corrigendum to Praesidium note CHARTE 4470/00	20/09/2000	EN	3577
CHARTE 4470/1/00 REV 1	Praesidium note: Complete text of the Charter after being finalised by the Legal Linguistic Working Party	21/09/2000	EN	3578
CHARTE 4470/1/00 REV 1 ADD 1	Addendum to Praesidium note: Complete text of the Charter after being finalised by the Legal Linguistic Working Party	25/09/2000	EN	3600
CHARTE 4471/00	Praesidium note: Text of the Explanations relating to the Complete Text of the Charter as set out in CHARTE 4470/00 + COR 1	20/09/2000	EN	3604
CHARTE 4473/00	Praesidium note: Text of the Explanations relating to the Complete Text of the Charter as set out in CHARTE 4487/00	11/10/2000	EN	3649
CHARTE 4473/1/00 REV 1	Note du Praesidium: Texte des explications relatives au texte complet de la Charte, tel que repris au doc. CHARTE 4487/00	19/10/2000	FR	3700
CHARTE 4475/00	Council of Europe's observations (dated 22/08/00)	19/09/2000	EN	3751
CHARTE 4477/00	Commission Communication COM(2000) 559 final on the Charter of Fundamental Rights of the European Union (dated 13/09/00)	20/09/2000	EN	3754
CHARTE 4479/00	Contribution submitted by the Council of Europe's observers (dated 19/09/00)	25/09/2000	EN	3767
CHARTE 4487/00	Projet de Charte des droits fondamentaux de l'Union européenne	25/09/2000	EN	3770
CHARTE 4487/1/00 REV 1	Draft Charter of Fundamental Rights of the European Union	10/10/2000	EN	3793
CHARTE 4487/1/00 REV 1 COR 1	Corrigendum to Draft Charter of Fundamental Rights of the European Union as contained in CHARTE 4487/1/00	11/10/2000	EN	3816
CHARTE 4487/2/00 REV 2	Draft Charter of Fundamental Rights of the European Union	09/11/2000	EN	3817
CHARTE 4952/00	Contribution de M. Jean-Luc Dehaene, représentant personnel du gouvernement belge	05/10/2000	FR	3840
CHARTE 4953/00	Contribution by Mrs. Van der Burg (Member of the European Parliament) (dated 20/09/00)	17/10/2000	EN	3846

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

III. The Charter Convention *travaux préparatoires*

III.3. Drafts, and Members' Amendments and Contributions

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 6 January 2000 (13.01)
(OR. f)****CHARTE 4102/00****CONTRIB 2****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed a discussion draft, submitted by Prof. Jürgen Meyer of the German Bundestag, based on the European Parliament's Declaration of fundamental rights and freedoms of 12 April 1989 ¹.

¹ This text has been submitted in French, German, Italian, English and Spanish.

EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

Discussion draft, based on the European Parliament's Declaration of fundamental rights and freedoms' of 12 April 1989

PREAMBLE

In recognition of the constitutional traditions common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the other international declarations and treaties providing for the protection of fundamental rights within the Union and the fundamental rights developed in the case law of the Court of Justice of the European Communities and as a further step towards its primary objective of economic integration leading on to the political union of its citizens, the European Union adopts the following European Charter of Fundamental Rights on the basis of its declaration of belief in parliamentary democracy, the rule of law and welfare statism.

Article 1

Human dignity

Human dignity is inviolable.

Article 2

Civil rights and liberties

1. Everyone shall have the right to life, physical integrity and respect for his dignity in death. Human liberty shall be inviolable. Any intrusion upon this guarantee shall be possible only for the duration and under the conditions specified by law.
2. No one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment.
3. Everyone shall have the right to develop his personality freely provided that he does not infringe the rights of others and does not violate the principles set out in this charter.

Article 4

Freedom of conscience and religion

1. The freedom of conscience, religious belief and worship shall be inviolable.
2. If a citizen of the Union is unable to fulfil his civil obligations because they are inconsistent with his conscience, the state shall, wherever possible, enable him to fulfil equivalent obligations. This shall not apply to taxes and other charges.

Article 5

Freedom of opinion and information

1. Everyone shall have the right to express and disseminate his opinion in words or images or by other means and to receive and impart information.
The freedom of the press and reporting by other means of mass communication shall be guaranteed.
There shall be no censorship.
2. Access to cultural events and facilities shall be guaranteed.
3. These rights may be restricted only by laws intended to protect public safety or order, health, the personality and honour or to prevent crime.
4. Intellectual, artistic and scientific development and teaching shall be free.

Article 6

Data protection

1. Everyone shall have the right to determine for himself the disclosure and use of his personal data and to obtain information on their storage provided that this right does not conflict with the rights of third persons.
2. Restrictions shall be admissible by law only in the dominant general interest.

Article 7

Privacy

1. Everyone shall have the right to respect for and the protection of his identity.
2. Respect for privacy and family life, reputation, the home and private correspondence by mail and telecommunications shall be guaranteed.
3. Restrictions of the inviolability of the home shall be admissible only in cases for which the law provides, especially to avert serious threats to public safety or to solve particularly serious crimes. Interference with correspondence by mail and telecommunications shall be permissible only under the conditions for which the criminal law provides.

Article 8

Marriage and family

1. Marriage and the family shall enjoy particular protection. Single-parent families, large families and families that include one or more disabled persons shall be entitled to special care from the authorities.
2. Other long-term relationships shall have the right to be protected against discrimination.
3. Housework, bringing up children, the care of the needy at home and employment shall be deemed equal.

Article 9

Asylum

Anyone who is persecuted for his political views or is exposed to inhuman or degrading treatment shall have the right of asylum.

Article 10

Right of ownership

The right of ownership and the owner's right to transfer property during his lifetime and following his death shall be guaranteed. Property acquired by criminal act shall not be protected.

No one shall be deprived of his property except where deemed necessary in the public interest and only subject to the conditions provided for by law and in return for fair compensation.

Article 11

Freedom of assembly

Everyone shall have the right to take part in peaceful meetings unarmed.

Article 12

Freedom of association

1. Everyone shall have the right freely to form associations with others.
2. Employees and employers shall have the right freely to form professional associations or trade unions of their choice.
The right of such associations to negotiate and conclude collective agreements shall be guaranteed.

Article 13

Work and working conditions

1. The right to work shall be guaranteed through the Member States' attachment of particular importance to the goal of full employment in their economic policies.
They shall take measures to promote employment.
2. Employees shall have the right to safe, healthy and decent working conditions.

Article 14

Right to education

Everyone shall have the right to education.

Article 15

Natural foundations of life

Everyone shall have the right to the protection and care of the natural foundations of life and shall be equally required to preserve them.

Article 16

Right of petition

Everyone shall have the right to address written requests or complaints to the European Parliament. The detailed provisions governing the exercise of this right shall be laid down by the European Parliament.

Article 17

Ne bis in idem

No one shall be tried or convicted for offences for which he has already been acquitted or convicted.

Article 18

Nulla poena sine lege

No one shall be punished for an act or omission which did not constitute a penal offence at the time when it occurred.

Article 19

Freedom of movement

1. All citizens of the Union shall have the right to move and reside freely in the territory of the Member States. All citizens of the Union shall be free to leave and return to the territory of the Member States unhindered.
2. All citizens of third countries shall enjoy these rights to the same extent if they have been lawfully resident in the territory of the Member States for five years.
3. The rights referred to in paragraphs 1 and 2 may be restricted only by provisions which are consistent with the foundations of the Union.

Article 20

Freedom to choose an occupation

1. All citizens of the Union shall have the right to equality of opportunity, freely to choose their occupation and place of work and freely to pursue their occupation.
2. The freedom of choice of a place of training shall be guaranteed.
3. All citizens of third countries shall have the rights referred to in paragraphs 1 and 2 to the same extent if they have been lawfully resident in the territory of the Member States for five years.
4. These rights may be restricted only by a law which serves the public good.

Article 21

Right to housing

The right to adequate housing shall be guaranteed by a policy of the Member States which promotes the creation and maintenance of housing for all citizens of the Union.

Article 22

Social security

1. The right to adequate social protection shall be guaranteed.
2. All citizens of the Union shall have the right to measures that guarantee them the best possible state of health.

Article 23

Right to vote and to stand for election

1. All citizens of the Union aged at least 18 years shall have the right to vote and to stand for election to the European Parliament and to the local parliaments in the area where they live.
2. All citizens of third countries shall have the rights referred to in paragraph 1 to the same extent if they have been lawfully resident in the territory of the Member States for five years.

Article 24

Limits

The rights, freedoms and guarantees set out in this Charter may be restricted by law solely for the purpose of upholding other rights or interests protected by this Charter. Such restriction shall be limited to what is absolutely essential.

The substance of the rights and freedoms shall remain unaffected in any event.

Article 25

Access to the courts

Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE
fundamental.rights@consilium.eu.int

Bruxelles, le 7 janvier 2000

CHARTE 4103/00

CONTRIB 3

NOTE DE TRANSMISSION

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une proposition de Charte Européenne des droits fondamentaux, soumise à l'enceinte instituée par le Conseil de Cologne. Ce texte est soumis par M. Georges Berthu, Député au Parlement européen. ¹

¹ Ce texte n'a été soumis qu'en langue française.

GEORGES BERTHU

GROUPE UNION POUR L'EUROPE DES NATIONS
MEMBRE DE LA DÉLÉGATION CONJOINTE
CHARGÉE DE L'ÉLABORATION DE LA CHARTE DES DROITS FONDAMENTAUX

PROPOSITION

de Charte Européenne des droits fondamentaux
soumise à la délégation conjointe Conseil - Parlements - Commission
instituée par le Conseil de Cologne

Paris, le 17 décembre 1999

Le Conseil de Tampere a prévu, dans ses conclusions concernant les méthodes de travail de "l'enceinte" chargée de l'élaboration de la Charte des droits fondamentaux, qu'un "comité de rédaction" préparerait un avant-projet "en tenant compte des propositions de texte soumises par tout membre de l'enceinte".

En application de cette disposition, Georges Berthu, député européen membre de la délégation du PE à la délégation conjointe ("l'enceinte"), présente ci-après une proposition de charte reflétant la conception d'une Europe fondée sur ses démocraties nationales.

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Résumé de la proposition

Le Conseil de Cologne a décidé, le 4 juin 1999 que "à ce stade du développement de l'Union européenne, il conviendrait de réunir les droits fondamentaux en vigueur au niveau de l'Union dans une charte, de manière à leur donner une plus grande visibilité"¹.

Cette décision, telle qu'elle est couramment interprétée - c'est-à-dire impliquant la rédaction d'un catalogue assez complet de droits des citoyens unifiés au niveau européen - ne peut être appliquée qu'au prix de travaux ardues, et néanmoins largement inutiles, car ces droits sont déjà bien protégés. Surtout, la finalité constitutionnelle à laquelle obéit implicitement à la charte conduirait à déposséder chaque démocratie nationale de la définition autonome des droits de ses citoyens. Ce résultat serait tout à fait contraire à la conception d'une Europe où chaque peuple doit rester maître de son destin.

On trouvera dans le présent document la proposition des éléments principaux d'une autre charte qui, elle, aurait le mérite d'être plus simple et utile. Elle pourrait certes se référer aux droits fondamentaux des citoyens, mais en laissant leur définition au niveau des Constitutions nationales et des conventions internationales pertinentes². Son objet premier serait plutôt de donner une approche commune des valeurs des pays membres, et de définir la philosophie institutionnelle sur laquelle repose l'Union. Cette charte serait ouverte à la signature des membres actuels et des pays de l'Est candidats. Par ces caractères, elle répondrait à deux questions actuelles et urgentes :

- le rôle-pivot des démocraties nationales, et les principes qui doivent sous-tendre la prise de décision dans une Europe élargie,
- l'établissement immédiat d'un lien visible entre tous les pays membres et les pays candidats à l'Union.

Pour résumer, il faut faire un choix entre une charte de haut niveau politique, aidant à traiter vraiment les problèmes actuels de l'Europe, ou bien une charte énumérant dans le détail des droits individuels et sociaux, qui créera autant de problèmes qu'elle en résoudra, et apportera surtout des satisfactions aux théoriciens de l'intégration.

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¹ Point 44 des conclusions - Voir annexe 1.

² Voir annexe 4.

Première partie

Exposé des motifs

I- La décision de Cologne

1- Une procédure anormale

L'idée de rédiger une charte européenne des droits fondamentaux n'est pas nouvelle : le Parlement européen, dans ses résolutions du 12 avril 1989 et du 10 février 1994, avait déjà demandé l'adoption d'une telle déclaration, à insérer dans le cadre d'une "Constitution" européenne. Plus récemment, le Parlement et la Commission avaient lancé plusieurs travaux d'experts sur le sujet¹. Cependant, ces réflexions n'avaient pas dépassé des cercles restreints et, à la veille du Conseil de Cologne, ne semblaient guère d'actualité.

Pourtant, la décision de lancer la préparation d'une charte des droits fondamentaux apparaît dans les conclusions du Conseil de Cologne, brusquement, et en apparence à contretemps :

- au moment même où le Conseil ouvrait ainsi le débat, par le biais de la charte, sur des perspectives constitutionnelles à terme, il déployait de grands efforts, sur un autre front, pour obtenir l'effet inverse : il essayait en effet d'éviter l'élargissement de la future CIG vers un ordre du jour de type constitutionnel ;
- les gouvernements nationaux qui ont ainsi lancé la préparation de la charte n'ont pas procédé préalablement à des consultations minima, et n'ont pas cherché à recueillir un feu vert, au moins sur le principe, de la part des Parlements nationaux, traditionnellement décideurs principaux en matière de droits des citoyens.

Il ressort de ces éléments une double impression : **l'irrégularité de la procédure suivie**, qui n'est pas conforme à la répartition des compétences prévue par les traités ; **l'impréparation profonde du Conseil**, dont on retrouve les conséquences dans les graves imperfections de la décision de Cologne.

¹ Voir notamment le rapport du groupe d'experts publié en février 1999 par la Commission : "*Affirmation des droits fondamentaux dans l'Union européenne*", ou la "*Charte des citoyennes et des citoyens européens*" publiée en décembre 1997 par l'association "Forum permanent de la société civile" avec le soutien de la Commission ; voir aussi, par exemple, le rapport commandé par les services du Parlement européen à l'Institut Universitaire Européen "*Quelle Charte constitutionnelle pour l'Union européenne ?*" (Mai 1999).

2- Une rédaction ambiguë

Sur le fond, la décision de Cologne est entachée de nombreuses ambiguïtés, provenant soit de l'impréparation du texte, soit au contraire d'une volonté de brouiller les cartes.

- *Sur l'étendue des droits* : à première vue, l'étendue des droits visés aurait pu être assez restreinte. Il s'agit en effet des droits "*fondamentaux*" (donc les principes essentiels), déjà "*en vigueur*" (donc en excluant la création de nouveaux droits), "*au niveau de l'Union*" (donc sans les droits nationaux non déjà inclus dans les traités) et enfin pour les "*citoyens de l'Union*" (donc sans traiter la question des ressortissants de pays tiers). Toutefois, les premières discussions ont montré que ces barrières sont fragiles, et que les rédacteurs vont sombrer dans l'inflation des textes. Les nombreuses propositions déjà évoquées montrent que la limite entre le droit "*fondamental*" et le droit "*moins fondamental*" ou "*normal*" est totalement subjective. De même les définitions de droits au niveau européen et au niveau national se recoupent et se chevauchent. Enfin, il est clair qu'une forte pression va s'exercer en faveur de la proclamation de nouveaux droits européens, ne serait-ce que pour contourner, sur tel ou tel point précis, telle ou telle réticence nationale.
- *Sur la méthode de travail* : les Parlements nationaux, en théorie décideurs principaux, comme on l'a vu, se trouvent embrigadés, parmi d'autres, dans la mise en oeuvre d'une décision sur le principe de laquelle ils n'ont jamais eu à se prononcer ; pis encore, ils disparaissent complètement au moment de la proclamation de la Charte.
- *Sur l'objectif même de l'exercice* : le texte de Cologne apparaît extraordinairement discret sur les raisons profondes qui ont motivé le lancement de l'initiative. Il s'agirait seulement, est-il affirmé, d'un exercice formel destiné à donner aux droits concernés "*une plus grande visibilité*". Si tel était le cas, la disproportion serait flagrante entre d'une part l'ampleur du travail à réaliser et des moyens mis en oeuvre, d'autre part la minceur de l'utilité invoquée. En réalité, le "*profil bas*" adopté à Cologne est parfaitement hypocrite. Michel Barnier, lors de l'audition préalable à sa nomination comme membre de la Commission, le 8 septembre suivant, a été plus franc lorsqu'il a déclaré que le processus d'élaboration de la Charte devait "*rejoindre, au bon moment*", le "*processus de constitutionnalisation des traités*"¹.

¹ Compte-rendu, p. 6.

Le véritable objectif de l'exercice s'éclaire alors : poser les fondements d'une Constitution européenne supranationale, banalisant le lien direct entre l'Union et les citoyens des pays membres, par dessus la tête des gouvernements nationaux.

3- Une ambition contreproductive

La Charte serait destinée, selon ses promoteurs, à prendre place en tête d'une première partie du traité, à valeur "constitutionnelle", par opposition à une seconde partie qui aurait simple valeur "législative". Cette idée de séparation du traité en deux parties a d'ailleurs été reprise par le rapport Dehaene, et par la communication de la Commission sur la réforme des institutions¹. Ce processus de "constitutionnalisation" serait alimenté par l'apport spécifique du traité d'Amsterdam, qui avalise la supériorité du droit communautaire sur les droits nationaux, même constitutionnels².

Malheureusement pour ce projet, il n'y a pas d'indice aujourd'hui que les peuples européens seraient demandeurs d'une Constitution européenne supérieure aux Constitutions nationales, et témoignant de l'existence d'un super-Etat, qu'il soit fédéral ou non. Surtout, on peut se demander si une Charte européenne des droits des citoyens ne serait pas inutile, et même contreproductive.

- *Inutile*, parce que le traité reconnaît déjà, de manière très simple, les droits fondamentaux tels qu'ils sont garantis à la fois par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et par les traditions constitutionnelles communes aux Etats membres³ ; l'addition dans le traité d'une Charte des droits fondamentaux - si elle était contraignante et contrôlée par la Cour de Justice des Communautés, comme le souhaitent ses promoteurs - pourrait même compliquer terriblement la défense de ces droits en instituant deux ordres de juridictions concurrents, celui de Strasbourg et celui de Luxembourg⁴.

¹ Communication du 10 novembre 1999, p. 6.

² Protocole sur la subsidiarité, article 2.

³ Préambule et article 6 du TUE - Voir annexe 3.

⁴ Pour certains défenseurs des droits de l'homme, la réalité serait pire encore : la charte aurait pour fonction de procurer un "parapluie" au droit communautaire, après qu'un récent arrêt de la Cour européenne des droits de l'homme ait fortement inquiété Bruxelles. La Cour présentait en effet le droit communautaire comme un simple démembrement du droit national, et condamnait le Royaume-Uni pour avoir appliqué une disposition de ce même droit communautaire contraire à la Convention européenne des droits de l'homme (Arrêt du 18 février 1999 - Matthews c. Royaume-Uni - Requête n° 24833/94). Selon cette interprétation, la Charte, contrairement aux intentions affichées, aurait plutôt pour effet de restreindre l'influence de la Cour de Strasbourg, et de son système de défense des droits de l'homme. D'autres soulignent que cet inconvénient, effectivement possible, serait atténué si l'Union se voyait accorder le droit d'adhérer en tant que telle à la Convention européenne des droits de l'homme. C'est douteux. Et en tout cas s'ajouteraient alors d'autres problèmes, liés à la complexité du nouveau système et à la longueur accrue des procédures induite par l'insertion d'un niveau judiciaire supplémentaire.

- *Contreproductive*, parce que la Constitution européenne cristalliserait un catalogue de droits, probablement sur la base d'un plus petit dénominateur commun, ce qui ne serait guère profitable. **En tout cas, ces droits ne pourraient plus être modifiés que par l'ensemble des Etats ou/et des peuples d'Europe, ce qui imposerait désormais une rigidité considérable.** Corollairement, chaque peuple pris séparément perdrait la capacité de définir seul ses propres droits. Un système de concurrence juridique souple, évolutif, soumis aux demandes de chaque démocratie nationale, serait remplacé par un système de définition uniformisée, extrêmement lourd, incapacitant pour les démocraties nationales et très frustrant pour elles.

II- Pour une autre charte

La Charte des droits des citoyens qui vient d'être décrite ne rendrait aucun service à l'Europe. Elle a été imaginée pour répondre à des impératifs idéologiques de construction cohérente d'un super-Etat, mais elle ne répond pas aux problèmes très immédiats de l'Europe d'aujourd'hui.

Ces problèmes peuvent être suggérés en quelques questions : qu'est-ce que l'Europe ? Qu'est-ce qui nous rassemble ? Comment associer sans tarder les pays candidats, en tenant compte de leurs différences ? Comment prendre les décisions dans une Union élargie ? Comment faire progresser un contrôle démocratique, effectif et proche des citoyens ?

Ces questions peuvent au premier regard apparaître comme très différentes. Il n'en est rien.

Tout d'abord, elles ont un point commun "négatif" : elles ne peuvent pas être résolues par le type de charte des droits fondamentaux couramment proposé, qui décrirait par le menu les droits juridiques des citoyens.

Surtout, elles ont un point commun "positif" : on ne peut les résoudre toutes ensemble qu'en utilisant une approche globale, intégrant les aspects politiques, économiques et sociaux, et conduisant à une conclusion résolument innovatrice : les problèmes de gestion d'une Europe élargie ne pourront être résolus que par une plus grande flexibilité, qui implique l'abandon du système monolithique et une nouvelle confiance envers les souverainetés nationales ; de même, le renforcement du contrôle démocratique implique le retour à la primauté des démocraties nationales, qui suscitent auprès des citoyens une adhésion et une participation sans commune mesure avec toute autre formule. **Tout concourt donc à conclure que l'urgence du moment, c'est de placer en tête des traités une charte dont l'objet premier serait de redonner aux nations la première place dans la définition de l'Europe.**

Accessoirement, on signalera que la charte ainsi définie rejoindra à sa manière le processus de la Conférence Intergouvernementale qui va s'ouvrir, et qui devrait être centrée sur la question de la prise de décision dans une Europe élargie. En effet, la prise de décision dans un espace aussi hétérogène ne pourra nullement s'effectuer à la majorité qualifiée, contrairement aux espoirs des fédéralistes : il faudra y ajouter le compromis de Luxembourg et la légitimité de

coopérations différenciées allant jusqu'à la géométrie variable. Dans l'esprit de l'Europe des nations, le processus de la charte et celui de la CIG se rejoignent donc naturellement.

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Le projet qui figure ci-après présente les orientations principales d'une telle charte, fondée sur le respect des démocraties nationales.

- En préambule, il introduit l'idée que la Charte a une portée plus large que l'Union actuelle, puisqu'elle est ouverte à la signature des pays candidats, qui seront concernés immédiatement par la première partie (valeurs) et à terme par la seconde (principes d'organisation de l'Union).
- Dans une première partie, le projet rappelle brièvement les principales valeurs auxquelles les pays d'Europe sont attachés, centrées sur le respect de la personne ; il s'agit, à cet endroit, d'une déclaration politique.
- Dans une seconde partie, le projet développe les principes d'organisation essentiels d'une Europe respectant non seulement les droits de l'homme et du citoyen, mais aussi les droits des démocraties nationales.

Cette partie s'ouvre elle-même sur une introduction qui renvoie, pour ce qui concerne les droits de l'homme, aux systèmes de protection existants, puisque ces derniers ne révèlent pas de failles majeures.

L'essentiel de la seconde partie est ensuite consacré aux principes d'organisation d'une Union qui serait fondée sur la liberté de ses peuples. Ces principes sont eux-mêmes regroupés par thèmes, qu'une rédaction définitive de la Charte pourrait évidemment perfectionner : nature de l'Union (association d'Etats), coopérations différenciées, respect des identités nationales, liberté des préférences, supériorité des Constitutions nationales, compromis de Luxembourg, évolution démocratique du droit communautaire, autonomie d'organisation des services publics, droit d'édicter des normes supérieures à celles de l'Union, maîtrise des frontières, droit de sauvegarde, légitimité principale des Parlements nationaux, support national de la citoyenneté.

Ainsi sont dessinés les traits d'une Europe plus démocratique et ouverte à l'élargissement.

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Ce document représente une première approche, qui sera complétée si nécessaire au fil des travaux de "l'enceinte".

Deuxième partie

Orientations principales pour un projet de Charte

Les Etats d'Europe,

Membres de l'Union européenne, ou participant au processus qui doit mener à leur adhésion,

Ont adopté cette Charte pour affirmer leurs valeurs, ainsi que les principes d'organisation qu'ils entendent établir pour les faire respecter.

NOS VALEURS

Les Etats signataires

- Sont convaincus que les sociétés pacifiques et heureuses reposent sur le respect des droits fondamentaux de la personne, découlant de son caractère sacré ; ils rejettent toute forme de mépris de l'être humain.
- Affirment que cette valeur centrale du respect de la personne implique nécessairement :
 - la protection de la vie et de la dignité de tout être humain ;
 - l'égalité pour tous des droits de liberté, propriété, sécurité, résistance à l'oppression, traditionnellement garantis en Europe par l'association politique, ainsi que le soutien mutuel face aux aléas de l'existence ;
 - le droit de chaque personne de se gouverner elle-même ; de participer pleinement, en tant que citoyen, à la vie de ses communautés, pour mieux défendre sa famille et protéger ses biens, matériels et spirituels ; d'exercer librement ses droits souverains par la démocratie politique et l'économie de marché ;
 - le respect des affections et des solidarités ressenties par chacun, et donc du sentiment d'appartenance fondé sur une culture transmise, une histoire apprise, une langue pratiquée en commun ;
 - le droit imprescriptible de chaque citoyen, d'exercer un contrôle effectif sur ses représentants ; de ne consentir de délégations de pouvoirs que proches,

contrôlables, et toujours révocables ; de ne jamais accorder aux institutions que des compétences subsidiaires et subordonnées.

- Reconnaissent que les citoyens des pays d'Europe expriment leurs solidarités volontaires par des associations ponctuelles, mais aussi par des communautés, notamment familiales ou locales, communes, cantons, lander, comtés, régions, provinces ; que ces solidarités s'expriment de la manière la plus large et la plus solide dans le cercle de valeurs de la nation; que ce cercle est celui où la démocratie s'exerce de la manière la plus complète, et que c'est donc là qu'il faut placer le niveau principal de l'association politique.
- Estiment que le mépris envers les nations a constitué une des grandes causes des guerres qui ont ravagé l'Europe ; qu'au contraire, le respect de la diversité des nations et de leurs peuples sera bénéfique à l'Europe, puisqu'il favorisera la liberté, l'émulation et le pluralisme, sources de la richesse la plus ancienne et la plus constante de la civilisation européenne.
- Sont persuadés que l'ignorance, l'oubli ou le mépris des droits de la personne, comme des familles, des communautés ou des nations, sont les seules causes des malheurs publics et de la corruption des gouvernements ;
- Déclarent dans ces conditions que l'Union européenne est une union de nations qui, tout en se respectant mutuellement, et en respectant l'expression démocratique de chaque peuple, devra poursuivre les objectifs suivants :
 - encourager une défense en commun des peuples d'Europe, afin de protéger ensemble leurs valeurs, leurs droits, leurs langues, leurs modèles de société, leurs territoires et leurs frontières ;
 - contribuer à établir les bases d'un développement durable, par le respect de la vie et la recherche de l'équilibre le plus épanouissant entre l'homme et son milieu naturel;
 - favoriser la prospérité des peuples d'Europe par le libre échange et la concurrence intérieurs, et par la négociation d'accords commerciaux extérieurs permettant un commerce équitable entre zones aux règles différentes.

NOS PRINCIPES D'ORGANISATION

Les Etats signataires

S'engagent à promouvoir les valeurs de la Charte, et à respecter les droits fondamentaux qui en découlent, tels qu'ils sont garantis par les Constitutions nationales, par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, et par les autres conventions internationales pertinentes, conclues notamment sous l'égide du Conseil de l'Europe, de l'Organisation des Nations Unies ou de l'Organisation Internationale du

Travail¹ ; ils s'engagent de même à ce que leur organisation commune, l'Union européenne, comme ses cercles de coopération différenciés, respectent ces droits, tels qu'ils résultent des textes précités, en tant que principes supérieurs de leurs activités.

Ils déclarent adopter les principes d'organisation suivants :

Nature de l'Union

1. L'Union européenne est une association libre de nations souveraines : en tant qu'association de nations, elle est contrôlée en premier lieu par les Etats qui lui ont délégué des compétences subsidiaires, et qui sont eux-mêmes placés sous le contrôle démocratique de leurs citoyens; en tant qu'association libre, elle admet le droit de sécession.

Coopérations différenciées

2. L'Union admet des formes de coopérations différenciées, c'est-à-dire n'incluant pas tous les pays membres, dès lors qu'elles sont librement choisies par les peuples concernés.
3. Les différentes coopérations européennes reposent essentiellement sur des prises de décision par consensus ; elles respectent ainsi le droit des peuples de décider les lois qui s'appliquent sur leurs territoires.
4. Les coopérations différenciées peuvent s'ouvrir à des pays extérieurs à l'Union, afin de favoriser sur une base plus large la promotion des valeurs et des intérêts communs.

Respect des identités nationales

5. L'Union respecte les identités nationales de ses membres, et les défend à l'extérieur.

Liberté des préférences

6. L'Union s'attache à faire prévaloir sur la scène internationale le principe général du libre choix, par chaque peuple, de son mode de vie, et la légitimité des coopérations qui établissent une préférence mutuelle librement décidée.

Supériorité des Constitutions nationales

7. L'Union rassemblant des nations souveraines, les Constitutions nationales demeurent sa norme supérieure ; il n'est pas procédé à des transferts de souveraineté - laquelle appartient irrévocablement à chaque peuple - mais seulement à des délégations de compétences qui sont toujours révocables.

¹ Voir annexe 4.

Compromis de Luxembourg

8. Chaque pays membre possède le droit imprescriptible de ne pas s'associer à une décision qu'il estimerait contraire à des intérêts très importants pour lui ; dans ce cas, la décision éventuellement prise ne peut s'appliquer au pays qui l'a refusée ; celui-ci ne peut toutefois empêcher ses partenaires de poursuivre ensemble les buts qu'ils estiment souhaitables, dans la mesure où ils ne lèsent pas ses intérêts vitaux.

Evolution démocratique du droit communautaire

9. Les délégations de compétences ne peuvent être accordées, modifiées, ou retirées que par les peuples concernés, dans les formes prévues par leurs Constitutions respectives. Si un peuple conteste une règle commune par la forme solennelle d'un référendum, cette règle doit être obligatoirement renégociée.
10. Si une décision de justice aboutit à interpréter un des traités dans un sens extensif, cette décision pourra faire l'objet d'un appel, pour ratification, devant les Parlements nationaux, qui pourront à leur tour en référer à leurs peuples.

Services publics

11. Sans préjudice des règles communes, les Etats membres ont le droit de décider librement l'organisation et les limites de leurs services publics.

Normes nationales

12. Sans préjudice des règles communes, les Etats membres ont le droit de décider pour eux des normes d'un niveau supérieur à celles de l'Union dans les domaines de la moralité publique, de l'ordre public, de la sécurité publique, de la protection de la vie et de la santé des personnes et des animaux, de la protection sociale, de la défense de l'environnement, de la sauvegarde de l'identité ou du patrimoine naturel, artistique, historique ou archéologique. Ils ont aussi le droit de se donner les moyens de contrôler le respect de ces règles.

Maîtrise des frontières

13. Les Etats membres conservent la maîtrise de leurs frontières et de leurs territoires. La libre circulation des personnes, des biens, des services ou des capitaux, telle que prévue par les traités, n'implique pas nécessairement l'absence de contrôles nationaux. La libre circulation des personnes n'implique pas non plus le droit d'établissement.

Droit de sauvegarde

14. Dans les domaines mentionnés aux points 11 et 12, les Etats membres peuvent prendre, en cas de nécessité, des mesures de sauvegarde nationales, dont ils informent aussitôt leurs partenaires.

Légitimité principale des Parlements nationaux

15. Conformément à l'article 1, l'échelon démocratique le plus important de l'Union est celui des Parlements nationaux, qui détiennent la légitimité principale. Le Parlement européen joue un rôle complémentaire pour le contrôle des activités européennes, et dans des formations variables selon les coopérations concernées.
16. Les Parlements nationaux interviennent dans les activités de l'Union soit indirectement, par le contrôle des gouvernements siégeant au Conseil, soit directement par une organisation en réseau qui leur permet de prendre des décisions applicables immédiatement dans leurs pays respectifs. Ils détiennent un droit de veto sur les questions de subsidiarité. Un comité formé des représentants parlementaires des pays participants assure le suivi permanent des questions les plus importantes, comme la sécurité ou la monnaie.

Citoyenneté

17. La citoyenneté, comme le droit de vote, reste de compétence nationale. Par "citoyenneté européenne", on désigne l'ensemble des avantages que les Etats membres se consentent réciproquement pour leurs citoyens respectifs. Nul ne peut y accéder s'il ne possède la nationalité d'un Etat membre.

ANNEXES

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ANNEXE 1

**Décision d'ouvrir
la rédaction d'une Charte
des droits fondamentaux de l'Union européenne**

Conclusions du Conseil européen
de Cologne
(4 juin 1999)

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Une Charte des droits fondamentaux de l'UE

44. Le Conseil européen estime qu'à ce stade du développement de l'Union européenne il conviendrait de réunir les droits fondamentaux en vigueur au niveau de l'Union dans une charte de manière à leur donner une plus grande visibilité.
45. Il a arrêté à ce sujet la décision jointe à l'annexe IV. La future présidence est invitée à faire en sorte que les conditions préalables à la mise en oeuvre de cette décision soient réalisées d'ici la réunion spéciale du Conseil européen à Tampere les 15 et 16 octobre 1999.

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ANNEXE IV des conclusions de Cologne

Décision du Conseil européen
concernant l'élaboration d'une Charte
des droits fondamentaux de l'Union européenne

Le respect des droits fondamentaux est l'un des principes fondateurs de l'Union européenne et la condition indispensable pour sa légitimité. La Cour de Justice européenne a confirmé et défini dans sa jurisprudence l'obligation de l'Union de respecter les droits fondamentaux. Au stade actuel du développement de l'Union, il est nécessaire d'établir une charte de ces droits afin

d'ancrer leur importance exceptionnelle et leur portée de manière visible pour les citoyens de l'Union.

Le Conseil européen est d'avis que cette charte doit contenir les droits de liberté et d'égalité, ainsi que les droits de procédure tels que garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes des Etats membres, en tant que principes généraux du droit communautaire. La charte doit en outre contenir les droits fondamentaux réservés aux citoyens de l'Union. Dans l'élaboration de la charte, il faudra par ailleurs prendre en considération des droits économiques et sociaux tels qu'énoncés dans la Charte sociale européenne et dans la Charte communautaire des droits sociaux fondamentaux des travailleurs (article 136 TCE) dans la mesure où ils ne justifient pas uniquement des objectifs pour l'action de l'Union.

Le Conseil européen est d'avis qu'une enceinte composée de représentants des Chefs d'Etat et de Gouvernement et du Président de la Commission européenne ainsi que des membres du Parlement européen et des parlements nationaux devrait élaborer un projet d'une telle charte des droits fondamentaux de l'Union européenne. Des représentants de la Cour de justice devraient y participer à titre d'observateurs. Des représentants du Comité économique et social et du Comité des régions ainsi que des groupes sociaux et des experts devraient être entendus. Le secrétariat devrait être assuré par le Secrétariat général du Conseil.

Cette enceinte doit présenter un projet en temps utile avant le Conseil européen en décembre de l'an 2000. Le Conseil européen proposera au Parlement européen et à la Commission de proclamer solennellement, conjointement avec le Conseil, une charte des droits fondamentaux de l'Union européenne sur la base dudit projet. Ensuite il faudra examiner si et, le cas échéant, la manière dont la charte pourrait être intégrée dans les traités. Le Conseil européen donne mandat au Conseil "Affaires générales" d'engager les mesures nécessaires avant le Conseil européen de Tampere.

ANNEXE 2

**Composition, méthodes de travail
et modalités pratiques de l'enceinte
pour l'élaboration du projet de charte
des droits fondamentaux de l'UE**

Annexe aux conclusions du Conseil européen
de Tampere
(16 octobre 1999)

A. COMPOSITION DE L'ENCEINTE

i) Membres

a) Chefs d'Etat ou de gouvernement des Etats membres

Quinze représentants des chefs d'Etat ou de gouvernement des Etats membres.

b) Commission

Un représentant du président de la Commission européenne

c) Parlement européen

Seize membres du Parlement européen désignés par celui-ci.

d) Parlements nationaux

Trente membres des parlements nationaux (deux par parlement) désignés par ceux-ci.

Les membres de l'enceinte peuvent être remplacés par des suppléants en cas d'empêchement.

ii) Président et vice-présidents de l'enceinte

L'enceinte élit son président. Un membre du Parlement européen, un membre d'un parlement national et le représentant du président du Conseil européen exercent les vice-présidences de l'enceinte, s'ils n'ont pas été élus à la présidence.

Le membre du Parlement européen exerçant la vice-présidence est élu par les membres du Parlement européen faisant partie de l'enceinte. Le membre du parlement national exerçant la vice-présidence est élu par les membres des parlements nationaux faisant partie de l'enceinte.

iii) Observateurs

Deux représentants de la Cour de justice des Communautés européennes désignés par la Cour.

Deux représentants du Conseil de l'Europe, dont un représentant de la Cour européenne des droits de l'homme.

iv) Instances de l'Union européenne devant être entendues

Le Comité économique et social

Le Comité des régions

Le médiateur

v) Echange de vues avec les pays candidats

Il convient d'organiser un échange de vues approprié entre l'enceinte ou son président et les pays candidats.

vi) Autres instances, groupes sociaux ou experts devant être entendus

D'autres instances, groupes sociaux et experts peuvent être entendus par l'enceinte.

vii) Secrétariat

Le Secrétariat général du Conseil assure le secrétariat de l'enceinte. Afin de garantir une bonne coordination, des contacts étroits seront établis avec le Secrétariat général du Parlement européen, avec la Commission, et, dans la mesure nécessaire, avec les secrétariats des parlements nationaux.

B. METHODES DE TRAVAIL DE L'ENCEINTE***i) Travaux préparatoires***

Le président de l'enceinte propose, en étroite concertation avec les vice-présidents, un programme de travail pour l'enceinte et effectue les autres travaux préparatoires nécessaires.

ii) Transparence des délibérations

En principe, les débats de l'enceinte et les documents présentés au cours de ces débats devraient être rendus publics.

iii) Groupes de travail

L'enceinte peut constituer des groupes de travail ad hoc, qui sont ouverts à tous ses membres.

iv) Rédaction

Sur la base du programme de travail établi par l'enceinte, un comité de rédaction, composé du président, des vice-présidents et du représentant de la Commission et assisté par le Secrétariat général du Conseil, élabore un avant-projet de charte en tenant compte des propositions de texte soumises par tout membre de l'enceinte.

Chacun des trois vice-présidents procède régulièrement à des consultations avec les composantes respectives de l'enceinte dont il est issu.

v) Elaboration du projet de charte par l'enceinte

Lorsque le président de l'enceinte, en concertation étroite avec les vice-présidents, estime que le texte du projet de charte élaboré par l'enceinte peut être en définitive adopté par toutes les parties, celui-ci peut être transmis au Conseil européen conformément à la procédure préparatoire habituelle.

C. MODALITES PRATIQUES

L'enceinte se réunit à Bruxelles, alternativement dans les locaux du Conseil et dans ceux du Parlement européen.

Le régime linguistique intégral s'applique aux réunions de l'enceinte.

ANNEXE 3

Les droits fondamentaux dans les traités européens

PREAMBULE TUE

(...)

CONFIRMANT leur attachement aux principes de la liberté, de la démocratie et du respect des droits de l'homme et des libertés fondamentales et de l'état de droit,

CONFIRMANT leur attachement aux droits sociaux fondamentaux tels qu'ils sont définis dans la Charte sociale européenne, signée à Turin le 18 octobre 1961, et dans la Charte communautaire des droits sociaux fondamentaux des travailleurs de 1989,

(...)

ARTICLE 6 TUE

1. L'Union est fondée sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales, ainsi que de l'état de droit, principes qui sont communs aux Etats membres.

2. L'Union respecte les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, signée à Rome le 4 novembre 1950, et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, en tant que principes généraux du droit communautaire.

3. L'Union respecte l'identité nationale de ses Etats membres.

(...)

ARTICLE 136 TCE

La Communauté et les Etats membres, conscients des droits sociaux fondamentaux, tels que ceux énoncés dans la Charte sociale européenne signée à Turin le 18 octobre 1961 et dans la Charte communautaire des droits sociaux fondamentaux des travailleurs de 1989, ont pour objectifs la promotion de l'emploi, l'amélioration des conditions de vie et de travail, permettant leur égalisation dans le progrès, une protection sociale adéquate, le dialogue social, le développement des ressources humaines permettant un niveau d'emploi élevé et durable et la lutte contre les exclusions.

A cette fin, la Communauté et les Etats membres mettent en oeuvre des mesures qui tiennent compte de la diversité des pratiques nationales, en particulier dans le domaine des relations conventionnelles, ainsi que de la nécessité de maintenir la compétitivité de l'économie de la Communauté.

Ils estiment qu'une telle évolution résultera tant du fonctionnement du marché commun, qui favorisera l'harmonisation des systèmes sociaux, que des procédures prévues par le présent traité et du rapprochement des dispositions législatives, réglementaires et administratives.

ANNEXE 4

**Liste des traités ONU et Conseil de l'Europe
relatifs à la protection des droits de l'homme**
ratifiés par les Etats membres de l'Union européenne

Traités conclus sous l'égide du Conseil de l'Europe

- Convention de sauvegarde des droits de l'homme et des libertés fondamentales (1950)
- Protocole n° 1 à la CSDH ajoutant de nouveaux droits à ceux déjà protégés par la Convention: propriété droit à l'éducation, droit à des élections libres au scrutin secret... (1952)
- Protocole n° 2 à la CSDH donnant à la Cour européenne de Justice la compétence de donner des avis (1963)
- Protocole n° 3 à la CSDH amendant les articles 29, 30 et 34 de la Convention (1963)
- Protocole n° 4 à la CSDH ajoutant certains droits et libertés à ceux déjà inclus dans la Convention et le protocole n° 1 (1963)¹
- Protocole n° 5 à la CSDH amendant les articles 22 et 40 (1966)
- Protocole n° 6 à la CSDH relatif à l'abolition de la peine de mort (1983)
- Protocole n° 7 à la CSDH étendant la liste des droits protégés, et notamment le droit des étrangers à des garanties procédurales en cas d'expulsion (1984)²
- Protocole n° 8 à la CSDH amendant certaines dispositions de procédure relatives à la commission européenne des droits de l'homme et à la Cour européenne des droits de l'homme (1985)
- Protocole n° 11 à la CSDH relative au contrôle (1994)
- Accord européen relatif aux procédures de la Commission et de la Cour européennes des droits de l'homme (1969)¹

¹ Non signé par la Grèce, signé mais non encore ratifié par l'Espagne et le Royaume-Uni.

² Non signé par la Belgique et le Royaume-Uni, signé mais non ratifié par l'Allemagne, l'Espagne, l'Irlande, les Pays-Bas, le Portugal.

- Accord européen relatif aux procédures de la Cour européenne des droits de l'homme (1996)²
- Convention européenne pour le bannissement de la torture et des punitions ou traitements inhumains ou dégradants (1987)
- Protocole n° 1 à la Convention européenne pour le bannissement de la torture, concernant la possibilité d'adhésion à la Convention de pays non membres du Conseil de l'Europe (1993)
- Protocole n° 2 à la Convention européenne pour le bannissement de la torture, concernant le renouvellement du Comité européen pour le bannissement de la torture et des punitions ou traitements inhumains ou dégradants (1993)³
- Convention cadre pour la protection des minorités nationales (1995)⁴
- Charte européenne sur les langues minoritaires ou régionales (1992)⁵
- Charte sociale européenne (1961)
- Protocole additionnel à la Charte sociale européenne, étendant la protection des droits économiques et sociaux (1988)⁶
- Protocole additionnel à la Charte sociale européenne relatif à un système de plaintes collectives (1995)⁷

¹ Non signé par la Grèce.

² Non signé par l'Espagne ; signé mais non ratifié par la Belgique, l'Allemagne, la Grèce, l'Autriche, le Portugal, le Royaume-Uni.

³ Signé mais non ratifié par le Portugal.

⁴ Non signée par la Belgique et la France ; signée mais non ratifiée par la Grèce, le Luxembourg, les Pays-Bas, le Portugal et la Suède.

⁵ Non signée par la Belgique, la Grèce, l'Irlande, l'Italie, le Portugal, la Suède et le Royaume-Uni ; signée mais non ratifiée par le Danemark, l'Espagne, la France, le Luxembourg et l'Autriche (seuls l'Allemagne, les Pays-Bas et la Finlande ont ratifié cette Charte).

⁶ Non signé par l'Irlande, le Portugal et le Royaume-Uni ; signé mais non ratifié par la Belgique, l'Allemagne, l'Espagne, la France, le Luxembourg, et l'Autriche.

⁷ Non signé par l'Allemagne, l'Espagne, l'Irlande, le Luxembourg, les Pays-Bas, le Royaume-Uni ; signé mais non ratifié par la Belgique, le Danemark et l'Autriche.

- Charte sociale européenne révisée (1996)¹
- Convention européenne sur le statut légal des travailleurs migrants (1977)²
- Convention européenne sur les droits de l'enfant (1996)³
- Convention sur la protection des droits de l'homme et de la dignité de l'être humain en ce qui concerne les applications de la biologie et de la médecine (1997)⁴
- Protocole additionnel à la Convention précédente, relatif à l'interdiction du clonage humain (1998)⁵
- Convention sur la protection des individus à l'égard des traitements automatiques de données personnelles (1981)

Traités conclus sous l'égide de l'organisation des Nations-Unies ou de ses agences spécialisées

- Convention internationale sur les droits économiques, sociaux et culturels (1966)
- Convention internationale sur les droits civils et politiques (1966)
- Protocole facultatif à la Convention internationale sur les droits civils et politiques (1966)⁶
- Second protocole facultatif à la Convention internationale sur les droits civils et politiques, tendant à l'abolition de la peine de mort (1989)⁷

¹ Non signée par l'Allemagne, l'Espagne, l'Irlande, les Pays-Bas ; signée mais non ratifiée par la Belgique, le Danemark, la Grèce, le Luxembourg, l'Autriche, le Portugal, la Finlande, le Royaume-Uni.

² Non signée par le Danemark, l'Irlande, l'Autriche, la Finlande, le Royaume-Uni ; signée mais non ratifiée par la Belgique, l'Allemagne, la Grèce, le Luxembourg.

³ Ratifiée seulement par la Grèce ; signée, mais non ratifiée par l'Espagne, la France, l'Irlande, l'Italie, le Luxembourg, l'Autriche, le Portugal, la Finlande, la Suède.

⁴ Non signée par la Belgique, l'Allemagne, l'Irlande, l'Autriche, le Royaume-Uni ; signée mais non ratifiée par la France, l'Italie, le Luxembourg, les Pays-Bas, le Portugal, la Finlande, la Suède.

⁵ N'a été signé et ratifié que par la Grèce ; signé seulement, pour le moment, par le Danemark, l'Espagne, la France, l'Italie, le Luxembourg, les Pays-Bas, le Portugal, la Finlande et la Suède.

⁶ Non signé par le Royaume-Uni.

⁷ Signé mais non ratifié par le Royaume-Uni, non signé par la France.

- Convention internationale sur l'élimination de toutes les formes de discrimination raciale (1965)¹
- Convention sur la prévention et la sanction du crime de génocide (1948)
- Convention sur l'élimination de toutes formes de discrimination contre les femmes (1979)

¹ Signée mais non ratifiée par l'Irlande.

ANNEXE 5

**Principaux droits fondamentaux
mentionnés par la Convention européenne
de sauvegarde des droits de l'homme et des libertés fondamentales**

Le droit à la vie
L'interdiction de la torture ou des traitements inhumains et dégradants
L'interdiction de l'esclavage et du travail forcé ou obligatoire
Le droit à la liberté et à la sûreté
Le droit à la liberté de pensée, de conscience et de religion
Le droit de se marier et de fonder une famille
Le droit au respect de la vie privée et familiale
Le droit de propriété
Le droit de vote dans le cadre d'élections libres
Le droit à la liberté d'expression
Le droit à la liberté de réunion pacifique et à la liberté d'association
En cas de procès, le droit à une audition équitable et publique par un tribunal indépendant et impartial
La non rétroactivité des lois
Le droit à un recours effectif en cas de violation de l'un des droits ou libertés ci-dessus.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
fundamental.rights@consilium.eu.int

Brussels, 20 January 2000 (25.01)
(OR. f)

CHARTE 4111/00

BODY 3

INFORMATION NOTE

Subject : Draft Charter of Fundamental Rights of the European Union
 – Horizontal questions

In preparation for the general debate on the Charter on 2 February, the Chairman has asked the Secretariat of the Body to set out in brief certain "horizontal" questions which the Body may have to look into. This paper is being sent to Members of the Body for information.

I. Political declaration or legal text

1. The mandate given by the Cologne European Council gave no indication as to what form the draft Charter resulting from the Body's proceedings should take. It simply stated that it would serve as a basis for an interinstitutional declaration and that its possible inclusion in the Treaties would be examined at a later stage.

2. The outcome of the Body's proceedings may be entirely different, depending on how much importance is attached to any one of the draft Charter's aims. It may take the form of a political declaration, in which case further discussions will be vital if the declaration is to be converted into a text capable of being incorporated into the Treaties. It may take the form of a legal text, but if so, special care will be needed to ensure that it is properly worded and in particular that it is consistent with the Treaties, since by definition it must be incorporated into the Treaties without amending them.
3. The choice between the two options is a political one, but it will have a significant bearing on the Body's future proceedings.

II. A Charter of Rights of the European Union

4. The Charter is intended to apply to the Union's institutions and not to activities of Member States which fall outside the scope of EC or EU legislation. This would be consistent with Court of Justice case-law, whereby Member States are bound to respect fundamental rights whenever they act within the scope of the Treaties for the purposes either of implementing Community (or EU) legislation or derogating from it (Judgment of 18 June 1991 in Case C-260/89, *Elliniki Radiophonia Tiléorassi AE*, ECR I-2925, par. 43).
5. The fact remains that the Charter cannot of itself impose obligations on Member States outside the scope of EU legislation in its broadest sense. One of the Charter's provisions should therefore make this clear.
6. The aim of the Charter is to establish a bill of rights, rather than to confer new powers on the Union to legislate in the field of fundamental rights. In its Opinion 2/94 of 28 March 1996 (ECR I-1759), the Court of Justice made a clear distinction between the obligation to respect fundamental rights and the power to legislate with regard to fundamental rights. The Charter must operate solely within the framework of existing powers. Should these be extended as a result of the Treaties being amended, the Charter would naturally apply to the new powers created.

7. The Charter applies to the institutions of the Union, and the Cologne European Council does not refer to the Community alone. The Charter should therefore be drafted in such a way as to apply within the framework not only of the Treaty on European Union but also of the EC Treaties. In other words, the Charter also applies to Titles V (CFSP) and VI (JHA) of the Treaty on European Union.

III. Holders of guaranteed rights

8. This is an extremely complex legal issue. If the terms of the European Convention on Human Rights are adopted, then this Convention applies to any person within the jurisdiction of a Contracting State. *Mutatis mutandis*, the Charter would thus apply to anyone within the jurisdiction of the Union.
9. A solution of this kind raises difficulties, particularly with regard to certain social rights which may not be applied systematically to workers from third countries and the scope of which is also likely to vary in accordance with the agreements concluded between the Union and the third countries. The same holds true, of course, with regard to freedom of movement.
10. Finally, rights linked to Community citizenship, which are political rights, may be granted solely to persons holding the nationality of one of the Member States. No discrimination based on nationality may occur in the enjoyment of such rights.
11. This distinction becomes further complicated with the inclusion of a general clause on non-discrimination which might conflict with the existence of specific rights reserved for EC nationals or persons treated as such.
12. This is a problem which can be solved. The European Court of Human Rights stated in its Chorfi judgment of 7 August 1996 that the preferential treatment granted to EC nationals in the matter of expulsion was dependent on a case being made on objective and reasonable grounds. It is thus possible to justify differing forms of treatment.

13. Under these circumstances, would it not be possible to work on the basis that the Charter should apply to any person falling within the scope of EU legislation, with a proviso covering the specific rights enjoyed by citizens of the Union? An example may be found in Article 25 of the European Parliament declaration which attempted to solve this problem, but which was not entirely successful in doing so.
14. Given the aim of incorporation into the Treaties, this is a significant problem which needs to be handled with great care. It should be noted that, strictly speaking, Article 13 TEC itself contains no general clause on non-discrimination, but does empower the Community to combat discrimination within the sphere of its competence. On the other hand, Article 6 TEU refers back to the European Convention on Human Rights and thus to Article 14 thereof which prohibits discrimination in the enjoyment of rights guaranteed under the said Convention. It should further be noted that an additional Protocol to the European Convention on Human Rights prohibiting discrimination of any kind is currently under negotiation within the Council of Europe.

IV. Relationship with international instruments for the protection of human rights and common constitutional traditions

15. The question of the relationship between the Charter and the European Convention on Human Rights is frequently raised. The drafting of the Charter has no direct impact on the question of the Community's accession to the European Convention on Human Rights. The problem of accession may arise, irrespective of whether the Community has a Charter or not. The Charter constitutes a bill of rights which the Union imposes on itself, just as each State party to the Convention has its own charter of fundamental rights. This does not dispense the Union from observing the Convention. Accession would establish an external check on the way in which the Community observes the Convention. According to the Court of Justice of the Communities, such accession will require a revision of the Treaty.

16. Article 6 TEU requires the Union to respect the Convention. Consequently, the Convention constitutes a minimum standard and the Charter cannot take a step backwards in relation to the Convention as interpreted by the European Court of Human Rights. This point is particularly important since there is always a risk of a private individual referring to the European Court of Human Rights a national measure implementing Community law and of that Community law being declared contrary to the Convention, although the Court of Justice of the Communities would perhaps not have delivered the same judgment (see ECHR, Judgment *Matthews v. United Kingdom* of 18 February 1999 concerning the European elections and Gibraltar).
17. The same consideration applies with regard to common constitutional traditions.
18. Under these circumstances, it would perhaps be useful to consider a clause that would establish that there is nothing in the Charter to restrict the protection offered by the European Convention on Human Rights and the common constitutional traditions and by other instruments which would have to be identified (United Nations Covenant, European Social Charter, etc.).

V. The question of limitation of guaranteed rights

19. Guaranteed rights are not guaranteed without limit. The European Convention authorises the limitations which are prescribed by law and are necessary in a democratic society. Other arrangements exist which preserve the actual core of the guaranteed right. It will probably be necessary to give thought to the limitation formula. For example, Article G (Part V) of the European Social Charter could be taken as a basis.

VI. The different categories of rights

20. The rights to be guaranteed are not of the same kind. There are rights which are clearly amenable to the law. Others require action by the European Union for them to be implemented, and the legislator has broad discretionary powers as regards such action.

21. Contrary to what certain parties claim, this distinction does not conceal any opposition between civil and political rights and social rights. Certain social rights, such as the right of association, may be amenable to the law, whilst others, such as the right to employment, are less so.
22. Consideration must therefore be given to each right to determine whether it is amenable to the law or whether it can be worded in such a way as to make it so. Could not certain rights be defined as political principles for Union action which need to be realised through action by the legislator? That is what was adopted in the Parliament declaration for the right to the environment (Article 24) or working conditions (Article 13).

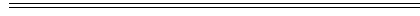
VII. Judicial control

23. If the Charter is inserted into the Treaty, observance thereof will be ensured through the provisions on judicial control contained in the Treaties. The control will be effected by the Court of Justice either by direct referral thereto or via a preliminary ruling by the national judge. The system of control will differ according to the pillars.
24. Is there a contradiction between the right to a judge as set out in the European Convention on Human Rights and the system of the Treaties? The system of appeal provided for by the Treaties is a comprehensive system since, when referral cannot be made direct to the Court, the national courts may be called upon to rule on national acts implementing Community law.
25. Nevertheless, there are cases in which no national implementing act is necessary as the Community legislation simply lays down a prohibition. The only possibility remaining for the private individual is to appeal against the penalty which might be imposed upon him by the national courts in the event of an infringement of the Community legislation. Some thought it was not normal for a private individual to be induced to commit an infringement in order to be able to appeal, since he had no right to appeal directly against the Community act concerned. However, it is not clear whether the Court's case law on this matter has been established and the Court will shortly be required to state its position.

26. In its preparatory report for the last Intergovernmental Conference, the Court mentioned the idea of introducing a special appeal ("Verfassungsbeschwerde"; complaint of unconstitutionality). The Intergovernmental Conference did not adopt this suggestion.

CONCLUSION

27. This note is not exhaustive and simply presents certain horizontal problems without examining them in depth. On the basis of the Body's discussions, they will require a detailed legal examination.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 26 January 2000
(OR. f)****CHARTE 4112/00****BODY 4****PRESIDENCY NOTE**

Subject : Draft list on fundamental rights

This list has been drawn up on the basis of the Community Treaties, International Conventions on Human Rights including the European Convention on Human Rights, texts of national Constitutions and various Community texts including several Declarations by the European Parliament. It merely aims to serve as a basis for discussions at the first working meeting called upon to draw up such a list. Once the forum has decided on that list, work on drafting the various rights may begin.

This list groups together rights granted to individuals, natural and legal persons, which may be invoked by them within the scope of the Union's powers and also rights which can be presented as political objectives of Union action. Sometimes, by way of illustration, the contents of a right have been spelt out.

No distinction has been drawn between civil and political rights on one hand and social and economic rights on the other. The only matters that have specifically been highlighted are the rights of citizens of the Union and horizontal questions. The document does not claim either to constitute a blueprint for the presentation of the Charter and the position of each right on the list should be subject to discussion.

The references that have been entered in brackets only have an explanatory value. They refer to texts of different natures, some having a binding value, and others not. Sometimes, the rights are formulated as such, sometimes there is merely a reference to a Union or Community objective. In addition, references to secondary legislation have been excluded

The forum is called upon to discuss and amend this list, either by cutting back certain rights, or by amplifying the list.

Abbreviations:

EC : Treaty establishing the European Community

ECHR: European Convention on Human Rights

Social Charter: European Social Charter

Community Charter of Social Rights : Community Charter of the Fundamental Social Rights of Workers

EP Decl. 1989 : Declaration of fundamental rights and freedoms adopted by the Parliament on 12 April 1989.

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LIST OF RIGHTS

1. Right of respect of the dignity of the human person: this right covers in particular, but not exclusively questions of bioethics, prohibition of slavery and forced labour.(Article 4 ECHR, Article 1 EP Decl.1989)
2. Right to life, prohibition of inhuman or degrading treatment, torture, problem of the death penalty.(Article 2 ECHR, Article 2 EP Decl. 1989)
3. Liberty and security: protection in the case of deprivation of liberty, habeas corpus.(Article 5 ECHR, Article 2 EP Decl. 1989)
4. Right to a fair trial: public hearing, impartial tribunal, reasonable time, principle of right to be heard (audi alteram partem) and of equality of arms, presumption of innocence and the rights of the accused in criminal proceedings...(Article 6 ECHR, Article 19 EP Decl. 1989)
5. Access to the courts: right to appear before a judge.(Articles 6 and 13 ECHR, Article 19 EP Decl. 1989)
6. Nullum crimen sine lege et nulla poena sine lege (no crime without law and no punishment without law) and non-retroactive criminal law.(Article 7 ECHR, Article 21 EP Decl. 1989)
7. Non bis in idem(double jeopardy).(Article 4 Protocol No 7 ECHR, Article 20 EP Decl. 1989)
8. Respect for private and family life: right to privacy, home, correspondence, data protection.(Article 8 ECHR, Article 6 EP Decl. 1989)
9. Right to found a family.(Article 12 ECHR, implicitly in Article 6 EP Decl. 1989)
10. Freedom of thought, conscience and religion.(Article 9 ECHR, Article 4 EP Decl. 1989)
11. Freedom of expression : including the freedom to receive and impart information and freedom of the press.(Article 10 ECHR, Article 5 EP Decl. 1989)
12. Right to free elections.(Article 3 Protocol ECHR, Article 17 EP Decl. 1989)
13. Right to education and vocational training.(Article 2 Protocol ECHR, Article 150 EC, Article 10 Social Charter, Point 15 Community Charter of Social Rights, Article 16 EP Decl. 1989)
14. Freedom of association and assembly, including the right to organise.(Article 11 ECHR, Article 15 Social Charter, Point 11 Community Charter of Social Rights, Article 11 EP Decl. 1989)
15. Access to information, transparency.(Article 255 EC, Article 18 EP Decl. 1989)
16. Data protection (Article 286 EC, Article 18 EP Decl. 1989)

17. Freedom of movement and of residence: problem of beneficiary, relationship with citizens' rights.(Article 2 Protocol No. 4 ECHR, Title III of the EC Treaty for workers, Article 8 EP Decl. 1989)
18. Property rights.(Article 1 Protocol ECHR, Article 9 EP Decl. 1989)
19. Conservation of the environment, right to a healthy environment: right or political objective ?(Article 6 EC, Article 24 EP Decl. 1989)
20. Rights of aliens: asylum, prohibition of collective expulsion, procedural guarantees in the case of expulsion.(Article 63 EC, Article 4 Protocol No. 4 and Article 1 Protocol No. 7 ECHR)
21. Right to work: objective of a high level of employment, freedom to choose and engage in an occupation.(Article 127 EC, Article 1 Social Charter, Point 4 Community Charter of Social Rights)
22. Right to safe and healthy working conditions.(Article 140 EC, Article 3 Social Charter, Point 19 Community Charter of Social Rights, Article 13 EP Decl. 1989)
23. Fair remuneration and minimum wage: distinguish between what falls under a right and what constitutes a political objective.(Article 4 Social Charter, Article 4 Community Charter of Social Rights, Article 13 EP Decl. 1989)
24. Right to weekly rest period and paid holidays.(Article 2 Social Charter, Point 8 Community Charter of Social Rights)
25. Pensions.(Article 23 Social Charter, Points 24 and 25 Community Charter of Social Rights)
26. Free access to placement services.(Article 1 Social Charter, Point 6 Community Charter of Social Rights)
27. Vocational guidance and continuing vocational training.(Articles 9 and 10 Social Charter, Point 15 Community Charter of Social Rights)
28. Right of information and consultation of workers.(Article 137 EC,Article 6 Social Charter, Point 17 Community Charter of Social Rights)
29. Right to collective bargaining.(Article 137 EC, Article 6 Social Charter, Point 12 Community Charter of Social Rights, Article 14 EP Decl. 1989)
30. Right to strike.(Article 6 Social Charter, Point 13 Community Charter of Social Rights, Article 14 EP Decl. 1989)
31. Right to health: right or political objective.(Article 152 EC, Article 11 Social Charter, Point 19 Community Charter of Social Rights, Article 15 EP Decl. 1989)
32. Right to social security, right to social and medical assistance.(Article 13 Social Charter, Point 10 Community Charter of Social Rights, Article 15 EP Decl. 1989)
33. Protection of maternity.(Article 8 Social Charter)

34. Protection of children and young persons.(Article 17 Social Charter, Points 20 and following Community Charter of Social Rights)
35. Integration of disabled persons.(Article 15 Social Charter, Point 26 Community Charter of Social Rights)

Rights of citizens of the Union

1. Freedom of movement and residence(Article 18 EC)
2. Right to vote and stand as a candidate at European and municipal elections(Article 19 EC)
3. Diplomatic and consular protection(Article 20 EC)
4. Right to petition the European Parliament(Article 21 EC)
5. Right to apply to the Ombudsman(Article 21 EC)
6. Non-discrimination between citizens of the Union(Article 12 EC)
7. Equality in access to the Community civil service(principle of non-discrimination on the basis of nationality and status)
8. Right to write to the Union in one of the official languages and to have an answer in the same language.(Article 21 EC)

NB. The rights referred to under points 4 and 5 also apply to persons residing in the territory of a Member State.

Horizontal questions

1. Holders of rights guaranteed by the Charter
 2. Non-discrimination : between Community nationals (Article 12 EC), between men and women (Articles 137 and 141 EC), general non-discrimination clause (Article 13 EC and Article 14 ECHR)
 3. Limitation of guaranteed rights (incorporated in various Articles of ECHR and Article 26 EP Decl 1989)
 4. Derogation in cases of exceptional situations (Article 15 ECHR and Protocol on right of asylum EC)
 5. Abuse of rights (Article 17 ECHR, Article 28 EP Decl. 1989)
 6. Relationship with other instruments of protection of fundamental rights (Article 27 EP Decl. 1989)
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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 27 janvier 2000**CHARTE 4112/1/00 REV 1****BODY 4****NOTE DE LA PRESIDENCE**

Objet : Projet de liste des droits fondamentaux

La présente liste a été établie sur la base des traités communautaires, des conventions internationales relatives aux droits de l'homme dont la Convention européenne des droits de l'homme, des textes des constitutions nationales ainsi que divers textes communautaires dont les différentes déclarations du Parlement européen. Elle vise simplement à servir de base aux discussions de la première réunion de travail appelée à établir une telle liste. Une fois que l'enceinte se sera prononcée sur cette liste, le travail de rédaction des différents droits pourra commencer.

Cette liste regroupe des droits accordés aux individus, personnes physiques et morales, que ceux-ci peuvent faire valoir dans le champ des compétences de l'Union et des droits qui peuvent être présentés comme des objectifs politiques de l'action de l'Union. Parfois, à titre d'illustration, le contenu d'un droit a été détaillé.

La distinction entre les droits civils et politiques d'une part et les droits économiques et sociaux d'autre part a été établie uniquement à des fins de clarté. Ont été isolés les droits des citoyens de l'Union et les questions horizontales. Le document ne constitue pas un plan de présentation de la Charte et la place de chaque droit dans la liste devra faire l'objet d'une discussion.

Les références qui ont été indiquées entre parenthèses n'ont qu'une valeur explicative. Elles se rapportent à des textes de nature différente, les uns ayant une valeur contraignante, les autres non. Parfois, les droits sont formulés comme tels, parfois il s'agit simplement d'une référence à un objectif de l'Union ou de la Communauté. De plus, ont été exclues les références au droit dérivé.

L'enceinte est appelée à discuter et à amender cette liste, soit en retranchant certains droits, soit en complétant la liste.

Abréviations:

CE: Traité instituant la Communauté européenne

CEDH: Convention européenne des droits de l'homme

Charte sociale : Charte sociale européenne

Charte communautaire des droits sociaux : Charte communautaire des droits sociaux fondamentaux des travailleurs

Décl. PE 1989 : Déclaration des droits et libertés fondamentaux adoptée par le Parlement européen le 12 avril 1989.

LISTE DES DROITS

Dignité

1. Droit au respect de la dignité de la personne humaine : ce droit couvre notamment, mais pas exclusivement les questions de bioéthique, interdiction de l'esclavage et du travail forcé (article 4 CEDH, article 1 décl. PE 1989).

Droit à la vie

2. Droit à la vie, interdiction des traitements inhumains et dégradants, de la torture, problème de la peine de mort (article 2 CEDH, article 2 décl. PE 1989)

Liberté et sûreté

3. Liberté et sûreté : protection en cas de privation de liberté, habeas corpus (article 5 CEDH, article 2 décl. PE 1989)

Accès à la justice et droits de procédure

4. Droit à un procès équitable : procès public, tribunal impartial, délai raisonnable, principe du contradictoire et égalité des armes, présomption d'innocence et droits de l'accusé en matière pénale...(article 6 CEDH, article 19 décl. PE 1989)
5. Accès à la justice : droit au juge, assistance judiciaire (articles 6 et 13 CEDH, article 19 décl. PE 1989)

Non rétroactivité

6. Nullum crimen sine lege, nulla poena sine lege et non-rétroactivité de la loi pénale (article 7 CEDH, article 21 décl. PE 1989)

Ne bis in idem

7. Ne bis in idem (article 4 protocole n°7 CEDH, article 20 décl. PE 1989)

Vie privée et familiale

8. Respect de la vie privée et familiale ; droit à l'intimité, domicile, correspondance (article 8 CEDH, article 6 décl. PE 1989)
9. Liberté de fonder une famille, protection de la famille (article 12 CEDH, implicitement in article 6 décl. PE 1989)

Liberté de conscience

10. Liberté de pensée, de conscience et de religion, liberté académique (article 9 CEDH, article 4 décl. PE 1989)

Liberté d'expression

11. Liberté d'expression : y compris la liberté de recevoir et de communiquer des informations et la liberté de la presse (article 10 CEDH, article 5 decl. PE 1989)

Principe de démocratie

12. Droit à des élections libres, *principe de démocratie* (article 3 protocole additionnel CEDH, article 17 décl. PE 1989)

Droit à l'éducation

13. Droit à l'instruction et à la formation professionnelle, *liberté de choix du mode d'éducation* (article 2 protocole additionnel CEDH, article 150 TCE, article 10 Charte sociale, Pt 15 charte communautaire des droits sociaux, article 16 décl. PE 1989)

Liberté d'association et de manifestation

14. Liberté d'association et de réunion, y compris la *liberté de manifestation*, la liberté syndicale et la *liberté d'affiliation à un parti politique* (article 11 CEDH, article 15 Charte sociale, pt. 11 Charte communautaire des droits sociaux, article 11 décl. PE 1989)

Droit d'accès aux informations et protection des données

15. Droit d'accès aux informations, transparence (article 255 CE, article 18 décl. PE 1989)
16. Protection des données (article 286 CE, article 18 décl. PE 1989)

Liberté de mouvement

17. Liberté de circulation et de séjour : problème du bénéficiaire, rapport avec les droits du citoyen (article 2 protocole n°4 CEDH, Titre III du traité pour les travailleurs, article 8 décl. PE 1989)

Droit de propriété

18. Droit de propriété (article 1 protocole additionnel CEDH, article 9 décl. PE 1989)

Environnement et protection des consommateurs

19. Préservation de l'environnement, droit à un environnement sain : droit ou objectif politique ? (article 6 CE, article 24 décl. PE 1989), *protection des consommateurs* (article 153 CE, article 24 déc. PE 1989)

Droit des étrangers

20. droit des étrangers: asile, prohibition des expulsions collectives, garanties procédurales en cas d'expulsion (article 63 CE, article 4 protocole n° 4 et article 1 protocole n° 7 CEDH,)

Non-discrimination

21. Clause générale de non-discrimination (article 13 CE, article 14 CEDH)

Droits du citoyen de l'Union

1. Liberté de circulation et de séjour (article 18 CE)
2. Droit de voter et d'être élu aux élections européennes et municipales (article 19 CE)
3. Protection diplomatique et consulaire (article 20 CE)
4. Droit de pétition au Parlement européen (article 21CE)
5. Droit de s'adresser au médiateur(article 21)
6. Non discrimination entre les citoyens de l'Union (article 12 CE)
7. Egalité dans l'accès à la fonction publique communautaire (principe de non discrimination sur la base de la nationalité et statut)
8. Droit de s'adresser à l'Union et d'obtenir une réponse dans l'une des langues officielles (article 21 CE)

NB Les droits visés sous 4 et 5 s'appliquent également aux personnes ayant leur résidence sur le territoire d'un Etat membre

Droits/objectifs économiques et sociaux

Droit au travail et liberté professionnelle

- 1 Droit au travail : objectif d'un niveau d'emploi élevé, libre choix et exercice d'une profession (article 127 CE, article 1 charte sociale, pt 4 charte communautaire des droits sociaux)

Conditions de travail

- 2 Droit à la sécurité et à l'hygiène dans le travail: droit ou objectif politique ? (article 140 CE, article 3 charte sociale, pt 19 charte communautaire des droits sociaux, article 13 décl. PE 1989)
- 3 Rémunération équitable et salaire minimal : distinguer ce qui relève d'un droit et ce qui constitue un objectif politique (article 4 charte sociale, article 4 charte communautaire des droits sociaux, article 13 décl. PE 1989)
- 4 Droit au repos hebdomadaire et aux congés payés: droit ou objectif politique ? (article 2 charte sociale, pt 8 charte communautaire des droits sociaux)
- 5 Pension: droit ou objectif politique ? (article 23 charte sociale, pt 24 et 25 charte communautaire des droits sociaux)
- 6 Accès gratuit aux services de placement: droit ou objectif politique (article 1 charte sociale, pt 6 charte communautaire des droits sociaux)

Formation

- 7 Orientation professionnelle et formation continue: droit ou objectif politique (article 9 et 10 charte sociale, pt 15 charte communautaire des droits sociaux)

Droits sociaux collectifs

- 8 Droit à l'information et à la consultation des travailleurs (article 137 CE, article 6 charte sociale, pt 17 charte communautaire des droits sociaux)
- 9 Droit à la négociation collective article 137 CE, article 6 charte sociale, pt 12 charte communautaire des droits sociaux, article 14 décl. PE 1989)
- 10 Droit de grève (article 6 charte sociale, pt 13 charte communautaire des droits sociaux, article 14 décl. PE 1989)

Protection sociale

- 11 Droit à la santé : droit ou objectif politique (article 152 CE, article 11 charte sociale, pt 19 charte communautaire des droits sociaux, article 15 décl. PE 1989)
- 12 Droit à la sécurité sociale, droit à l'aide sociale et médicale : droit ou objectif politique ? (article 13 charte sociale, pt 10 charte communautaire des droits sociaux, article 15 décl. PE 1989)
- 13 Protection de la maternité (article 8 charte sociale)
- 14 Protection des enfants et des adolescents (article 17 charte sociale, pts 20 et svts charte communautaire des droits sociaux)
- 15 Insertion des handicapés (article 15 charte sociale, pt 26 charte communautaire des droits sociaux)

Questions horizontales

1. Titulaires des droits garantis par la Charte
 2. Non discrimination : entre les ressortissants communautaires (article 12 CE), entre homme et femme (article 137 et 141 CE), clause générale de non discrimination (article 13 CE et article 14 CEDH)
 3. Limitation des droits garantis (incorporée dans différents articles CEDH et article 26 décl. PE 1989)
 4. Dérogation en cas de situation exceptionnelle (article 15 CEDH et protocole droit d'asile CE)
 5. Abus de droit (article 17 CEDH, article 28 décl. PE 1989)
 6. Niveau de protection : Rapport avec les autres instruments de protection des droits fondamentaux (article 27 décl. PE 1989)
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 27 January 2000 (31.01)
(OR. f)

CHARTE 4112/2/00 REV 2

BODY 4

PRESIDENCY NOTE

Subject : Draft list of fundamental rights

This list has been drawn up on the basis of the Community Treaties, international human rights conventions including the European Convention on Human Rights, the texts of national constitutions and various Community texts, including several declarations by the European Parliament. It merely aims to serve as a basis for discussions at the first working meeting called upon to draw up such a list. Once the Body has decided on that list, work on drafting the various rights may begin.

This list groups together rights granted to individuals, natural and legal persons, which may be invoked by them within the scope of the Union's powers, and also rights which can be presented as political objectives of Union action. Sometimes, by way of illustration, the contents of a right have been spelt out.

The distinction between civil and political rights on the one hand and economic and social rights on the other has been drawn purely for the sake of clarity. The only matters that have specifically been highlighted are the rights of citizens of the Union and horizontal questions. The document does not claim to constitute a blueprint for the presentation of the Charter and the position of each right on the list will need to be discussed.

The references in brackets have an explanatory value only. They refer to texts of different natures, some having a binding value, and others not. Sometimes, the rights are formulated as such, sometimes there is merely a reference to a Union or Community objective. In addition, references to secondary legislation have been excluded.

The Body is called upon to discuss and amend this list, either by cutting back certain rights, or by amplifying the list.

Abbreviations:

EC: Treaty establishing the European Community

ECHR: European Convention on Human Rights

Social Charter: European Social Charter

Community Charter of Social Rights: Community Charter of the Fundamental Social Rights of Workers

EP Decl. 1989: Declaration of fundamental rights and freedoms adopted by the European Parliament on 12 April 1989.

LIST OF RIGHTS

Dignity

1. Right to respect for the dignity of the human person: this right covers in particular, but not exclusively, questions of bioethics, prohibition of slavery and forced labour (Article 4 ECHR, Article 1 EP Decl. 1989).

Right to life

2. Right to life, prohibition of inhuman or degrading treatment, torture, problem of the death penalty (Article 2 ECHR, Article 22 EP Decl. 1989).

Liberty and security

3. Liberty and security: protection in the event of deprivation of liberty, habeas corpus (Article 5 ECHR, Article 2 EP Decl. 1989).

Access to justice and procedural rights

4. Right to a fair trial: public hearing, impartial tribunal, reasonable time, principle of right to be heard (*audi alteram partem*) and of equality of arms, presumption of innocence and the rights of the accused in criminal proceedings...(Article 6 ECHR, Article 19 EP Decl. 1989).
5. Access to justice: right to appear before a judge, legal assistance (Articles 6 and 13 ECHR, Article 19 EP Decl. 1989).

Non-retroactivity

6. *Nullum crimen sine lege et nulla poena sine lege* (no crime without law and no punishment without law) and non-retroactive criminal law (Article 7 ECHR, Article 21 EP Decl. 1989).

Non bis in idem

7. *Non bis in idem* (double jeopardy) (Article 4, Protocol No 7 ECHR, Article 20 EP Decl. 1989).

Private and family life

8. Respect for private and family life: right to privacy, home, correspondence (Article 8 ECHR, Article 6 EP Decl. 1989).

Right to found a family

- 9. Freedom to found a family (Article 12 ECHR), protection of the family (Article 7 EP Decl. 1989)**

Freedom of conscience

10. Freedom of thought, conscience and religion, academic freedom (Article 9 ECHR, Article 4 EP Decl. 1989).

Freedom of expression

11. Freedom of expression: including the freedom to receive and impart information and freedom of the press (Article 10 ECHR, Article 5 EP Decl. 1989).

Principle of democracy

12. Right to free elections, principle of democracy (Article 3 Additional Protocol ECHR, Article 17 EP Decl. 1989).

Right to education

13. Right to education and vocational training, freedom of choice of method of education (Article 2 Additional Protocol ECHR, Article 150 EC, Article 10 Social Charter, Point 15 Community Charter of Social Rights, Article 16 EP Decl. 1989).

Freedom of association and demonstration

14. Freedom of association and assembly, including freedom to demonstrate, freedom to form trade unions and freedom to join a political party (Article 11 ECHR, Article 15 Social Charter, Point 11 Community Charter of Social Rights, Article 11 EP Decl. 1989).

Right of access to information and data protection

15. Right of access to information, transparency (Article 255 EC, Article 18 EP Decl. 1989).
16. Data protection (Article 286 EC, Article 18 EP Decl. 1989).

Freedom of movement

17. Freedom of movement and of residence: problem of beneficiary, relationship with citizens' rights (Article 2 Protocol No 4 ECHR, Title III of the Treaty for workers, Article 8 EP Decl. 1989).

Right to property

18. Property rights (Article 1 Additional Protocol ECHR, Article 9 EP Decl. 1989).

Environment and consumer protection

19. Conservation of the environment, right to a healthy environment: right or political objective? (Article 6 EC, Article 24 EP Decl. 1989), consumer protection (Article 153 EC, Article 24 EP Decl. 1989).

Rights of aliens

20. Rights of aliens: asylum, prohibition of collective expulsion, procedural guarantees in the event of expulsion (Article 63 EC, Article 4 Protocol No. 4 and Article 1 Protocol No. 7 ECHR).

Non-discrimination

21. General non-discrimination clause (Article 13 EC, Article 14 ECHR).

Rights of citizens of the Union

1. Freedom of movement and residence (Article 18 EC)
2. Right to vote and stand as a candidate at European and municipal elections (Article 19 EC)
3. Diplomatic and consular protection (Article 20 EC)
4. Right to petition the European Parliament (Article 21 EC)
5. Right to apply to the Ombudsman (Article 21 EC)
6. Non-discrimination between citizens of the Union (Article 12 EC)
7. Equal access to the Community civil service (principle of non-discrimination on the basis of nationality and status)
8. Right to write to the Union in one of the official languages and to have an answer in the same official language (Article 21 EC)

NB. The rights referred to under points 4 and 5 also apply to persons residing in the territory of a Member State.

Economic and social rights/objectives

Right to work and choose an occupation

1. Right to work: objective of a high level of employment, freedom to choose and engage in an occupation (Article 127 EC, Article 1 Social Charter, Point 4 Community Charter of Social Rights).

Working conditions

2. Right to safety and health at work: right or political objective? (Article 140 EC, Article 3 Social Charter, Point 19 Community Charter of Social Rights, Article 13 EP Decl. 1989).
3. Fair remuneration and minimum wage: distinguish between what falls under a right and what constitutes a political objective (Article 4 Social Charter, Article 4 Community Charter of Social Rights, Article 13 EP Decl. 1989).

4. Right to weekly rest period and paid holidays: right or political objective? (Article 2 Social Charter, Point 8 Community Charter of Social Rights).
5. Pensions: right or political objective? (Article 23 Social Charter, Points 24 and 25 Community Charter of Social Rights).
6. Free access to placement services: right or political objective (Article 1 Social Charter, Point 6 Community Charter of Social Rights).

Training

7. Vocational guidance and continuing training: right or political objective (Articles 9 and 10 Social Charter, Point 15 Community Charter of Social Rights).

Collective labour rights

8. Workers' right to information and consultation of workers (Article 137 EC, Article 6 Social Charter, Point 17 Community Charter of Social Rights).
9. Right to collective bargaining (Article 137 EC, Article 6 Social Charter, Point 12 Community Charter of Social Rights, Article 14 EP Decl. 1989).
10. Right to strike (Article 6 Social Charter, Point 13 Community Charter of Social Rights, Article 14 EP Decl. 1989).

Social protection

11. Right to health: right or political objective (Article 152 EC, Article 11 Social Charter, Point 19 Community Charter of Social Rights, Article 15 EP Decl. 1989).
12. Right to social security, right to social and medical assistance: right or political objective? (Article 13 Social Charter, Point 10 Community Charter of Social Rights, Article 15 EP Decl. 1989).
13. Protection of maternity (Article 8 Social Charter).
14. Protection of children and young persons (Article 17 Social Charter, Points 20 et seq. Community Charter of Social Rights).
15. Integration of disabled persons (Article 15 Social Charter, Point 26 Community Charter of Social Rights).

Horizontal questions

1. Holders of rights guaranteed by the Charter
2. Non-discrimination: between Community nationals (Article 12 EC), between men and women (Articles 137 and 141 EC), general non-discrimination clause (Article 13 EC and Article 14 ECHR)
3. Limitation of guaranteed rights (incorporated in various Articles of ECHR and Article 26 EP Decl. 1989)
4. Derogation in exceptional situations (Article 15 ECHR and Protocol on right of asylum EC)
5. Abuse of rights (Article 17 ECHR, Article 28 EP Decl. 1989)
6. Level of protection: Relationship with other instruments for the protection of fundamental rights (Article 27 EP Decl. 1989)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 January 2000**CHARTE 4117/00****CONTRIB 13****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution submitted by Mr. Paavo Nikula, personal representative of Finland.

The Chancellor of Justice of
the Finnish Council of State

CONSIDERATIONS ON THE DRAFTING OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

1. It might be most natural to start by making an inventory of the fundamental rights that already *exist at the European level*. Available legal sources are, in the first place, the European Convention for the protection of Human Rights, mentioned in Article 6(2) of the Treaty on European Union, and the practice of applying the Convention. But it is also appropriate to go through the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEU), both mentioned in the Cologne Conclusions. Further, the decisions of the EC Court of Justice contain some statements of the Court's position on fundamental rights that are worth noticing. Also the UN human rights conventions (including the Conventions on the Rights of Women and the Rights of the Child) and the ILO conventions ratified or signed by the EU Member States should be examined and taken into account in the work of the Body.

Such a basic inventory is necessary for establishing the prevailing situation. It is also necessary in order that we can, firstly, avoid ending up in a draft Charter of Fundamental Rights that is below the current standard and, secondly, assess our opportunities to further develop the European fundamental rights.

2. From the Finnish point of view, it would also be useful to examine how the possible *accession of the EU to the European Convention for the protection of Human Rights* and perhaps other international human rights instruments could take place in practice. This examination would mainly include technical work to find out what amendments to the Treaties would be needed and what corresponding measures would be necessary in the Council of Europe and possibly other international organisations. In this connection, it would probably be necessary to deal with the division of competence between the Courts in Strasbourg and Luxembourg. — When examining the accession to the European Convention for the Protection of Human Rights and the project on the EU's Charter of Fundamental Rights, Finnish specialists have concluded that these two are not mutually exclusive alternatives.
3. In Article 6(2) of the Treaty on European Union, reference is made to the *constitutional traditions common to the Member States*. In my view it is appropriate to examine this issue, as well, because also the EC Court of Justice has used these traditions as an argument for some of its decisions. The national constitutions of the Member States may also stimulate further development of fundamental rights at the European level. In this respect, I wish to briefly describe the past developments in Finland.

In Finland, fundamental rights were originally (in the Constitution Act of 1919) prescribed as rights of Finnish citizens. During the decades to follow, however, the application practice gradually changed in a universal direction. The fundamental rights of 1919 were mainly classical freedom rights. In the constitutional reform carried out in 1995, these fundamental rights were supplemented with considerably increased and extended economic, social, educational and political rights.

Moreover, the so-called third generation fundamental rights were introduced by including in the Constitution a provision on responsibility for the environment. This provision also represents a new writing technique: "The nature, biodiversity, the environment and the cultural heritage shall be the responsibility of everyone". Protection of work force, which has traditionally been included in the fundamental rights in Finland, is also covered by the new provisions on fundamental rights by prescribing that the public authorities are responsible for promoting employment. At the same time, the right to pursue a business is safeguarded as a fundamental right.

On the one hand, the new Finnish provisions on fundamental rights aim at safeguarding citizens' rights of participation. On the other, they obligate the public authorities to ensure that the fundamental and human rights are implemented. This obligation also contributes to the supervision of fundamental and human rights. The fundamental rights provisions concerning a fair trial and proper public administration have the same contributory effect, but in addition they have a great independent significance as legal rules that strengthen the individual rights and obligations in the application of the law by courts and the decision-making of different administrative authorities.

The new Finnish Constitution, which will enter into force on 1 March 2000, will include the fundamental rights provisions of 1995 unamended.

4. The Finnish example for its part probably shows that, in addition to the classical fundamental rights, it is necessary to examine, inter alia, the rights of linguistic and cultural minorities as well as prohibitions of discrimination, rights of participation and access to information, the principle of publicity etc. In my view, the new Finnish provisions on fundamental rights, for their part, do not only reflect the national constitutional tradition but also a tradition that is common to the Member States. I enclose the Finnish and Swedish language versions and a translation into English of the chapter on fundamental rights ("Basic rights and liberties") of the Finnish Constitution, which will enter into force on 1 March 2000.

The Union's fundamental rights should not be limited so that they concern exclusively EU citizens or economic operators, such as employees, except for particularly well-founded and weighty reasons.

Paavo Nikula
January 2000

The Constitution of Finland

(731/1999)

Chapter 2

Basic rights and liberties

Section 6 - Equality

Everyone is equal before the law.

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.

Section 7 – The right to life, personal liberty and integrity

Everyone has the right to life, personal liberty, integrity and security.

No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity.

The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act.

Section 8 – The principle of legality in criminal cases

No one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which has not been determined punishable by an Act at the time of its commission. The penalty imposed for an offence shall not be more severe than that provided by an Act at the time of commission of the offence.

Section 9 - Freedom of movement

Finnish citizens and foreigners legally resident in Finland have the right to freely move within the country and to choose their place of residence.

Everyone has the right to leave the country. Limitations on this right may be provided by an Act, if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence.

Finnish citizens shall not be prevented from entering Finland or deported or extradited or transferred from Finland to another country against their will.

The right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

Section 10 – The right to privacy

Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act.

The secrecy of correspondence, telephony and other confidential communications is inviolable.

Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act.

Section 11 - Freedom of religion and conscience

Everyone has the freedom of religion and conscience.

Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.

Section 12 - Freedom of expression and right of access to information

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.

Section 13 - Freedom of assembly and freedom of association

Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them.

Everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to

participate in the activities of an association. The freedom to form trade unions and to organise in order to look after other interests is likewise guaranteed.

More detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act.

Section 14 - Electoral and participatory rights

Every Finnish citizen who has reached eighteen years of age has the right to vote in national elections and referendums. Specific provisions in this Constitution shall govern the eligibility to stand for office in national elections.

Every Finnish citizen and every foreigner permanently resident in Finland, having attained eighteen years of age, has the right to vote in municipal elections and municipal referendums, as provided by an Act. Provisions on the right to otherwise participate in municipal government are laid down by an Act.

The public authorities shall promote the opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her.

Section 15 - Protection of property

The property of everyone is protected.

Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.

Section 16 – Educational rights

Everyone has the right to basic education free of charge. Provisions on the duty to receive education are laid down by an Act.

The public authorities shall, as provided in more detail by an Act, guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.

The freedom of science, the arts and higher education is guaranteed.

Section 17 – Right to one's language and culture

The national languages of Finland are Finnish and Swedish.

The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign

language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

Section 18 – The right to work and the freedom to engage in commercial activity

Everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The public authorities shall take responsibility for the protection of the labour force.

The public authorities shall promote employment and work towards guaranteeing for everyone the right to work. Provisions on the right to receive training that promotes employability are laid down by an Act.

No one shall be dismissed from employment without a lawful reason.

Section 19 – The right to social security

Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care.

Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.

Section 20 - Responsibility for the environment

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.

The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

Section 21 – Protection under the law

Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.

Section 22 – Protection of basic rights and liberties

The public authorities shall guarantee the observance of basic rights and liberties and human rights.

Section 23 - Basic rights and liberties in situations of emergency

Such provisional exceptions to basic rights and liberties that are compatible with Finland's international obligations concerning human rights and that are deemed necessary in the case of an armed attack against Finland or if there exists an emergency that threatens the nation and which according to an Act is so serious that it can be compared with an armed attack may be provided by an Act.

Editors' note to CHARTE 4118/1/00 REV 1,
**Letter from Mr. Buttiglione to Mr. Mendez de Vigo,
Chairman of the European Parliament delegation
(dated 26/01/00):**

The INIT version is identical to the REV 1 one save for formatting changes and is therefore excluded.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**TRANSLATION SUPPLIED BY THE
EUROPEAN PARLIAMENT DELEGATION****Brussels, 2 February 2000
(OR. IT)****CHARTE 4118/1/00
REV 1****CONTRIB 14****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter sent by Mr. Buttiglione to Mr. Mendez de Vigo, Chairman of the European Parliament delegation. ¹

¹ This text has been submitted in English and Italian language.

Bruxelles, 26 January 2000

Dear Mr. President,

the decision to prepare a charter of man's and citizen's rights marks a fundamental step forward towards the construction of a common european citizenship and sovereignty. It is therefore mandatory that this Charter be included in the Treaty and become the cornerstone of the new european constitutional law. This is the only path leading from the Europe of the States towards a Europe of Citizens and of Nations.

Striving towards this goal I take the liberty of proposing to your attention the following considerations.

1. The Culture of Rights diffused in the cultural context of our democracies has to undergo a critical examination in the writing of our charter.

We run the danger of forgetting through a generic affirmation of rights the hard fact that to each right corresponds a duty.

The Charter of Rights must be therefore at the same time a Charter of Rights and Duties of men and of citizens.

If we don't affirm clearly this truth we shall be exposed to two great risks:

- a. on the one hand we run the risk of writing a charter containing a broad and vague catalogue of rights with a mere rhetorical and declamatory effect but that will not be able to offer precise judgement criteria to the judiciary and a clear orientation to the lawgivers.

- b. on the other hand we run the risk, explicitly or implicitly, of attributing to the state or, even worse, to the European Union the task of enforcing all rights, making of the state the bearer of all corresponding obligations. It is apparent that in order to enforce all rights the state must control all powers, and the emphasis on the rights may easily lead to an abnormal extension of state's powers, to that omnipotence of the state that is today the greatest obstacle to the real empowerment of the liberty rights of the citizens.

Don't forget that modern totalitarianism was, to a certain extent, a consequence of the affirmation of unconditional rights whose enforcement has been entrusted to omnipotent states.

2. The problem I have pointed out is particularly important in the field of social rights or, more precisely, in the field of rights with a positive content.

There are some rights whose content is just the demand of a negative behaviour of the state or of all members of the human community. The right to life, for instance, in a narrower definition, consists in the demand of not being killed; the right to property (in its narrower definition) consists in the demand of not being deprived of one's own property and so on. Liberty rights, in the form in which they are contained in liberal Bills of Rights and Constitutions of the XIX Century, have as a rule a negative content. The right consists in a universal demand, addressed to the generality of men, that they should maintain a negative behaviour in relation to this or that kind of action; it demands that they should not interfere with the exercise of the free action of a given subject. Its form is "Thou shall not".

Social rights, affirmed in the Constitutions and in the Declarations of Rights of the XX Century, are of a different sort. Social rights or, more in general, rights with a positive content, consist in the demand of a positive behaviour that brings about a state of affairs favourable to the subject of that right.

A classical example is the right to work, understood as the right to have a job.

The affirmation of this right runs of course the risk of remaining purely rhetorical if the bearer of the corresponding duty is not clearly identified; if it is not determined who has the duty of creating the corresponding job.

But if we assume, explicitly or implicitly, that the carrier of this obligation is the state, then we must accept that the state has the right and the duty of creating all the needed jobs. To this duty corresponds necessarily the right of the state to command all the resources needed to attain this goal and the consequence is a totalitarian state's control of the economy.

If we consider the whole of social rights (to work, to health care, to education, to pensions and so on) it is apparent that an inadequate formulation of these rights may open a free inroad toward a complete social control or, at least, may be seen as a support to the bureaucratic degeneration of the social state against which we are struggling today both in the European Union and in each particular state.

3. It is important to observe that, really, the distinction we have drawn in not between individual liberty rights an social rights but between rights with a positive and rights with a negative content. Even traditional liberty rights may be interpreted in a broader sense as rights with a positive content. The rights to life, for instance, may be interpreted as a right not only not to

be killed but also as a right to all what maintains, implements and enhances life and, in this interpretation, it would include all social rights. It could even be interpreted as a right not to die, a right to immortality, but in this sense it would trespass the capacity of any political community to guarantee it. The example explains how absurd the talk about rights may easily become, if we don't keep a sober mind.

The socialist tradition of thought has insisted and insists upon a culture of rights and on a culture of social rights.

The liberal tradition has expressed an increasing diffidence towards unconditional social rights, after having been the first to support a culture of rights.

It is possible to find a sound compromise or even a working synthesis of these two traditions? I think that this is possible and that the leading concept of this correct synthesis is already contained in the guidelines of the European Union and it is the principle of subsidiarity that must be reaffirmed in the Charter of Rights and must be used as a criterium to order rights and duties.

The principle of subsidiarity says that a society of a higher order should not interfere with the functioning of a society of a lower order, unless the latter is not able through its own efforts to cope with its own tasks. Each society has a sphere of action and competence entrusted to its responsibility. In this sphere it may not and should not be substituted. It may be supported in case of need and has moreover to be co-ordinated by the higher society so that it may cooperate harmonically for general or higher level purposes.

If we consider the social rights and the rights with a positive content we see that they demand for their enforcement the co-operation of a plurality of societies and subjects of different orders, each one carrying a specific responsibility.

Let us consider for instance the right to work, understood in the light of the principle of subsidiarity. The enforcement of this right demands the fulfilment of corresponding duties falling upon a whole series of different subjects. The first subject is the worker himself, who has to acquire the skills that allow him to find a useful occupation and has to be engaged in looking for it and/or in building it up, participating in business initiatives aimed to create jobs and opportunities for work. There is also a role of the family to help and support the person in her/his education and in the search for a job. There is a fundamental role of the business community, with the support of local communities, and there is a task of the educational system and of public and private agencies that are active in it. There is of course a subsidiary responsibility of the state and of the public authorities that must take care that in a general condition of ordinate economic development there is a reasonable abundance of opportunities

for work, so that all of those who want to work, and stand in need of working, can work.

Dear President, I hope you will excuse me for this long letter. It is perhaps justified because of the importance of the subject, decisive for the structure of the Charter of Rights and for the choices of principle we will be confronted with in the next years. It is appropriate to solicitate on these subjects a broad debate, with the involvement of the cultural, business and labour communities as well as of european society at large.

I take this occasion to express you my best wishes for a fruitful work and to thank you for the authority and style with which you comply with your delicate function.

Yours truly

Rocco Buttiglione

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 février 2000**CHARTE 4121/00****CONTRIB 17****NOTE DE TRANSMISSION**

Objet : Projet de charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de M. Guy Braibant, Représentant personnel de la France. ¹

¹ Ce texte a déjà été diffusé lors de la réunion des 1er/2 février 2000. Il existe uniquement en français.

Paris, le 31 janvier 2000

**CHARTRE DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE****Contribution aux débats****(Réunions des 1^{er} et 2 février 2000)****N° 7 de l'ordre du jour : Thèmes horizontaux**

Je pense que, pour mener à bien notre tâche qui est importante et difficile, nous ne devons être ni trop ambitieux ni trop modestes.

Pas trop ambitieux

Je propose, en premier lieu, de ne pas nous attarder sur trois questions qui sont certes très importantes, mais que pour des raisons politiques et techniques, nous ne serons sans doute pas en mesure de régler « en temps utile ».

C'est d'abord la question de la Constitution. Certains considèrent que la Charte peut ou doit être le préambule d'une Constitution qui serait, par hypothèse, fédérale. C'est peut-être une vue d'avenir et chacun peut conserver son opinion sur l'opportunité d'une telle solution. Mais ce n'est pas à mon avis une question d'actualité. Nous n'avons pas de mandat pour établir une Constitution, dont le principe même n'a pas encore été décidé. Il n'y a pas de lien nécessaire entre les deux questions, comme le montre entre autres l'exemple de la Convention européenne des droits de l'homme. Il ne faudrait pas renoncer à la Charte sous prétexte qu'elle n'est pas assortie d'une Constitution.

La question des traités est du même ordre. Elle est double. En premier lieu, l'insertion de la Charte dans les traités n'est pas de notre compétence, mais de celle des autorités européennes, comme l'ont rappelé les conclusions de Cologne. Nous pourrions sans doute émettre un vœu à ce sujet. Mais, là encore, ce serait peut-être un facteur d'affaiblissement des chances du projet que de subordonner son approbation à une incorporation dans les traités. En second lieu nous devons également éviter de subordonner l'adoption de la Charte à des modifications des traités sur d'autres points.

Nous en venons ainsi à une troisième question, celle des juridictions. L'Europe dispose actuellement de deux juridictions anciennes et prestigieuses, qui ont fait leurs preuves : la Cour de justice des Communautés européennes et la Cour européenne des droits de l'homme. Il ne serait pas raisonnable de modifier dès maintenant le statut des Cours existantes en portant atteinte à leurs compétences ou à leur composition, en particulier en subordonnant l'une à l'autre.

Nous devons travailler, me semble-t-il, à « organisation juridictionnelle constante ». Il pourra en résulter des inconvénients, en particulier si comme il est probable et comme les conclusions de Cologne d'ailleurs nous y incitent, la Charte se réfère à la Convention européenne des droits de l'homme : les deux Cours pourront être conduites à interpréter le même texte de manière différente. Mais ce risque existe déjà, compte tenu de la rédaction actuelle des traités et de la jurisprudence de la Cour de Luxembourg, et il n'a pas soulevé jusqu'à présent de difficultés majeures ; il faut espérer que les deux juridictions sauront harmoniser spontanément leurs jurisprudences, sans se livrer à une « guerre des juges ». C'est ainsi que pourrait être réglé un problème souvent évoqué dans les débats actuels, celui du caractère contraignant de la Charte. A la différence du précédent, ce point relève, me semble-t-il, de notre compétence. Il ne suffira pas de proclamer ou de reconnaître les droits il faudra trouver les moyens juridiques de les faire valoir, notamment en justice, qui ne nécessitent peut-être pas d'innovations ni de modifications des traités. La question devra être examinée à propos des différents droits. Sur ce point, j'approuve la position exprimée par le Président Herzog lors de notre première séance : « Nous allons élaborer un texte qui n'aura pas immédiatement la force obligatoire attachée à la législation européenne et communautaire. Malgré tout, nous devrions toujours garder à l'esprit l'idée que la charte que nous rédigeons doit acquérir un jour, dans un avenir relativement proche, un caractère contraignant ».

Pas trop modestes non plus

Pour l'essentiel, notre travail devrait consister à établir des listes de droits, en définissant leur champ d'application aux institutions (institutions communautaires seulement, ou également institutions nationales lorsqu'elles appliquent le droit communautaire) et aux personnes (citoyens, résidents, étrangers de passage). Ces droits peuvent être classés en trois catégories comme l'ont fait les conclusions de Cologne, mais en suivant peut-être un ordre différent. Je pense en effet qu'il n'est ni logique ni opportun de placer les droits « réservés aux citoyens de l'Union européenne » entre les deux autres catégories, qui ne doivent pas subir la même limitation ; on peut les placer en tête ou à la fin.

Cette catégorie « des droits de citoyenneté » est sans doute la plus facile à définir dans son contenu comme dans son champ d'application, car elle est inscrite pour l'essentiel, dans le traité de l'Union européenne ; elle comprend notamment les droits de vote, d'éligibilité, de pétition, et avec certaines extensions à d'autres catégories de personnes, le droit de pétition au Parlement, le droit de saisine du Médiateur et la liberté de circulation.

Une deuxième catégorie, qui figure actuellement au premier rang, des conclusions de Cologne, est constituée par « les droits de liberté, d'égalité et de procédure ». A la différence des précédents, ces droits sont universels. Ils sont difficiles à qualifier ; on ne peut plus parler de « droits civils et politiques », comme dans les documents des Nations-Unis, car les droits de citoyenneté sont aussi des droits politiques ; il faudrait peut-être adopter soit l'expression de « droits de la personne », soit celle de « droits et libertés ». Elle comprendrait notamment, ceux qui sont énumérés dans la Convention européenne des droits de l'homme ; mais pas seulement. Il faudrait y ajouter des droits apparus depuis la signature de la Convention, dans des protocoles, dans des conventions antérieures ou dans des directives et des règlements communautaires en matière par exemple, d'informatique et de bioéthique ; le premier cas est typique car il a fait l'objet d'une directive européenne et d'une convention du Conseil de l'Europe ; il ne s'agit donc pas de « droits

nouveaux » ; le second est plus complexe, car il existe des divergences sensibles entre les Etats et une convention européenne, la convention d'Oviedo, certes signée mais non ratifiée ; il serait toutefois possible de trouver une formulation générale et consensuelle, qui sans entrer dans les détails, montrerait que ce secteur important a été pris en compte. Outre les instruments européens déjà existants, il faudrait se référer aux instruments internationaux ratifiés par tous les Etats membres de l'Union.

En ce qui concerne les dispositions qui figurent déjà dans des textes, plusieurs méthodes peuvent être utilisées : soit un simple renvoi, mais le lecteur ne connaîtrait pas ses droits par la seule lecture de la Charte ; soit une réécriture, mais ce système est dangereux parce qu'il risque d'entraîner des discussions inutiles au moment de la rédaction et des divergences d'interprétation dans l'application ; soit enfin une reproduction intégrale ou bien en annexe, ou bien dans le corps de la Charte.

Ces techniques peuvent également être utilisées pour la troisième catégorie de droits, les droits économiques et sociaux. C'est sans doute la plus importante pour nous, parce que c'est celle qui est la moins perfectionnée actuellement et qui provoque le plus d'attentes sociales. Mais c'est aussi la plus difficile. D'abord le texte des conclusions de Cologne dit des et non pas les droits économiques et sociaux, ce qui nous invite à procéder à une sélection. En outre ces mêmes conclusions nous incitent à éviter les droits qui ne sont que des « objectifs » ; mais nous ne devons pas accepter une régression par rapport au droit actuel tel qu'il est écrit, en particulier, dans les Chartes européennes auxquelles renvoient ces conclusions ou dans d'autres conventions internationales comme celles de l'organisation internationale du travail. Nous devons au contraire le renforcer par des formules plus précises et plus contraignantes. Les droits liés à la protection de l'environnement devraient également être inscrits dans cette catégorie.

C'est là certes un vaste programme. Si nous commençons rapidement à le mettre en œuvre, nous pourrions achever sa réalisation dans les brefs délais qui nous sont impartis.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 February 2000**CHARTE 4122/00****CONTRIB 18****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the contribution and the intervention made by Lord Goldsmith, QC at the meeting of 1 and 2 February 2000. ¹

¹ This text has been submitted only in English language.

EU CHARTER OF RIGHTS CONVENTION

NOTE ON STRUCTURE - LORD GOLDSMITH (UK REPRESENTATIVE)

At its meeting on 1-2 February the Charter drafting body will have an initial discussion of the scope and content of the Charter of Rights, following which the Praesidium will be turning its attention to preparing initial drafts. How the Charter is structured will be an important element in its success and it may be helpful if I set out some thoughts on a possible approach.

Purpose of our Work

As the Cologne Conclusions make clear, the challenge is to make existing fundamental rights more visible. The Charter exercise is a real opportunity. Properly constructed and presented, the Charter could deepen and strengthen the culture of rights and responsibilities at all levels across the EU and express our underlying unity of moral purpose. Bringing together into a single document endorsed by Member States and Community institutions, a proclamation of existing rights would have a powerful effect in reinforcing in the minds of administrators, governments, legislators, judges, lawyers and all other citizens the rights they possess and the need to respect them.

The Cologne and Tampere European Council Conclusions set the scope and timescale for this project. At Cologne, Heads of Government created this Body to produce a draft Charter of fundamental rights existing at Union level ‘in order to make their overriding importance and relevance more visible to the Union’s citizens.’ In this way ‘the fundamental rights applicable at Union level’ can be ‘consolidated in a Charter and thereby made more evident’ (Cologne Conclusions, paragraph 44).

This is a clear steer towards a political statement limited to existing rights. The Cologne Conclusions set out the sequence. Only after this Body has done its work will the question be considered of ‘whether and, if so, how the Charter should be integrated into the treaties’. This has important implications for our work. We should be seeking to keep the draft clear and simple for maximum public impact. There is no time to do anything else in the few months we have available.

The drafting body cannot decide on legal status, so we must ensure that we respect and complement the existing European human rights architecture and existing competences, and preserve legal certainty. We should aim to agree from the outset a clear and straightforward structure for the document which will make our work easier and facilitate the subsequent endorsement process.

Proposal

I propose a simple document comprising of two interrelated parts designed to meet these criteria. Part A would contain a succinct and user-friendly statement of rights and responsibilities, while Part B would complement and build on Part A by explaining the nature and scope of those rights and pointing to the appropriate source instrument and how they are justiciable. The two parts would be clearly linked through mutual cross-references though the first could perhaps be made available separately for promotional purposes, but keeping the signpost to Part B. This approach would allow visibility and accessibility through Part A while retaining legal certainty through Part B. Part B would also contain any applicable national derogation.

I attach an annex which sets out how such a document might look, taking as examples rights under four headings identified by Cologne. (The examples and wording used in the annex are for illustrative purposes; the detailed content and wording would, of course, be for the drafting body):

- civil and political rights;
- EU citizens' rights;
- economic and social rights; and
- rights emanating from the constitutional traditions common to all Member States.

[signed]

Lord Goldsmith QC

January 2000

Annex

DRAFT STRUCTURE

PART A

Introduction: an opening paragraph on, for example, Europe's common human rights heritage; the importance of that common heritage to e.g. the fight against xenophobia; identifying fundamental ethical unity of purpose amidst the diversity of races and religions; acting as an international beacon for human rights etc. Explanation of the interdependence of rights and responsibilities (c.f. EC Treaty Article 17(2) and ECHR Article 17) and corresponding need for citizens as well as public authorities to respect the rights of others and reaffirming a commitment to the protection and promotion of fundamental rights throughout the EU.

- A list of rights enjoyed within the EU, with a statement that their legal source is set out in Part B and that they are subject to the conditions set out in Part B and to be enforced in the way set out in Part B. Illustrative examples:

Example 1: Every citizen has the right to liberty and security and cannot be deprived of it except in limited cases and in accordance with the law;

Example 2: Every citizen has the right to vote and stand for election in EP and local elections;

Example 3: Every citizen has the right as an EU national to set up a business anywhere in the EU;

Example 4: Every citizen has the right to keep communications with his lawyers private.

It is for discussion whether there could be included also a statement: "In simple terms this means that ..."

PART B

This section will set out and explain the nature and conditions of the fundamental rights included in Part A.

A short passage stating that an individual in a Member State will enjoy the rights contained in the provisions referred to in Part B in so far as the provisions conferring the rights have been accepted and brought into effect by that Member State and are in accordance with that Member State's national law and practice.

The source instrument for each right will be indicated separately; and guidance will be given on justiciability, and about general provisions of the individual treaties which are essential for understanding their nature and extent.

Civil and Political

Example 1: Right to liberty and security – *This right is guaranteed by European Convention on Human Rights, Article 5 and is enforceable through national courts and by the European Court of Human Rights in Strasbourg. Article 5 provides as follows:*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound minds, alcoholics or drug addicts or vagrants;

- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

For discussion: There would be a cross reference to later section of Part B which will need to outline the enforcement mechanisms for each Treaty referred to and capture general provisions of the Treaty referred to which are essential for understanding the nature and extent of the rights. For the ECHR the relevant general provisions would be Articles 15 (the power to derogate in future; 16, 17 (which would benefit from prominent treatment) and 18). They would *not* include Art 13 (right to an effective remedy).

Citizens' rights

- Short indication that citizens of the Union will enjoy the following rights (and will be subject to the duties imposed thereby), in so far as they have been conferred upon them by provisions of the Treaty establishing the European Community or of legislation brought forward under the Treaty, in accordance with those provisions. Followed by::

Example 2: Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. Without prejudice to Article 190(4) EC Treaty and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. These rights shall be exercised subject to detailed

arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State. (Article 19 (1) and (2), EC Treaty)

Economic and Social

Example 3: EU nationals have the right to pursue economic activities and to set up and manage undertakings in another Member State under the same conditions as those imposed on its own nationals (Article 43 EC Treaty). Within the framework of the EC Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited.

Constitutional traditions of Member States

- Short indication that these rights are common to the constitutional traditions of the Member States and, consistent with the principle of subsidiarity, enforced in accordance with national conditions. Followed by:

Example 4: The right of legal professional privilege enabling client-lawyer communications to be treated in confidence helps ensure confidence in the judicial systems of each Member State. [In the UK, this right and its limitations are recognised in section 10 of the Police and Criminal Act 1984 and other statutes.]

SECOND PLENARY MEETING OF THE CHARTER OF RIGHTS CONVENTION INTERVENTION BY LORD GOLDSMITH

I would like to set out a proposal as to how we should proceed.

It is contained in my written paper. Allow me to summarise and elaborate a little.

I suggest we be guided by 3 fundamental considerations.

The first is that our mandate is to make existing fundamental rights more visible.

That is very clear from the Cologne conclusions. See especially the passages set out in my written paper:

The body was created to produce a draft Charter of fundamental rights “in order to make their overriding importance and relevance more visible to the Union’s citizens”

In this way “the fundamental rights applicable at Union level” can be “consolidated in a Charter and thereby made more evident”

That is a very important and valuable task. It is essential to promote a culture of rights and responsibilities.

It will have powerful effect in reinforcing in the minds of administrators, lawyers, governments, legislators, judges, companies as well as citizens the rights citizens possess and which must be respected.

The problem is not at the moment that there are not such rights. The problem is the need to reinforce the culture of respect. Legislators, companies, individuals may stumble into infringement of fundamental rights because their existence is not recognized enough. We need the alarm bells to sound when a right of this kind is about to be infringed so that the transgressor steps back.

Such a document would also have a very powerful effect in showing our common unity of moral purpose as Europeans. And what Europe brings to the citizen.

To achieve this end the document we produce must be clear and simple for maximum public impact.

It should be capable of being read and understood by everyone. It should be capable even of being pinned to the wall in every government office and company headquarter to remind everyone of the rights which must be respected.

The second consideration is that there are major problems in trying to rewrite existing rights.

Some of these are referred to in the Horizontal Issues paper. Let me simply identify a few.

- We risk a different interpretation of fundamental rights because they are expressed in different terms or interpreted in different terms. This would damage legal certainty. It would damage respect for human rights not reinforce them. We should not attempt to rewrite existing rights.
- We will have great difficulty agreeing a common list of rights to be enforced as a separate document. Member States recognize rights differently. It would be difficult for a Member State, having recognized one of these rights at the national level, perhaps in its constitution, to see it omitted in the EU Charter. And vice versa.
- The ways rights are recognized are also subject to differences. Differences of content – there are derogations or different content of the same basic right. Differences of enforcement which can have a major impact eg on the financial consequences of a particular right. In one State it may not appear to entail significant cost but it does in another.
- There are serious issues of conflict between different courts.

The implications are two. We will not achieve a text of the precision which we can all accept in the time allowed.

Perhaps even more important it will not be a document which would have the impact I have referred to. A detailed legal document of closely defined rights will not be accessible and transparent to all. We will severely limit the vision and the social utility of the Charter.

The third consideration is that we cannot decide if this should have legal status. That is not a decision for us.

Therefore we must work to respect and complement the existing human rights regime and preserve its legal certainty.

MY PROPOSAL therefore is set out in the document: to produce a two part document. Part A identifies the existing rights in clear and simple language for maximum impact. They are anchored in Part B to the existing rights with their legal source and existing enforcement mechanism. Be that ECHR, or ECJ or national courts.

That would allow legal certainty. It would avoid the risk of contrary interpretations. It would enable us to allow for national differences where applicable; because Part B would make it clear that the basic right was subject, in some cases, to national conditions and national legislation.

I strongly suggest that this is a feasible and worthwhile approach. If we do not go down this route we will be missing an opportunity and letting down the citizens of Europe.

[signed]

Lord Goldsmith QC

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[signed]

Lord Goldsmith QC

Editors' note to CHARTE 4123/1/00 REV 1,
Praesidium Note: Draft articles:

The INIT version was cancelled and replaced by REV 1.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 15 February 2000 (16.02)
(OR. f)****CHARTE 4123/1/00
REV 1****CONVENT 5****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Draft articles

In accordance with the method of work agreed by the Convention, this document proposes draft wording for certain rights. The rights described in Part I of the document are those which featured at the head of the list submitted to the Convention at its last meeting. It should be considered whether these rights should feature in the Charter. If so, the Convention will examine the proposed wording. Each right is the subject of a commentary, which indicates sources and highlights certain editorial questions. The articles set out in Part II of the document relate to horizontal aspects. They give examples of solutions to some of the horizontal problems which might be raised by an examination of Part I.

I. Articles submitted for the Convention to consider

Article 1. Dignity of the human person

- 1. Human dignity shall be inviolable.**
- 2. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.**
- 3. No one shall be required to perform forced or compulsory labour.**

Commentary

Paragraph 1 is inspired by the principles common to the constitutional traditions of Member States and by Article 1 of the 1989 Declaration of the European Parliament.

Paragraph 2 is taken from Article 3 of the European Convention on Human Rights.

*Paragraph 3 is the same as Article 4(2) of the European Convention on Human Rights. It did not seem useful to repeat the definition of forced labour which is contained in paragraph 3 of the Article, as that definition is in any case brought in by Article 6 of the TEU and would lead to over-lengthy wording. That was also the solution used by the European Parliament in 1989. Is it still necessary today to include the prohibition on slavery and servitude ("**No one shall be held in slavery or servitude**") in an explicit fashion as in the European Convention, since this is in any case covered by paragraph 1? Must the ban on forced and compulsory labour be retained here?*

Article 2. Right to life

- 1. Everyone shall have the right to life.**
- 2. Everyone shall have the right to the respect of his physical, psychological and genetic integrity.**
- 3. The death penalty shall be abolished.**

Alternative wording for paragraph 2:

2. **Everyone shall have the right to the respect of his physical, psychological and genetic integrity. In the field of medicine and biology, the following principles must be respected:**
- **An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.**
 - **Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited.**
 - **Predictive genetic tests may only be carried out for medical purposes or for medical research, subject to appropriate genetic counselling. An intervention to modify the human genome may only be undertaken for preventive, diagnostic or therapeutic purposes and only if its aim is not to introduce modifications in the genome of any descendants.**
 - **Medical research must respect the dignity of the human person and the principle of free and informed consent.**
 - **The human body and its parts shall not, as such, give rise to financial gain.**
 - **The removal of organs from a living donor for transplantation purposes may be carried out solely with the free and informed consent of the donor and for therapeutic benefit where there is no other alternative therapeutic method.**
 - **The cloning of human beings is forbidden.**

Commentary

Paragraph 1 reproduces Article 2 of the European Convention on Human Rights using other wording, namely that of Article 2 of the 1989 Declaration of the European Parliament.

Paragraph 2 deals with bioethical questions. It would be possible to mention other points, in particular consent to medical treatment, a prohibition on cloning etc. – but would not a general text which could always be adapted to technical progress, be better? Alternative 2 illustrates what a list of rights in this area might be. This list is inspired by the Council of Europe Convention on Human Rights and Biomedicine. This Convention is not in force and will be supplemented by protocols as technical progress is made. The disadvantage is that this considerably lengthens the text and that the list will never be complete because of technical developments in the bioethics field.

The wording of paragraph 3 poses a delicate question. On the one hand, all Member States have ratified Protocol No 6 of the European Convention on Human Rights, and as Declaration No 1 adopted by the conference and attached to the Final Act of the Amsterdam Treaty indicates, they do not apply the death penalty. However, currently, the legal systems of the Union cannot of course condemn anyone to the death penalty. The abolition of the death penalty therefore seems rather to be an objective of the Union to be realised through CFSP, but may also have a role to play with regard to cooperation in criminal matters (Title VI of the TEU). The 1998 Declaration of the Council on the death penalty indicates that the Union is working towards the universal abolition of the death penalty. The wording set out in the text is that of Protocol No 6. If one wished to avoid giving the impression that the Union is abolishing a penalty which has already been abolished by all the Member States, one could also simply take over the second sentence of Protocol No 6:

"No one shall be condemned to the death penalty, or executed."

Article 3. Liberty and security

- 1. Everyone has the right to liberty and security of person.**
- 2. No one shall be arrested or detained save in the cases prescribed by law.**
- 3. Everyone arrested or detained on reasonable suspicion of having committed an offence shall be brought before a judge and shall be entitled to trial within a reasonable time or be released pending trial.**
- 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.**
- 5. Everyone who has been the victim of arrest or detention in contravention of the above provisions shall have an enforceable right to compensation.**

Commentary

This text is drawn from Article 5 of the European Convention on Human Rights. Paragraph 1 states the principle. As the Union does not have penal jurisdiction, it cannot be directly responsible for the respect of these rights in the practical implementation of penal activity. On the other hand, in the context of the work accomplished on the basis of Title VI of the TEU, it has the obligation to ensure that measures taken in this context, particularly with regard to the harmonisation of penal legislation, do not infringe those rights. Article 2 of the 1989 Declaration of the European Parliament restricted itself to mentioning the principle of liberty and security, but at that time the TEU did not exist and it was not deemed necessary to develop the principle. This solution is no longer possible today, given the development of the Union's powers.

The question should be carefully examined in conjunction with the Article 1 or preamble proposed as part of the horizontal provisions. It must be clear that the obligation of compliance with fundamental rights devolves upon the Union when it adopts measures within the framework of Title VI, i.e. within the framework of its own tasks, and not upon the Member States within the framework of their national penal systems, which are outside the scope of Community law. The same remark applies also in the cases of Articles 5 and 6.

Article 4. Right to an effective remedy

Everyone whose rights and freedoms are violated shall have the right to bring an action before a court or tribunal specified by law.

Commentary

This article follows Article 13 of the European Convention on Human Rights and Article 19 of the 1989 Declaration of the European Parliament. The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Case 222/84, Johnston, ECR 1651), National Constitutions.

Article 5. Right to a fair trial

1. **Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
2. **Access to justice shall be effective. Legal aid shall be provided to those who lack sufficient resources *[insofar as such aid is indispensable to ensure the effectiveness of access to justice]*.**
3. **Everyone charged with an offence has the following minimum rights:**
 - (a) **to be presumed innocent until proved guilty according to law;**
 - (b) **to be informed promptly, in a language which he understands and in detail, of the accusation against him, and to have adequate time and facilities for the preparation of his defence;**
 - (c) **to defend himself in person or through legal assistance of his own choosing or to be given it free, and to have the free assistance of an interpreter if he cannot speak the language of the proceedings;**
 - (d) **to have access to the dossier; to examine or have examined under the same conditions witnesses on his behalf and witnesses against him.**

Commentary

Paragraphs 1 and 2 concern justice in general and are therefore applicable to the Union's own judicial system. Paragraph 3 concerns criminal procedure and the same form of presentation has been used as in the preceding Article. These rights are taken from Article 6 of the European Convention on Human Rights and Article 19 of the 1989 Declaration of the European Parliament. It should be noted that, in accordance with the case law of the European Court of Human Rights, no State is under any absolute obligation to introduce a system of legal aid for all civil cases. States must only provide legal aid where the lack of such aid would invalidate the guarantee of an effective remedy (ECHR judgment of 9.10.1979, Airey, Series A, Volume 32, 11). Nor are there any principles common to the Member States in this field.

Article 6. No punishment without law

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence in law at the time when it was committed. No heavier penalty than the one applicable at the time of committing the offence shall be imposed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.

Commentary

This article adopts the classic principle of non-retroactivity of laws and penalties in criminal matters. The principle of retroactive application of the lighter penalty, existing in many Member States and to be found in Article 15 of the Covenant on Civil and Political Rights, has been added. See Article 7 of the European Convention on Human Rights and Article 21 of the 1989 European Parliament Declaration.

Article 7. Non bis in idem

No one shall be tried or convicted for offences for which they have already been finally acquitted or convicted.

Commentary

See Article 4 of Protocol No 7 to the European Convention on Human Rights and Article 20 of the 1989 Declaration of the European Parliament.

Article 8. Respect for private and family life

- 1. Everyone shall have the right to respect and protection for their identity.**
- 2. Respect for privacy and family life, reputation, the home and the confidentiality of correspondence, irrespective of the medium, shall be guaranteed.**

Commentary

This article follows Article 8 of the European Convention on Human Rights. The reason for the use of the expression "irrespective of the medium" in paragraph 2 is to make clear the fact that this paragraph applies equally to the Internet. A specific Article will cover data protection, which therefore is not referred to here. See also Article 6 of the 1989 Declaration of the European Parliament.

Article 9. Family life

- 1. Everyone shall have the right to found a family.**
- 2. The Union shall ensure the legal, economic and social protection of the family.**
- 3. The Union shall ensure the protection of children.**

Commentary

The inspiration for this article is Article 12 of the European Convention on Human Rights and Article 7 of the 1989 Declaration of the European Parliament. In paragraph 1, there should perhaps be a restrictive clause, as not everyone can found a family under all circumstances (cf. restrictions as a result of minimum age requirements or prohibition of certain marriages within families), but in this case it is difficult to imagine a solution other than reference to national law as in Article 12. Would not the best solution be to allow the operation of the general limitation clause (cf. Article Y below)? Concerning children, the phrase "in accordance with the United Nations

Convention on the Rights of the Child of 20 November 1989" could be added to paragraph 3. But need reference be made to an instrument external to the Union which may develop independently? The question is not the same for the European Convention on Human Rights, which is specifically mentioned in the Treaty.

II. HORIZONTAL ARTICLES

These articles are not submitted for discussion. They are intended merely to provide an illustration of a possible way of solving certain horizontal problems which are closely linked to matters to be examined when drafting provisions on specific rights.

Preamble or Article 1

The following provisions are applicable to the Institutions and bodies of the European Union within the framework of the powers and tasks assigned to them by the Treaties. They are binding on the Member States only where the latter transpose or apply the law of the Union. The Charter does not introduce new tasks or powers, nor does it extend existing tasks or powers.

Commentary

This general article should either be placed in the preamble or become the first article of the Charter. It is intended to indicate clearly that the Charter's scope is restricted to the European Union and to avoid any application to the Member States when they are acting within their own jurisdiction. It adopts the case law of the Court of Justice as set out in the Cinéthèque case (judgment of 11 July 1985, Joined Cases 60 and 61/84, ECR p. 2618, paragraph 26) and more recently in the Kremzow Case (judgment of 29 May 1997, Case C-299/95, ECR p. 1-2629). It

also indicates that, while the Union must guarantee respect for fundamental rights within the framework of its own areas of jurisdiction, the Charter cannot have the effect of extending the powers of the Union, which is the express result of the Court's Opinion of 28 March 1996 on the accession of the Community to the European Convention on Human Rights (point 27 in particular). According to the Court's reasoning, although the Community has the obligation to respect fundamental rights, it does not follow that it thereby acquires competence to act in this field, except where this is expressly provided for in the Treaties. In other words, the obligation to respect fundamental rights is a constraint on the Community's action and not a licence to legislate in this field.

Article X

- 1. Certain rights shall be reserved for citizens of the European Union. *[It may be decided to extend the enjoyment of such rights wholly or partly to other persons.]***

Commentary

This paragraph enshrines the fact that certain rights may be reserved for citizens of the Union. These rights will be identified on a case-by-case basis (using the formula of "all persons" or "the citizens of the Union" to identify those entitled). Concerning the possibility of an extension, the guarantee of this depends less on a reference in the Charter than on the existence of a legal basis in the Treaty. Extension may be effected by unilateral acts of the Union or by international conventions. It needs to be considered whether the possibility of an extension should be mentioned.

Article Y. Limitations

Without prejudice to provisions affording more protection than this Charter, no limitation on respect for the rights and freedoms which it recognises shall be admitted except under a rule of law which is not an implementing rule, does not infringe the essential content of the rights in question and, subject to the principle of proportionality, remains within the limits necessary for the protection of legitimate interests in a democratic society.

Commentary

A model for a possible general limitation clause, suggested as an example if the question of limitations is taken up in relation to a specific right. It does not exclude the existence of specific clauses for particular rights. There is a problem with regard to the nature of the act limiting fundamental rights. The term "rule of law" may be considered too broad, as it includes implementing measures, but "a law" is not appropriate since it has no meaning in Community law at present, unless understood as in the European Convention on Human Rights in the sense of a general and abstract rule without implying the source of the rule. The present formula eliminates the possibility of limiting rights by means of implementing measures. It leaves this option to the legislator alone, acting on the appropriate legal basis.

Article Z. Level of protection

No provision of the this Charter may be interpreted as placing restrictions on the protection afforded, in conformity with Article 6 of the Treaty on European Union, by the European Convention on Human Rights.

Commentary

The purpose of this article, a suggested wording for which is given by way of example, is to ensure that, in conformity with Article 6 of the Treaty on European Union, the level of protection of human rights in the Union cannot be inferior to that afforded by the European Convention on Human Rights, regardless of the wording of the Charter. This article makes it possible to depart from the wording of the Convention without altering the standard of protection afforded to the individual.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 9 février 2000**CHARTE 4125/00****CONTRIB 20****NOTE DE TRANSMISSION**

Objet : Projet de charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint le discours prononcé par Mme Anne-Marie SIGMUND (présidente du Groupe III, rapporteur du Comité économique et social) lors de la réunion du 2 février 2000. ¹

¹ Ce texte a été soumis en langues française et allemande.

31 janvier 2000

Monsieur le Président,
Mesdames, Messieurs,

Nous sommes très reconnaissants à l'Enceinte chargée d'élaborer une Charte européenne des droits fondamentaux de nous avoir donné la possibilité de vous présenter aujourd'hui les principales réflexions du Comité économique et social sur un catalogue européen des droits fondamentaux.

Le Comité économique et social a abordé pour la première fois la question de l'élaboration d'une Charte européenne des droits fondamentaux dans le cadre des travaux d'un groupe d'étude sous la présidence allemande du Conseil, lorsqu'une première réflexion a été entamée sur différentes approches possibles. Dans ce contexte, il était déjà largement acquis que cette entreprise revêt un caractère éminemment politique. Il ne s'agit pas seulement de codifier les droits existants aux différents niveaux politiques et de les élever pour ainsi dire au rang constitutionnel du droit des sociétés. Il s'agit aussi de présenter aux citoyens européens un instrument juridique clair et accessible énumérant leurs droits directs, leurs droits fondamentaux et leurs devoirs dans le cadre de l'Union.

Dans le cadre d'une réunion extraordinaire de son Bureau, le Comité s'est ensuite penché sur le contexte politique dans lequel s'inscrit l'élaboration de cette Charte des droits fondamentaux. Il lui a fallu constater que l'Union doit se rendre à l'évidence qu'un fossé s'est creusé, sur le plan émotionnel, entre elle et ses citoyens. "Manque de contacts entre l'Europe et ses citoyens", "déficit démocratique", tels sont les reproches que l'on entend régulièrement formuler à l'encontre de l'Europe. Force nous est de constater que nos concitoyens des différents Etats membres n'ont pas le sentiment de faire partie d'une "Europe des citoyens", pas plus qu'ils ne s'identifient avec une telle Europe. Cela tient sûrement également au fait que la mutation de l'Europe, au départ Communauté économique, en une vaste union politique suite à l'Acte unique et en passant par Maastricht et Amsterdam, n'a pas toujours été très bien comprise par les citoyens européens. Or, le développement d'une telle "identité européenne" serait, dans la perspective de l'élargissement, un outil très important pour donner aux pays candidats une "échelle des valeurs" commune à tous les Etats membres et déterminante pour l'Europe. Pour être efficaces, ces valeurs communes, servant de base à des actions communes, ont toutefois besoin d'un ancrage institutionnel. C'est pourquoi le Comité économique et social préconise l'élaboration d'une Charte des droits fondamentaux, contraignante et faisant partie intégrante des Traités européens.

Un souci fondamental du Comité est de garantir que les citoyens européens, lorsqu'il s'agit de questions qui les concernent aussi directement qu'un catalogue de droits fondamentaux, soient associés de façon optimale au processus décisionnel. Le Comité économique et social, en tant que porte-parole de la société civile organisée d'Europe, qui défend les intérêts des citoyens européens par le biais des organisations qui la représentent, s'engage à faire en sorte que le processus d'élaboration de la Charte des droits fondamentaux repose sur la plus large base possible et offre le plus de possibilités de participation.

C'est aussi pourquoi le Comité n'a pas encore émis d'avis définitif, dans la mesure où il entend également donner la parole, dans le cadre d'auditions qu'il organisera dans les semaines à venir, à celles des organisations de la société civile qui ne sont pas représentées au Comité. Le Comité considère comme essentielle, pour l'élaboration de la Charte, une telle participation de la société civile organisée européenne, inscrite dans la continuité et soutenue par la base.

Permettez-moi dès lors, monsieur le Président, de vous demander instamment d'autoriser le Comité à participer en tant qu'observateur aux réunions de vos groupes de travail et de lui donner la possibilité de vous tenir au courant de l'état d'avancement de ses travaux.

Au cours des auditions précitées, il conviendra de se pencher sur les considérations suivantes :

1. La citoyenneté de l'Union doit se matérialiser pour le citoyen; elle doit être le moteur d'une "identité européenne". *Sous quelle forme le lien entre le catalogue des droits fondamentaux et la citoyenneté européenne sera-t-il le mieux représenté ?*
2. Le citoyen doit accepter son rôle de détenteur de droits et d'obligations. A cette fin, il convient d'établir un catalogue clair et explicite de ces droits et obligations, que les citoyens reconnaîtront en tant que définition de leurs propres valeurs.
3. D'un point de vue juridique également, le développement de la protection des droits fondamentaux depuis Amsterdam a atteint un point tel qu'il est nécessaire de dresser une liste claire des droits fondamentaux européens en vigueur.
4. Les droits civiques et politiques, mais aussi sociaux et économiques constituent un tout indivisible. Ils ne se cumulent pas, mais sont interdépendants.
Les droits fondamentaux peuvent également être différenciés selon d'autres critères, notamment:
 - *droits de l'homme - droits fondamentaux européens - droits civiques européens*
 - *droits ayant force exécutoire concrète - droits programmatiques*
 - *droits individuels - droits collectifs**Quelle approche adopter ?*
5. La charte des droits fondamentaux doit en particulier reposer sur la Convention européenne des droits de l'homme, la Charte sociale européenne et les principes juridiques généraux institutionnalisés par la jurisprudence, et intégrer les droits fondamentaux déjà formulés ou ébauchés dans le traité d'Amsterdam. En outre, elle devrait faire référence à la Déclaration universelle des droits de l'homme et aux conventions de l'ONU relatives aux droits de l'enfant, à l'élimination de toutes les formes de discrimination à l'égard des femmes et au statut des réfugiés.

6. Les droits fondamentaux doivent avoir force exécutoire vis-à-vis des instances européennes. Les droits programmatiques doivent être définis de manière à permettre une action en justice.
7. La charte des droits fondamentaux doit s'inscrire dans le champ d'application du droit communautaire et tenir compte des compétences des Etats membres ainsi que de leur acquis juridique.
8. Le problème de la compétence judiciaire pour les questions relatives aux droits de l'homme doit être examiné.
9. Tout comme la société, les droits fondamentaux sont en constante mutation.
10. Juridiquement et politiquement, un catalogue de droits fondamentaux n'a de sens que s'il est intégré dans le traité et est contraignant.

Immédiatement après ces auditions, le Comité participera à une discussion sur la formulation des différents droits fondamentaux et élaborera ensuite un projet d'avis en la matière.

Le Comité espère vivement avoir la possibilité de vous présenter ce projet d'avis, qui aura déjà fait l'objet d'un débat avec ses membres et des associations invitées.

Merci beaucoup.

Anne-Marie SIGMUND
Présidente du Groupe des Activités diverses

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 February 2000**CHARTE 4131/00****CONTRIB 26****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the speech given by Mr. Jacob Söderman, European Ombudsman, at the meeting of 1/2 February 2000. ¹

¹ The text has been submitted in English, French and German language.

Public Hearing on the draft Charter of Fundamental Rights of the European Union

2 February 2000, 09.00.

European Parliament
Rue Wiertz
B - 1047 Brussels

Preliminary remarks by the European Ombudsman, Jacob Söderman

Mr President!

Members of the Convention!

I would first like to thank you for inviting me to speak at the very beginning of your work of drafting a Charter of Fundamental Rights for the European Union.

The office of European Ombudsman was established by the Treaty of Maastricht with the aim of furthering the citizenship of the Union and enhancing the relations between the Union and its citizens. The Ombudsman's specific task is to make inquiries about possible instances of maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. It is important to underline that the mandate of the European Ombudsman concerns only the Community institutions and bodies. Community law and policies are implemented mostly by national, regional or municipal administrations of the Member States, but the European Ombudsman cannot supervise their activities.

The definition of maladministration which was proposed by the Ombudsman and accepted is that:

“Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.”

This, of course, includes failure to respect human rights.

1 What is the problem?

On the basis of my experiences as European Ombudsman since September 1995, I will try to look at the idea of the Charter from the perspective of the citizen.

The Charter project began in response to a specific problem: the failure of the proposal that the European Community should accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission had proposed that the Community should sign the Convention. The Council asked for an Opinion of the Court of

Justice on the proposal. In March 1996, the Court decided that the Community had no competence to accede to the Convention on the basis of the existing EC Treaty.¹ In 1997, the Treaty of Amsterdam committed the Union to respect fundamental rights, as guaranteed by the European Convention and as they result from the constitutional traditions common to the Member States, as general principles of Community law.² However, the Member States did not take the opportunity of the Amsterdam Treaty to provide the Community with competence to accede to the Convention, or to any other international human rights convention.

There are two reasons for citizens to be dissatisfied with the present situation. First, The Treaty refers to fundamental rights, but does not say what they are. To discover what fundamental rights the institutions and bodies of the European Union should respect, the citizen must become an expert in comparative constitutional law as well as in Community law.

The second problem is the gap in protection of rights at the level of the Union. The Member States have all signed the European Convention and there are many other international instruments for the protection of human rights which bind all, or a majority, of the Member States. From the citizen's perspective it is not obvious why these provisions should apply to the activities of national authorities in their fields of competence, but not to the activities of the Union's institutions and bodies within the Union's fields of competence.

2 A pragmatic proposal

I have already proposed, on previous occasions,³ a pragmatic way forward from the present situation.

The proposal is to insert a provision in the EC Treaty to require that the Union's institutions and bodies respect the existing international human rights instruments that all, or a majority, of its Member States have ratified. This would include not only the ECHR, but also other Council of Europe Conventions such as the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities. It would also include United Nations instruments such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the

¹ Opinion 2/94 [1996] ECR I-1759. The Court held that Article 308 (ex Article 235) of the EC Treaty (ECT), which gives the Council the power to take appropriate measures if action of the Community is necessary to attain one of the objectives of the Community, was not a sufficient legal basis, given the "fundamental institutional implications" for the Community and the Member States of accession to the European Convention.

² Article 6 of the Treaty on European Union.

³ In speeches at the conference "A European Union Human Rights Agenda for the year 2000" Vienna, 9 October 1998 and to the European Forum, "Eine Europäische Charta der Grundrechte - Beitrag zur gemeinsamen Identität", Köln, 27 April 1999.

International Covenant on Civil and Political Rights, as well as a number of ILO conventions. A complete list of the relevant instruments could be annexed to the Treaty.

In my view, the main advantage of this proposal is that it could be accepted and implemented quite rapidly. On the other hand, it must be acknowledged that the result would not be perfect, since the citizen would still be obliged to read a number of different texts in order to know his or her fundamental rights. Furthermore, the lack of international supervision would remain.

I therefore very much welcome the initiative to create a Charter of Fundamental Rights. In my view, the starting point for drafting the Charter should be respect for the existing international human rights instruments which are already binding on all, or a majority, of the Union's Member States, as well as their constitutional principles.

In order to be understood by the citizens and to make it possible to apply, the new Charter should be drafted to include clear provisions, binding on the Union's institutions and bodies, both internally and in their relations with third countries and international organisations. If this could be achieved, it would already be an important step forward for the citizen.

If there is sufficient political will within the Union, this could of course become the foundation for a more ambitious approach in the future.

The most encouraging part of your work in drafting the new Charter is the possibility to take into account modern developments in human rights standards and in the relationship between the citizen and the public administration.

3 A fundamental right to an open, accountable and service-minded administration

Foremost amongst these developments is the idea that the citizen has a right that his or her affairs be dealt with properly, fairly and promptly by an open, accountable and service-minded public administration.

Experience shows that an open administration, which is practised in many Member States, allows the citizen to obtain the information needed to call the administration to account for its actions and omissions, and so promotes a high level of public debate and enhances the possibilities of rational consent and participation. Furthermore openness seems to work against corruption, while a closed and confidential handling of public affairs provides opportunities for fraud and other illegal activities.

Alongside openness and accountability, should be placed service-mindedness. Service-mindedness implies that the administration exists to serve citizens, not *vice versa*. In national systems of administration, this principle is expressed in different ways such as citizen-friendliness and the concept of public service.

In the Charter itself, the citizen's right to good administration should be stated at the level of principle. To put the principle into practice, it would be necessary to enact a Regulation on good administrative behaviour and another on access to information and to documents.

To include this right in the Charter could have a broad impact on all existing and future Member States, helping to make the 21st century the "century of good administration".

4 Rights are worth nothing without effective remedies

Mr Chairman!

In the final section of my remarks I would like to emphasise that rights are worth nothing without effective remedies. I stress this point because I have been disturbed by what has happened to the promises which were made to citizens of the Union in the Treaty of Amsterdam. According to the Amsterdam Treaty, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Furthermore, decisions should be taken "as openly as possible".⁴

Despite these fine words, some Community legislation continues to be decided behind closed doors by the Council of Ministers. I have heard it argued that these meetings should not be open to the public because, on the one hand, the debates lack interest and, on the other hand, because the real negotiations would move to corridors and private meetings. If these arguments were valid, they would equally apply at national level and the national Parliaments should also legislate in closed session. In my view, the arguments are not valid. Citizens in a democracy should be entitled to listen to the debates which accompany the enactment of laws.

The Treaty also promised citizens a constitutional right of access to documents of the European Parliament, Council and Commission. According to Article 255 EC, "*general principles and limits on grounds of public or private interest governing this right of access to documents*" shall be determined before 1 May 2001. Last week, the Commission published its proposal for a Regulation. I am sorry to say that this document seems to consist mainly of a long and obscure list of possible reasons to deny access to documents. This cannot be what was intended when the Treaty of Amsterdam was drafted.

However, it must be remembered that the activity of the Court of Justice and Court of First Instance has consistently promoted respect for Community law including fundamental rights. Insofar as citizens enjoy, at present, any rights of access to documents, this is in large part due to the Courts.⁵

⁴ "Treaty on European Union, Articles 1 and 6.

⁵ I developed this point in my speech on the 10th Anniversary of the Court of First Instance, 19 October 1999.

I do hope that the Charter will be drafted and adopted in a form which enables the citizen to apply to the Community Courts if his or her fundamental rights are infringed by the activities of a Union institution or body. Within his mandate, the European Ombudsman is also ready to supervise respect for fundamental rights, for the benefit of the citizens, as an extra-judicial remedy.

As the experience of the Member States shows, the protection of fundamental rights can be further enhanced and strengthened by the possibility of international supervision. The most developed and effective system of supervision is that of the European Convention on Human Rights. All the Union's Member States have accepted international supervision through the Convention system, which they played an active part in creating and developing over a long period. It therefore seems right that the institutions and bodies of the Union should also accept this supervision, through accession to the Convention.

Mr President!

Members of the Convention!

I wish you every success in your important task of drafting the Charter of Fundamental Rights for the European Union.

Thank you for your attention.

Editors' note to CHARTE 4135/00,
**Observations sur CHARTE 4123/1/00 REV 1
de M. Guy Braibant (Représentant personnel
du Gouvernement de la France):**

See also CHARTE 4221/00.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 February 2000 (22.02)
(OR. fr)****CHARTE 4135/00****CONVENT 7****COVER NOTE**

Subject : Draft EU Charter of Fundamental Rights

Please find attached the comments made by Mr Guy BRAIBANT, the personal representative of France, on the draft set out in CHARTE 4123/1/00 REV 1.

**COMMENTS ON THE DRAFT RIGHTS
SET OUT IN
CHARTE 4123/00**

I. It would be desirable to include among the fundamental individual rights listed at the beginning of the Charter:

- equality in rights or the principle of equality, as embodied in Member States' constitutional traditions and in a number of international instruments; that principle is not to be confused with non-discrimination; it would thus be possible to follow the beginning of the Universal Declaration of Human Rights (UDHR): "human beings are free and equal in dignity and rights";
- the right to recognition as a person before the law, in accordance with Article 6 of the UDHR and Article 16 of the United Nations Covenant on Civil and Political Rights;
- the right of everyone to a nationality (Article 15 of the UDHR).

II. Articles

Article 1

- (a) Dignity is an excellent place to start. The wording used follows the 1989 European Parliament Declaration. In my view, however, it would be preferable to refer to the dignity of the human person and respect for that dignity. I would propose one of the following wordings:

- "the dignity of the human person shall not be infringed";
 - "the dignity of the human person shall be respected under all circumstances";
 - "the right to dignity is inherent in the human person".
- (b) In my view, the right to dignity, which lies behind many articles in the draft, ought to appear on its own in Article 1; otherwise it might appear to amount merely to the right to freedom from torture and forced labour, currently referred to in the same article.
- (c) If it is wished to retain the ban on forced labour, heed should be paid to the negative definition of the term given in the ECHR, which is of considerable practical significance. I can understand its omission here so as not to clutter up the text. However, it should at least be stated in an accompanying report or explanatory memorandum that the Charter's drafters did not mean to dispense with that definition and do refer to it by implication.
- (d) I believe there is a need to add a provision on slavery and servitude, which unfortunately remain of relevance today, even in Europe.

Article 2

- (a) Paragraph 2: It would be better to delete the word "genetic", which does not add anything and is liable to cause confusion.

My preference is for the shorter version. If it is nevertheless wished to add some details regarding bioethics, which would probably be helpful in order to make the Charter more modern, I would propose keeping to three basic principles:

- a ban on "eugenic practices" (Article 16 of the French Civil Code, as a result of a 1994 law);

- a ban on the cloning of human beings;
- an assertion that the human body and its parts may not give rise to financial gain (with the removal, if possible, of the restrictive wording "as such").

The indent on discrimination could be transferred to the general article on non-discrimination.

- (b) Paragraph 3: The death penalty cannot of course "be abolished", since it already has been. I would propose simply taking the alternative wording: "no one shall be condemned to death or executed".

It should be noted that the ECHR Protocol on the matter includes an article on exceptions in time of war. I am not proposing that it be included here, particularly since it makes reference to the Secretary-General of the Council of Europe. However, it should be mentioned in the accompanying report so as not to give the impression that it is no longer applicable.

Article 3

- (a) The wording in paragraph 2, "no one shall be arrested or detained", is narrower than that used in Article 5 of the ECHR, "no one shall be deprived of his liberty"; the latter wording, which also covers arrangements such as residence and reporting orders, is to be preferred.
- (b) Paragraphs 3 to 6 are criminal law provisions, and could well be placed closer to or combined with Article 5(3). This would also give greater prominence to Article 4, which is general in nature and could be placed closer to Article 5(2). In order to avoid repeating the word "effective", the latter provision could be worded as follows: "access to justice shall be facilitated by providing legal aid to ...".

Articles 6 and 7

- (a) I think Latin expressions should be avoided in a document designed to make rights clearer.
- (b) In Article 6 the wording "criminal offence in law" is more restrictive than that in Article 7 of the ECHR "criminal offence under national or international law"; this restrictive wording is at odds with the development of international criminal courts and indictments on the basis of international law.

Article 8

It seems to me that nowadays the concepts of private life and family life are separate. I suggest deleting "family life" from Article 8 and keeping it for Article 9, thus avoiding pointless duplication.

Article 9

1. I think that, as stated in the commentary, reference should be made to local law, as in Article 12 of the ECHR.
2. and 3. These are hardly legislative provisions and what is more they have the disadvantage of appearing to create new powers for the Union. I propose replacing paragraph 2 by a wording that mirrors that of Article 8(2) ("Respect for family life shall be guaranteed") and, as regards children, incorporating one or two essential articles of the United Nations Convention, notably Article 3(1) which refers to the concept of "the best interests of the child" and an article on the protection of child development.

III. Horizontal articles

Although they are not for discussion, I think it preferable to state my views on these provisions now.

1. Preamble or Article 1

This provision is useful but anticipates the inclusion of rights in the Treaty, which is not within the Convention's remit. It would be more at home in an introductory report on the Charter.

2. Article X

This provision is inappropriate and will undoubtedly prompt criticism of the Charter, as being solely for the "rich and privileged" who have the good fortune to be citizens of the European Union. And basically it is inexact, since many rights are universal or are extended to foreigners who are legally resident. The scope of the Charter needs to be specified in the Articles or Chapters.

3. Article Y

I understand the intention of the authors of this text. However, it needs to be more clearly worded, avoiding in particular the concepts of "rules of law" and "implementing rule"; furthermore, a general restriction replacing the particular restrictions of the Convention might give the impression that the Charter provides less protection than the Convention.

4. Article Z

If this Article is considered essential, it would be better to delete the reference to Article 6 TEU, which adds nothing.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 February 2000 (23.02)
(OR. fr)****CHARTE 4136/00****CONTRIB 29****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Attached hereto is a contribution by Mr Fischbach and Mr Krüger, Council of Europe observers.¹

¹ Text supplied in and English.

21.2.2000

CONTRIBUTION BY MR FISCHBACH AND MR KRÜGER,
COUNCIL OF EUROPE OBSERVERS

On 2 February 2000, at the end of the last meeting of the Convention, the delegation of observers from the Council of Europe announced that it would be submitting contributions to the Convention's proceedings in two spheres in particular, namely the identification of rights which might be included in the Charter and the issue of the European Communities' and/or the European Union's accession to the European Convention on Human Rights. An initial contribution on the latter issue is set out below.

Factors vital to the Charter's success

(a) Content of the Charter

Whether the Charter proves a success will depend on a number of factors. The first of these is its content. It would be reasonable for the Charter to include social and economic rights as well as civil and political rights. Human rights are indivisible and cannot be separated into watertight divisions. In any event, the European Union may grant different or additional rights to persons within its jurisdiction. Indeed, Article 53 of the European Convention on Human Rights (ECHR) clearly envisages that Contracting States may, under their own law or under other treaties, increase the level of protection afforded by the ECHR. Progress in this sphere by member States of the Union would provide an impulse for improving the protection of human rights in general in Europe.

(b) Ensuring consistency and legal certainty

If, as is proposed by President Herzog, the Charter is to be legally binding, another vital factor for the Charter's success will be the degree to which it is able to fit in with the other international instruments for the protection of fundamental rights, in particular the ECHR. As a number of participants at the meeting on 1 and 2 February 2000 pointed out, a situation where applicants are faced with a plethora of systems should be avoided because of the attendant risk of inconsistent or even incompatible outcomes; that would undermine legal certainty, an element that is essential to the smooth functioning of any society. Fundamental rights are too important to be implemented inconsistently. Far from reinforcing fundamental rights, any inconsistency will weaken them.

In order to ensure the requisite consonance between the ECHR and the Charter, it will be necessary first of all to ensure that a given right cannot be understood or construed differently, according to whether the instrument being applied is the ECHR or the Charter. That would create different standards and thus run counter to one of the cardinal features of fundamental rights: their universality.

(i) Reference to the ECHR and the case-law of the European Court of Human Rights

One way of achieving that purpose at the outset would be to adhere as closely as possible to the text of the ECHR where the Charter protects the same rights.

The next issue that will arise is the interpretation of those instruments. In that connection, it would be advisable for the Charter to contain a reference not only to the ECHR but also to the case-law of the European Court of Human Rights in order to avoid the emergence of diverging case-law on identical provisions. It will be noted that Articles 19 and 32 of the ECHR vest the power to interpret the ECHR in the European Court of Human Rights.

Such a reference would, however, be insufficient as two gaps would remain.

Firstly, the European Court of Human Rights would not be able to review whether the application of the provisions borrowed from the ECHR by the Charter complied with the ECHR.

Secondly, it would not resolve the problem arising from the fact that the institutions of the European Communities and the European Union are not bound by the ECHR – unlike the member States which, *in lieu* of the Community institutions, are answerable to the European Court of Human Rights for the effects of Community law in their domestic legal orders.

That was the problem which recently arose in the case of *Matthews*, in which on 18 February 1999 the United Kingdom was held responsible by the European Court of Human Rights for the effects in its domestic legal order of a primary Community law, in that case one which deprived the inhabitants of Gibraltar of the right to take part in elections to the European Parliament.

Similarly, on 15 November 1996 the Court held in the *Cantoni* case that the fact that a domestic provision was based almost word for word on a Community Directive did not prevent the provision from being reviewable under the ECHR.

In the future, the European Court of Human Rights may have to consider the responsibility of a State that is required to apply a Community Regulation.

(ii) Accession to the European Convention on Human Rights

In the light of these case-law developments, the only effective and clear solution to these problems would be to provide for the European Communities – and the European Union when allowed to do so under Community law – to accede to the ECHR. Without lessening the Charter's usefulness, accession to the ECHR would have the advantage of ensuring consistency in the protection of fundamental rights in Europe.

Firstly, the Charter would be seen as complementing, not being an alternative, to the ECHR, in keeping with Article 53 of the ECHR. That would underscore the fact that the Charter did not affect the universality of human rights or uniformity of standards in Europe.

Secondly, the European Court of Human Rights would be able to review the interpretation of those provisions of the Charter that were borrowed from the ECHR, thus ensuring perfect consonance between the two instruments in the interests of the clarity and legal certainty to which European citizens aspire.

Lastly, it would enable Community institutions to be a party to proceedings before the European Court of Human Rights that concerned the effects of Community provisions in the legal orders of member States.

From that perspective, accession to the ECHR appears to be a natural and logical complement to the adoption of the Charter. Just as the States have accepted the supervision of the European Court of Human Rights, so also it would be logical for the Union to accept this form of external review. To accept the contrary would ultimately amount to affording Community institutions greater freedom than that afforded to national ones.

Towards a relationship of cooperation between the European Court of Human Rights and the Court of Justice of the European Communities

It must be noted in this connection that on no account will the European Communities' or the European Union's accession to the ECHR mean that a hierarchy is established between the Court of Justice and the European Court of Human Rights, just as no such hierarchy exists between the latter court and any of the national courts.

The European Court of Human Rights has no power to impose penalties on national authorities, to censure them for their acts or to set their acts aside. In other words, it cannot intervene in the legal order of the State concerned and adheres to the principle that it is for the national authorities to interpret domestic law. Its power is restricted to verifying whether the acts of a national authority comply with the ECHR. If they do not, the Court will *find* a violation of the ECHR, but has no power to set aside or modify the relevant act or to prescribe the measures which the State concerned should take to redress the violation. The States are free to decide on which measures to implement in order to comply with the Court's judgment. Thus the subsidiarity principle applicable in Community law also governs relations between the European Court of Human Rights and the national authorities.

The above clearly shows that the relationship between the European Court of Human Rights and the national courts is not a hierarchical one, but one of cooperation in the interests of achieving consistent application of the ECHR throughout Europe.

When applied in the context of the European Communities, this machinery would leave intact the autonomy of Community law and the Court of Justice, the sole issue being compliance with the European Convention of Human Rights, to the exclusion of any issue regarding the interpretation and application of Community law. In that connection, it should be noted that the mere fact that the ECHR and the rights it embodies are applied in the Community legal order or, as now, are referred to by that order through Article 6 § 2 of the European Union Treaty does not alter their nature and content. This is confirmed by the fact that the Court of Justice has consistently and increasingly referred to the case-law of the European Court of Human Rights when interpreting the ECHR, thereby itself highlighting the importance of a consistent and uniform interpretation of the ECHR in Europe.

Terms of accession that will preserve jurisdiction while ensuring complementarity

However, with a view to reinforcing guarantees that the autonomy of Community law will be preserved if the European Communities and/or European Union acceded to the ECHR, machinery adapted to the special features of Community law can be devised. Thus, before deciding a case touching on a provision of the ECHR, the Court of Justice could seek an advisory opinion from the European Court of Human Rights limited to issues concerning the interpretation of the ECHR. It would be for the Court of Justice to extract from that opinion the points necessary for it to decide the case before it.

Articles 47 to 49 of the ECHR already provide for a procedure of advisory opinions. The procedure could be adapted to the present situation and so made more flexible and speedier. Further, the composition of chambers dealing with requests for an opinion could also be adjusted to take into account the special nature of Community law.

Should the Convention so wish, the Council of Europe will without delay submit proposals in greater detail with a view to enabling the Community or the Union to accede to the ECHR along the above lines.

Of course, the Convention has no power to amend the Treaties. However, the Presidency of the European Council of Cologne concluded: “It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties”. Thus, as integration of the Charter necessarily means amending the treaties, the amendments should also be accompanied by all measures necessary to make integration a success. There is therefore nothing to prevent the Convention from recommending, as a natural and logical complement to the adoption of the Charter, that the Communities and/or the Union accede to the ECHR.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 24 February 2000 (28.02)
(OR. fr)****CHARTE 4137/00****CONVENT 8****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposed Articles (Articles 10 to 19)

Below are further articles relating to civil and political rights. The only Article on the initial list which has not been included is the one concerning the principle of democracy. The place and the content of that Article merit particular attention. Proposals will be made later, particularly in the light of the principles common to national constitutions. Likewise, the question of freedom of movement will be considered at a later stage.

Article 10: Freedom of thought, conscience and religion

Everyone shall have the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Comments

This wording is taken from numerous national constitutions, Article 9 of the European Convention on Human Rights and Article 4 of the 1989 European Parliament Declaration. The Court of Justice of the European Communities endorsed the principle of freedom of religion in the Prais case (Judgment of 27 October 1976, Case 130/75, ECR. p. 1589). Article 9 of the European Convention develops the implications of this freedom (freedom to change religion or belief, to manifest one's religion or beliefs publicly, etc.). Since these are implications and not rights, it might seem preferable simply to make a statement of principle and to stop after the first part of the sentence. Any limitations will stem from the general limitation clause.

Article 11: Freedom of expression

Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas, regardless of frontiers.

Comments

This Article incorporates the principles of Article 10 of the European Convention on Human Rights and Article 5 of the 1989 European Parliament Declaration. Paragraph 2 is based on several national constitutions and the Parliament Declaration. The Court of Justice has endorsed the

principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (Judgment of 18 June 1991, Case C-260/89, ECR. p. I-5485).

Article 12: Right to education

- 1. Everyone shall have the right to education [and to vocational training] appropriate to their abilities.**
- 2. There shall be free choice of educational [and vocational training] establishment.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.**
- 4. Art, science, research and teaching shall be free of constraint.**

Comments

This Article is based on common constitutional traditions of the Member States, Article 2 of the Additional Protocol to the European Convention on Human Rights and Article 16 of the 1989 European Parliament Declaration. As regards vocational training, which is not covered by the European Convention on Human Rights, there are doubts as to whether it should be included here or under social rights. The case law of the Court of Justice relates to access to such training for Community nationals and persons treated as such and to the question of Community competence, not to the existence of a right to education. Should reference be made to the obligation to ensure that primary and secondary education is compulsory and free of charge, and also to ensure equal opportunities as regards access to higher education? For paragraph 4 there are other possible wordings which would make clear that the types of freedom at issue are the freedom to found educational establishments and the freedom to decide the content of the education in certain cases. As regards paragraph 2, this freedom cannot be absolute. Could it perhaps be made subject to the obligation to respect fundamental rights?

Article 13: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.

Comments

This Article is based on national constitutional traditions, Article 11 of the European Convention on Human Rights and Articles 10 and 11 of the 1989 European Parliament Declaration. Should explicit reference be made to the freedom not to join a trade union or an association? Does this freedom derive clearly from the case law of the European Court of Human Rights? The question of freedom to form political parties will be dealt with in connection with the rights of citizens. It has also been suggested that the following could be added: "The freedom to form groupings within a trade or profession and the freedom to organise for the purpose of protecting other interests shall also be guaranteed".

Article 14: Right of access to information

Every citizen of the Union and anyone residing in the Union shall have a right of access to the documents of the institutions of the European Union. This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community.

Comments

The wording of this Article is difficult. It follows from Article 255 of the Treaty. That Article specifies the persons who enjoy right of access (citizens, residents and legal persons with their registered office in the Community). The wording is identical for the right of petition and the right to apply to the Ombudsman. Should this right be placed here or in the part relating to citizens only? Furthermore, the right of access is not absolute. It has limitations. Should there be a reference to the Treaty, which sets out those limitations, or can the general limitation clause be regarded as sufficient?

Article 15: Data protection

Every natural person shall have a right to protection for his personal data.

Comments

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. The wording is therefore based on that Convention. The Convention provides for the possibility of extending those principles to the manual processing of files. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy. See Article 18 of the 1989 European Parliament Declaration. A more comprehensive alternative wording could be considered: "Respect for the rights and freedoms laid down by this Charter, and in particular the right to privacy, shall be guaranteed with regard to the processing, by whatever means, of any information concerning an identified or identifiable natural person. The information must be processed fairly and for specified purposes, and subject to the data subject's consent or to any other legitimate basis specified by law". This wording is closer to the Community texts and covers the protection not only of privacy but of all freedoms. Should control by an independent body be included as well?

Article 16: Right to ownership

Everyone is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to fair [*and prior*] compensation.

Comments

This Article reflects Article 1 of the Additional Protocol to the European Convention on Human Rights and Article 9 of the 1989 European Parliament Declaration. This is a fundamental principle common to all national constitutions. It has been endorsed many times in the case law of the Court of Justice, and first and foremost in the Hauer judgment (13 December 1979, ECR. p. 3727). It is not certain that the principle of prior compensation is common to all Member States.

Article 17: Right of asylum and expulsion

- 1. Persons who are not nationals of the Union shall have a right of asylum in the European Union *[in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees] [under the conditions laid down in the Treaties].***
- 2. Collective expulsions of aliens shall be prohibited.**

Comments

This Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights as regards collective expulsions. The 1989 European Parliament Declaration contained no reference to this, but no Community policy existed at the time. The text of paragraph 1 is based on Article 63 of the EC Treaty which incorporates the Convention on refugees into Community law. The provisions of Article 1 of Protocol No 7 to the European Convention on Human Rights on Procedural safeguards relating to expulsion have not been included as most Member States have not signed or ratified this Protocol. In any case the Geneva Convention contains guarantees to this effect. It has been suggested that reference be made to the right to temporary protection for displaced persons "under the conditions laid down in the Treaties or measures taken in pursuance thereof", but, as substantive law stands at present, does such a right exist?

Article 18: Equality

All persons shall be equal before the law.

Comments

This Article expresses a principle which the Court has deemed to be a fundamental principle of Community law (Judgment of 13 November 1984, Racke, Case 283/83, ECR. p. 3791).

Article 19: Non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. The Union shall seek to eliminate inequalities and to promote equality between men and women. [The equality of the sexes shall be ensured in particular by the setting of pay and other working conditions in accordance with the Treaty and with the texts implementing it.]**

Comments

As regards paragraph 1, the European Convention on Human Rights limits the application of the principle to guaranteed rights, but here again it is a principle which forms part of the constitutional traditions common to the Member States. The Treaty enshrines the principle of equal treatment only in specific cases (between Community nationals, between men and women at work). But it

seems clear that any form of discrimination would be contrary to the general principles of Community law. The list combines the list in Article 13 of the Community Treaty with the list in Article 14 of the European Convention on Human Rights. It will be seen that discrimination on grounds of nationality has not been prohibited. This is a complex issue because not all discrimination is prohibited if the rights in question are linked to the status of Community national (rights of movement, residence and establishment, for example). It must be left to the courts to assess in accordance with traditional case law whether discrimination is based on objective grounds and whether it is proportionate to the objective pursued. However, either a paragraph on the prohibition of discrimination on grounds of nationality as between citizens of the Union could be inserted here, or this question could be moved to the section on citizens of the Union. Paragraph 2, taken from Article 3(2) of the EC Treaty, authorises positive action.

It has been suggested that this Article should also include a paragraph 3, based on Article 6 of the Finnish constitution, which would deal with children's rights. The paragraph would read:

"4. Children shall be treated as individuals and shall be permitted to influence matters affecting them according to their degree of maturity."

Should this paragraph be inserted here or should it be placed elsewhere together with parents' and families' rights?

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PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 28 febbraio 2000 (21.03)
(OR. fr/it)****CHARTE 4138/00****CONTRIB 30****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei Diritti fondamentali dell'Unione europea

Si accludono due lettere che l'On. Elena Paciotti, Parlamento europeo, ha indirizzato al Presidium della Convenzione.¹

¹ Queste lettere sono pervenute unicamente in lingua italiana.

Strasburgo, 14 febbraio 2000

Alla Presidenza della Convenzione
Incaricata di redigere il progetto di
Carta dei Diritti fondamentali dell'UE

OGGETTO: il diritto alla protezione dei dati personali

A norma dell'articolo 286 del Trattato che istituisce la Comunità europea – come modificato dal Trattato di Amsterdam – mi sembra che si debba ritenere vigente nell'Unione il diritto fondamentale alla protezione dei dati personali, quello che la giurisprudenza costituzionale tedesca ha definito come "diritto fondamentale all'autodeterminazione informatica" o "habeas data".

Poiché tale diritto non è inserito nell'elenco contenuto nella nota della Presidenza del 27 gennaio 2000, chiedo che venga introdotto fra i diritti da prendere in considerazione nella prossima riunione.

Una formulazione a mio avviso condivisibile di tale diritto è quella contenuta nel progetto predisposto dal prof. Dr. Jürgen Meyer, del Bundestag, distribuito il 6 gennaio 2000, all'art. 6:

" Ognuno ha il diritto di decidere autonomamente sulla divulgazione e l'utilizzo dei propri dati personali e di ottenere informazioni sulla memorizzazione di questi ultimi, nella misura in cui ciò non leda i diritti di terzi.

Limitazioni sono ammissibili per legge soltanto in caso di superiore interesse pubblico."

Con i migliori saluti,

Elena Paciotti

Bruxelles, 23 febbraio 2000

Alla Presidenza della Convenzione
Incaricata di redigere
una Carta dei Diritti fondamentali
dell'Unione europea.

Fundamental.rights@consilium.eu.int

OGGETTO: Progetto di Carta dei diritti fondamentali dell'Unione europea

In relazione al testo dell'Art. 2 proposto con la nota del 15 febbraio scorso, suggerisco una formulazione alternativa del paragrafo 2:

" Ciascuno ha il diritto al rispetto dell'integrità fisica, psichica, genetica.

Nessun intervento sanitario può essere effettuato senza il consenso libero e informato dell'interessato.

Il corpo umano e le sue parti non possono costituire oggetto di profitto.

È proibita ogni forma di discriminazione basata sulle condizioni di salute o sui caratteri genetici di una persona. I test genetici sono ammessi solo per la tutela della salute dell'interessato o per fini di ricerca."

Distinti saluti.

Elena Paciotti

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 February 2000 (29.02)
(OR. fr)****CHARTE 4139/00****CONTRIB 31****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

The text ¹ of the statement by the Council of Europe's Mr Marc Fischbach at the meeting of the Convention on 24 February 2000 is attached.

¹ Submitted in French and English.



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

22 February 2000

The European Union's Draft Charter of Fundamental Rights

(...)

I have studied with the greatest attention the draft Articles submitted to the Convention for perusal in the document Convent 5 and it seems appropriate at this juncture to make a number of general observations on them, noting that some of the proposed provisions fall well short of the level of protection afforded at present by the European Convention on Human Rights.

One example of this is Article 3, on liberty and security. Its text is directly based on Article 5 of the European Convention. But according to Article 5, it is not sufficient for arrest or detention to comply with domestic law in order to be compatible with the European Convention. They must also be effected for one of the purposes exhaustively listed in Article 5. The case-law includes cases where a deprivation of liberty was held to be in breach of Article 5 not because it did not comply with domestic law but because it was not effected for one of these purposes.

I note, however, that this exhaustive list has not been reproduced in the draft Article 3 which has been submitted to us. That would seriously weaken the present level of protection in that it would be sufficient, for a deprivation of liberty to be compatible with the Charter, for it to comply with domestic law.

Some of the other draft provisions raise the same concerns, particularly those relating to so-called "horizontal questions". I know that at this stage these have not been submitted for discussion and merely serve to provide an illustration of the way in which certain horizontal problems raised by the drafting of the Articles relating to specific rights might be solved. Nevertheless, I wish to make two comments on them which seem to me to be of a fundamental nature.

My first observation concerns the general limitation clause proposed in Article Y. On this point, I would like to point out that the European Convention on Human Rights contains a number of provisions which are either not limited in any way or subject only to limitations whose scope has been narrowly circumscribed by the European Court of Human Rights. That applies in particular to Articles 2 to 7, which concern, among other matters, the dignity of the human being, the right to life, liberty and security, the right to a fair trial and the principle *nullum crimen sine lege*. Here again, accepting that these provisions might be affected by a general limitation clause would amount to reducing the level of protection guaranteed by the European Convention on Human Rights [and thus doing the opposite of what Article Z says, a provision I intend to come back to in a moment].

I further note that Article Y refers to "the protection of legitimate interests in a democratic society", but without listing those interests exhaustively, as the European Convention on Human Rights does. This too would lower the standards of protection currently in force in Europe since any interest at all might one day be held to be "legitimate".

To remedy the problems I have just mentioned, I fear that it will not be sufficient to refer to Article Z of the draft. That brings me to my second remark, concerning the correct interpretation of Article Z, regard being had to the wording defining certain rights.

On the one hand, the wording seems in certain cases to lag behind the level of protection afforded at present by the European Convention on Human Rights. On the other hand, however, Article Z provides that no provision of the Charter may be interpreted as placing restrictions on that protection. If it is true, as a number of members of the Convention have already said, that our main concern should be to ensure the readability and comprehensibility of the Charter, then that situation is one which I find unsatisfactory.

To ask citizens to compare two parallel texts, and in this instance that would mean grasping and understanding all the subtle differences between Articles referring to the same rights – differences of which I could moreover cite further examples – seems to me to go well beyond what one can legitimately expect of an individual subject of law and in any case to run counter to the objective of making the Charter readable and comprehensible.

In conclusion, I can therefore only emphasise the need to depart as little as possible from the text of the European Convention on Human Rights where the rights set forth therein are included in the Charter. On that subject, I would refer you to the contribution made by the Council of Europe observers on 21 February.

That being said, Mr President, if the Convention wishes, the Council of Europe is ready to submit concrete proposals to it very rapidly with a view to ensuring a minimum level of consistency between the Articles of the Charter and the Convention provisions.

Thank you.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 February 2000 (01.03)
(OR. fr)****CHARTE 4140/00****CONVENT 9****NOTE FROM THE SECRETARIAT**

Subject : Draft Charter of Fundamental Rights of the European Union
- Comparative Table

Further to the meeting on 24 and 25 February, please find enclosed a comparative table containing the rights in the wording proposed in Charte 4123/1/00 REV 1 (Articles 8 and 9) and Charte 4137/00 (Articles 10 to 19), laid out beside similar provisions, where such exist, in the European Convention on Human Rights.

European Convention on Human Rights	Praesidium Draft
<p data-bbox="176 332 1047 368">Article 8: Right to respect of private and family life</p> <ol data-bbox="231 406 1047 771" style="list-style-type: none"> <li data-bbox="231 406 1047 479">1. Everyone has the right to respect for his private and family life, his home and his correspondence. <li data-bbox="231 511 1047 771">2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 	<p data-bbox="1050 332 1915 368">Article 8: Respect for private and family life</p> <ol data-bbox="1050 406 1915 592" style="list-style-type: none"> <li data-bbox="1050 406 1915 479">1. Everyone shall have the right to respect and protection for their identity. <li data-bbox="1050 479 1915 592">2. Respect for privacy and family life, reputation, the home and the confidentiality of correspondence, irrespective of the medium, shall be guaranteed.
<p data-bbox="176 810 1047 846">Article 12: Right to marry</p> <p data-bbox="176 885 1047 990">Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.</p>	<p data-bbox="1050 810 1915 846">Article 9: Family life</p> <ol data-bbox="1050 885 1915 1031" style="list-style-type: none"> <li data-bbox="1050 885 1915 917">1. Everyone shall have the right to found a family. <li data-bbox="1050 917 1915 990">2. The Union shall ensure the legal, economic and social protection of the family. <li data-bbox="1050 990 1915 1031">3. The Union shall ensure the protection of children.

European Convention on Human Rights	Praesidium Draft
<p data-bbox="178 284 1045 321">Article 9: Freedom of thought, conscience and religion</p> <ol data-bbox="178 354 1045 781" style="list-style-type: none"> <li data-bbox="178 354 1045 537">1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. <li data-bbox="178 570 1045 781">2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. 	<p data-bbox="1054 284 1919 321">Article 10: Freedom of thought, conscience and religion</p> <p data-bbox="1054 354 1919 537">Everyone shall have the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</p>

European Convention on Human Rights	Praesidium Draft
<p data-bbox="176 316 1047 354">Article 10: Freedom of expression</p> <ol data-bbox="176 386 1047 1034" style="list-style-type: none"> <li data-bbox="176 386 1047 609">1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. <li data-bbox="176 641 1047 1034">2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. 	<p data-bbox="1050 316 1913 354">Article 11: Freedom of expression</p> <p data-bbox="1050 386 1913 495">Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas, regardless of frontiers.</p>

European Convention on Human Rights	Praesidium Draft
<p>Article 2: Right to education</p> <p>No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</p>	<p>Article 12: Right to education</p> <ol style="list-style-type: none"> 1. Everyone shall have the right to education [<i>and to vocational training</i>] appropriate to their abilities. 2. There shall be free choice of educational [<i>and vocational training</i>] establishment. 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed. 4. Art, science, research and teaching shall be free of constraint.
<p>Article 11: Freedom of assembly and association</p> <ol style="list-style-type: none"> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. 	<p>Article 13: Freedom of assembly and association</p> <p>Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.</p>

European Convention on Human Rights	Praesidium Draft
	<p>Article 14: Right of access to information</p> <p>Every citizen of the Union and anyone residing in the Union shall have a right of access to the documents of the institutions of the European Union. This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community.</p>
	<p>Article 15: Data protection</p> <p>Every natural person shall have a right to protection for his personal data.</p>
<p>Article 1: Protection of ownership</p> <p>Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.</p> <p>The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.</p>	<p>Article 16: Right to ownership</p> <p>Everyone is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to fair [<i>and prior</i>] compensation.</p>

European Convention on Human Rights	Praesidium Draft
<p>Article 3: Prohibition of expulsion of own nationals</p> <ol style="list-style-type: none"> 1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2. No one shall be deprived of the right to enter the territory of the State of which he is a national. <p>Article 4: Prohibition of collective expulsion of aliens</p> <p>Collective expulsion of aliens is prohibited.</p>	<p>Article 17: Right of asylum and expulsion</p> <ol style="list-style-type: none"> 1. Persons who are not nationals of the Union shall have a right of asylum in the European Union <i>[in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees] [under the conditions laid down in the Treaties].</i> 2. Collective expulsions of aliens shall be prohibited.
	<p>Article 18: Equality</p> <p>All persons shall be equal before the law.</p>
<p>Article 14: Prohibition of discrimination</p> <p>The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>	<p>Article 19: Non-discrimination</p> <ol style="list-style-type: none"> 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. The Union shall seek to eliminate inequalities and to promote equality between men and women. <i>[The equality of the sexes shall be ensured in particular by the setting of pay and other working conditions in accordance with the Treaty and with the texts implementing it.]</i>

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 February 2000 (29.02)
(OR. de)****CHARTE 4141/00****CONVENT 10****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Draft Articles 1-9 (see CHARTE 4123/1/00 REV 1)

Please find attached a new version of the draft Articles in CHARTE 4123/1/00 REV 1 not yet discussed, which was submitted by former Federal President Mr Roman Herzog, Personal Representative of the Federal Republic of Germany and Convention Chairman.

Structure of the Charter

The Charter of Fundamental Rights of the EU to be drawn up by the Convention should comprise the following sections:

1. **Fundamental human rights**
2. **Rights of freedom**
3. **Rights of equality**
4. **Economic and social rights**
5. **Political rights**
6. **Judicial rights**

The Convention will find below proposals for the fundamental rights to be included in each individual section.

Within each section the draft will start with an Article 1 with a view to facilitating work in the coming months. The Articles should then be numbered consecutively in the final text.

6. **Judicial rights**

Article 1

(Right to an effective remedy)

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

Commentary:

Verbatim text of Article 13 of the ECHR, except for an introductory change referring to the planned Charter

Article 2

(Right to a fair trial)

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.**
- 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.**
- 3. Everyone charged with a criminal offence has the following minimum rights:**
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;**
 - (b) to have adequate time and facilities for the preparation of his defence;**
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;**

- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Commentary:

Verbatim text of Article 6 of the ECHR

Article 3

(Right of appeal in criminal matters)

1. **Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.**
2. **This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.**

Commentary:

Verbatim text of Article 2 of Protocol N° 7 to the ECHR

Article 4

(No punishment without law)

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

Commentary:

Article 7 of the ECHR, unchanged

Article 5

(Right not to be tried or punished twice)

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

Commentary:

*Verbatim text of the 1st and 2nd paragraphs of Article 4 of Protocol N° 7 to the ECHR.
Paragraph 3 may be added if the Convention so wishes.*

Article 6

(Compensation for wrongful conviction)

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Commentary:

Verbatim text of Article 3 of Protocol N° 7 to the ECHR

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 28 février 2000 (01.03)
(OR. de)****CHARTE 4141/1/00
REV 1 (fr)****CONVENT 10****NOTE**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 - Propositions pour les articles 1 à 9 (document de référence :
 Charte 4123/1/00 REV 1)

Veillez trouver ci-joint une nouvelle version des propositions d'articles figurant dans le document Charte 4123/1/00 REV 1 qui n'ont pas encore été examinées, présentée par M. Roman Herzog, ancien Président de la République fédérale d'Allemagne, représentant personnel pour ce pays et président de la Convention.

Structure de la Charte

La Charte des droits fondamentaux de l'Union européenne qui doit être élaborée par la Convention devrait comporter les sections suivantes :

1^{ère} section Les droits fondamentaux de l'homme

2^{ème} section Libertés

3^{ème} section Droits ayant trait à l'égalité

4^{ème} section Droits économiques et sociaux

5^{ème} section Droits politiques

6^{ème} section Droits dans le domaine de la justice.

Il est proposé à la Convention de reprendre les droits fondamentaux énoncés ci-après pour les différentes sections.

Dans le projet, chaque section débute par un article 1^{er}, ce qui devrait faciliter le travail au cours des mois à venir. Néanmoins, dans le texte définitif, il conviendra de renuméroter les articles de manière à avoir une numérotation continue.

6^{ème} section : Droits dans le domaine de la justice

Article premier

(Droit à un recours effectif)

Toute personne dont les droits et libertés reconnus dans la présente Charte ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles.

Commentaire :

Il s'agit de l'article 13 de la CEDH, mais avec une introduction modifiée qui fait référence à la Charte à élaborer.

Article 2**(Droit à un procès équitable)**

- 1. Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. Le jugement doit être rendu publiquement, mais l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice.**
- 2. Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.**
- 3. Tout accusé a droit notamment à :**
 - a) être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui ;**
 - b) disposer du temps et des facilités nécessaires à la préparation de sa défense ;**
 - c) se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent ;**

- d) **interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge ;**
- e) **se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience.**

Commentaire :

Il s'agit de la retranscription mot pour mot de l'article 6 de la CEDH.

Article 3

(Droit à un double degré de juridiction en matière pénale)

1. **Toute personne déclarée coupable d'une infraction pénale par un tribunal a le droit de faire examiner par une juridiction supérieure la déclaration de culpabilité ou la condamnation. L'exercice de ce droit, y compris les motifs pour lesquels il peut être exercé, sont régis par la loi.**
2. **Ce droit peut faire l'objet d'exceptions pour des infractions mineures telles qu'elles sont définies par la loi ou lorsque l'intéressé a été jugé en première instance par la plus haute juridiction ou a été déclaré coupable et condamné à la suite d'un recours contre son acquittement.**

Commentaire :

Il s'agit de la retranscription mot pour mot de l'article 2 du protocole n° 7 à la CEDH.

Article 4

(Pas de peine sans loi)

- 1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.**
- 2. Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées.**

Commentaire :

Reproduction sans modification de l'article 7 de la CEDH.

Article 5

(Droit à ne pas être jugé ou puni deux fois)

- 1 Nul ne peut être poursuivi ou puni pénalement par les juridictions du même État en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet État.**
- 2 Les dispositions du paragraphe précédent n'empêchent pas la réouverture du procès, conformément à la loi et à la procédure pénale de l'État concerné, si des faits nouveaux ou nouvellement révélés ou un vice fondamental dans la procédure précédente sont de nature à affecter le jugement intervenu.**

Commentaire :

Retranscription mot pour mot de l'article 4, paragraphes 1 et 2, du protocole n° 7 à la CEDH. Le paragraphe 3 devra être ajouté, le cas échéant, si la Convention le souhaite.

Article 6**(Droit d'indemnisation en cas d'erreur judiciaire)**

Lorsqu'une condamnation pénale définitive est ultérieurement annulée, ou lorsque la grâce est accordée, parce qu'un fait nouveau ou nouvellement révélé prouve qu'il s'est produit une erreur judiciaire, la personne qui a subi une peine en raison de cette condamnation est indemnisée, conformément à la loi ou à l'usage en vigueur dans l'État concerné, à moins qu'il ne soit prouvé que la non-révélation en temps utile du fait inconnu lui est imputable en tout ou en partie.

Commentaire :

Retranscription mot pour mot de l'article 3 du protocole n° 7 à la CEDH.

PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 29 febbraio 2000 (21.03)
(OR. fr/it)****CHARTE 4142/00****CONTRIB 32****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei Diritti fondamentali dell'Unione europea

Si acclude una lettera che l'On. Elena Paciotti, Parlamento europeo, ha indirizzato al Presidium della Convenzione.¹

¹ Questa lettera è pervenuta unicamente in lingua italiana.

Bruxelles, 28 febbraio 2000

Alla Presidenza della Convenzione
incaricata della redazione
della Carta dei diritti fondamentali

Oggetto: protezione dei dati personali

Facendo seguito alla mia lettera pari oggetto del 14/02/00 e preso atto che nella nota del presidium del 15/02, a commento dell'art. 8 è scritto "un articolo specifico sarà consacrato alla protezione dei dati", propongo qui di seguito due formulazioni alternative a quella già proposta dal prof. Jürgen Meyer, allo scopo di rendere più approfondita e ampia la discussione sul tema:

1. (questa formulazione mi è stata suggerita dal prof. Spyros Simitis: ne trascrivo anche il testo in tedesco)

" (1) Ogni persona ha il diritto di decidere in merito al trattamento dei dati che la riguardano.

(2) Ogni persona ha il diritto di conoscere dal responsabile dell'elaborazione dati se vi siano dati che la riguardino e quali essi siano.

(3) Limitazioni di questo diritto possono essere previste soltanto dalla legge"

"

(1) Jede Person hat das Recht, über die Verarbeitung der sich auf sie beziehenden Daten selbst zu bestimmen.

(2) Jede Person hat das Recht, von dem für die Verarbeitung Verantwortlichen bestätigt zu bekommen, ob und welche Daten, die sich auf sie beziehen, verarbeitet werden.

(3) Einschränkungen dieser Rechte dürfen nur durch Gesetz erfolgen."

2.

" Ciascuno ha diritto di decidere liberamente sulla raccolta, l'utilizzazione e la circolazione dei propri dati personali, di ottenere informazioni sul loro trattamento e di accedere alle informazioni raccolte.

Specifiche limitazioni possono essere previste solo per legge per la tutela di rilevanti interessi pubblici."

Distinti saluti.

Elena Paciotti

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 8 March 2000 (14.03)
(OR. en,nl)****CHARTE 4145/00****CONTRIB 35****COVER NOTE**

Subject : Draft Charter on Fundamental Rights of the European Union

Please find attached a contribution by Mr Frits KORTHALS ALTES, Personal Representative of the Netherlands Government.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
(contribution by Frits Korthals Altes, representative of the Netherlands Government in the Convention
for the drawing up of a draft Charter of fundamental rights of the European Union)

I endorse the efforts being made to establish a concise wording for the fundamental rights so that citizens and other residents of the European Union find them comprehensible and easy to read. However, I have two objections to the proposals discussed so far and contained in CONVENT 5 (CHARTE 4123/1/0 REV 1) and CONVENT 8 (CHARTE 4137/00). The same applies to the proposals contained in CONVENT 10 (CHARTE 4141/00). Those objections are as follows:

1. Deviating from the wording of a fundamental right also contained in the ECHR risks producing a difference in interpretation between the ECHR and the EU Charter. There is no objection if such deviation aims to expand that fundamental right: in my opinion, the European Union has every entitlement to expand a fundamental right in such a way as to make protection within the European Union stronger than that guaranteed by the ECHR. On the other hand, the EU Charter must never restrict a fundamental right already guaranteed by the ECHR or word it in more limited terms than the ECHR does.
2. In specific cases, the ECHR authorises States to infringe a fundamental right. It also lays down the generally strict conditions under which such infringements may take place (cf. Article 5 of the ECHR). By not including an article authorising infringement and laying down the conditions under which a fundamental right may be infringed, the EU Charter risks diverging even further from the ECHR.

The same thing will happen when we eventually come to draw up fundamental social rights which are already contained in the revised European Social Charter (ESC) or treaties of the International Labour Organisation (ILO). A similar discrepancy may also arise between fundamental rights yet to be drafted which have already been expressed by bodies of the European Union in a European Parliament declaration or other instrument.

In principle I see two possible means of overcoming these objections:

1. by making explicit reference in each article to ECHR, ESC, ILO or EU documents;
2. by specifying in an introductory ("horizontal") article that only the original articles of the ECHR, ESC, ILO or EU document to which the explanatory notes on the article refer are applicable, and that the sole purpose of the ensuing list of rights is to summarise the rights laid down in the ECHR, ESC, ILO or EU documents without altering their scope. While the rights enshrined in the ECHR, ESC, ILO or EU documents may be expanded, an express indication must be given where this is the case.

I have provided examples of each option below.

My preference would be for option 1, even though I am aware that the informal meetings of the Convention have proceeded on the basis of horizontal provisions pursuant to option 2. My preference is based on the fact that the articles which the Convention has discussed so far appear to accord unlimited rights, whereas those rights may in fact be restricted by the horizontal provisions. If the articles were worded in accordance with option 1, it would be immediately obvious that each article could be subject to restrictions as justified by ECHR, ESC and EU documents or other treaties.

EXAMPLES:

Re 1.

§ 1 Human dignity

Article 1

- 1.1. The right to human dignity shall be inseparably linked to the human person.
- 1.2. The right to human dignity shall be inviolable and must be respected under all circumstances.

Article 2

- 2.1. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- 2.2. No one shall be held in slavery or servitude.
- 2.3. No one shall be required to perform forced or compulsory labour, except in the cases provided for in Article 4.3 of the ECHR.

§ 2 Right to life

Article 3

- 3.1. Everyone has the right to life.
- 3.2. Everyone has the right to the respect of his physical and mental integrity.
- 3.3. The death penalty may not be enforced other than in the event of war, subject to due regard for Article 2 of Protocol No 6 to the ECHR.

Article 4

- 4.1. An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.
- 4.2. The cloning of human beings is forbidden.

§ 3 Liberty and security

Article 5

- 5.1. Everyone has the right to liberty and security of person.
- 5.2. No one shall be deprived of his liberty save in the cases referred to in Article 5.1 of the ECHR and with due regard for Articles 5.2 - 5.5 of the ECHR, Article 1 of Protocol No 4 and Articles 2, 3 and 4 of Protocol No 7 to the ECHR.

§ 4 Right to a fair trial

Article 6

In the determination of his civil and administrative rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 7

- 7.1. Everyone whose rights and freedoms are violated has the right to request an effective remedy from a court or tribunal specified by law.¹
- 7.2. Everyone charged with an offence has the following rights in accordance with Articles 6.2 and 6.3 of the ECHR:
 - (a) to be presumed innocent until proved guilty according to law;

¹ This wording deviates from that of Article 13 of the ECHR to favour residents as Article 13 refers to a "national authority" rather than "a court or tribunal specified by law". There should therefore be no reference to Article 13 of the ECHR.

- (b) to be informed promptly, in a language which he understands and in detail, of the accusation against him, and to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free, and to have the free assistance of an interpreter if he cannot understand or speak the language of the proceedings;
- (d) to have access to the dossier; to examine witnesses on his behalf and to produce and examine or have examined witnesses against him under the same conditions as witnesses on his behalf.

Article 8

- 8.1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence in law at the time when it was committed. No heavier penalty than the one applicable at the time of committing the offence shall be imposed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.
- 8.2. The previous paragraph shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 9

With due regard for the restrictions and exceptions referred to in Article 4 of Protocol No 7 to the ECHR, no one shall be tried or convicted for offences for which they have already been finally acquitted or convicted.

§ 5 Freedom of the individual

Article 10

- 10.1. Everyone has the right to freedom of thought, conscience, religion and belief; this right shall include freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 10.2. The right to freedom of thought, conscience, religion and belief shall be subject only to such limitations as are referred to in Article 9.2 of the ECHR.

Article 11

- 11.1. Everyone has the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and images without interference by public authority and regardless of frontiers.
- 11.2. The right to freedom of expression shall be subject only to such limitations as are referred to in Article 10 of the ECHR.

Article 12

There shall be freedom of art, science and research.

§ 6 Respect for private and family life**Article 13**

- 13.1. Everyone has the right to protection of their identity.
- 13.2. Respect for the privacy, reputation, home and confidentiality of correspondence, irrespective of the medium, shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 14

- 14.1. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.
- 14.2. Every minor has the right to protection by the public authorities.
- 14.3. Respect for family life shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 15

- 15.1. Every child has the right to compulsory free primary education within the age limits set by national legislation and to secondary education in accordance with his capabilities.
- 15.2. There shall be freedom of choice of educational establishment.
- 15.3. The right of parents or legal guardians to secure for their children an education which conforms to their religious or philosophical beliefs shall be respected.

Etc.

Re b. Introductory (horizontal) article

Insofar as they do not explicitly expand the rights and freedoms guaranteed by the ECHR and the accompanying Protocols, the rights and freedoms listed in Articles 1 to ... shall have the same scope and significance as the corresponding rights guaranteed in Section I (Articles 1 to 18) of the ECHR and in the Protocols to the ECHR, and may, unless expressly stated otherwise, be limited by law in the same way and under the same conditions as those rights. The interpretation of the ECHR and its Protocols provided in the case law of the European Court of Human Rights, established by Article 19 of the ECHR, shall be the basis for applying the rights and freedoms laid down in Articles 1 to

A similar provision referring to the ESC (and ILO Conventions) should precede the enumeration of the social rights.

The Hague, 6 March 2000

Frits KORTHALS ALTES

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 6 March 2000**CHARTE 4146/00****CONTRIB 36****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of Lord GOLDSMITH, Personal Representative of the Government of the United Kingdom.¹

¹ This text has been submitted in English only.

(i) DRAFT CHARTER

(b) PART A

II. Article 1 / Purpose and Object

- (1) The dignity of the person is inviolable. In order to protect it, the European Union declares its adherence to the fundamental rights set out below.
- (2) The following provisions are addressed to the bodies and institutions of the European Union in the exercise of the responsibilities and tasks assigned to them by the Treaties. [*] They establish neither new tasks or competences for the Union nor do they extend its existing tasks or competences.
- (3) The fundamental rights are listed below in Part A. Part B explains the nature, full extent and application of these rights.

Notes:

- *‘Purpose and Object’ is borrowed from the helpful titular formulation in the Convention on Human Rights and Biomedicine and is perhaps a more accurate description than ‘Article 1’.*
- *‘Inviolability’ presents some difficulties in English. Prof. Braibant has suggested an alternative formulation using ‘respected’ which we should consider.*
- *[*]I would suggest that we omit the second sentence of your Article 1(2) which contains a proposition which would require a Treaty amendment for its validity. We can discuss these issues at greater length.*

Article 2

(Right to life)

- (1) Everyone’s right to life shall be protected by law.
- (2) The death penalty is abolished. No one shall be condemned to such penalty or executed.

Notes:

- *I still think it is better to aim for a shorter Part A leading to a cleaner, more accessible document, with the detail in Part B.*

-
- *Headnote for Articles 3 to 5: We could possibly consider the pros and cons of combining these provisions under a single Article entitled 'Respect for the person.'*

Article 3

(Right to the respect of physical and mental integrity)

Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine.

Article 4

(Prohibition of torture and inhuman treatment)

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

Article 5

(Prohibition of forced or compulsory labour)

No one shall be required to perform forced or compulsory labour.

Note:

- *Setting out this right in this way increases visibility without losing legal certainty.*

Article 6

(Liberty and security)

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

Note:

- *I regard it as important that the right should not be cut down by using any expression which might be interpreted differently from ECHR Article 5, which limits cases where a person might be deprived of liberty to specific limited circumstances. But the two-part approach allows visibility without losing legal certainty. This approach enables a visible statement of a personal right but tied clearly to the protection of the individual in ECHR Article 5.*
-

PART B

This Part explains the nature, full extent and application of the fundamental rights referred to in Part A.

General Provisions

Each reference in this Charter to an Article of the ECHR or its Protocols should be interpreted in accordance with the jurisprudence of the Strasbourg organs.

Note:

- *It will be necessary in the draft to capture the developing jurisprudence of the Strasbourg and to tie the application of the Charter rights to individuals to the obligations of Member States. It may be possible to incorporate some or all of such material in Article 1 or draft a general clause thereby avoiding needless repetition. But it is probably better to return to this question at the end of the process. The text I previously proposed included ‘References to ECHR Articles in this Charter are to be understood having regard to the jurisprudence of the Strasbourg organs. They do not confer a guarantee greater than that under the corresponding ECHR Article(s) subject to any reservation or, where applicable, derogation entered in respect of them’. This will have to be for consideration.*

III. Article 1 / Purpose and Object

1(1): The principle of respect for the inviolable dignity of the human person is the foundation for statements of fundamental rights throughout the European Union. Article 1 has effect in accordance with the constitutional traditions of Member States and is respected by the Union bodies and institutions.

Note:

- *We cannot supply a Part B text for Article 1(2), because there is as yet no certainty about the legal force the Charter may be given at some later stage.*

Article 2

(Right to life)

The rights in Article 2 are the rights guaranteed by Article 2 of and Articles 1, [2], 3 and 4 of Protocol 6 to the ECHR, read with ECHR Articles 17 and 18¹. The full

¹ It will need to be considered later where in the Charter we should set out the text of ancillary provisions of this kind.

ECHR Article 2 is as follows [...] The full text of relevant provisions of ECHR Protocol 6 is as follows [...]

Article 3

(Right to the respect of physical and mental integrity)

The right set out in this Article comprises the following principles:

- (a) the principle of informed consent should be respected;
- (b) the human body and its parts shall not, as such, give rise to financial gain;
- (c) research on human beings shall only be carried out under appropriate conditions for their protection;
- (d) organ removal from living donors shall only be permitted under specified circumstances and with the consent of the person concerned.

The principle in (a) above is covered by the general rule given in Article 5 of the Convention on Human Rights and Biomedicine. It will not be applicable in all circumstances; for example, where a person is not able to give informed consent the relevant rules given in Articles 6, 8, 17 and 20 of the Biomedicine Convention must be applied. Where a person suffers from a serious mental disorder the principles given in articles 7 and 26 of the Biomedicine Convention will be applicable if certain criteria are met.

The principle in (b) above is that laid down in Article 21 of the Biomedicine Convention.

The appropriate protective conditions referred to in (c) above are set out in Articles 16 and 17 of the Biomedicine Convention.

The principle in (d) above is laid down in Article 19 of the Biomedicine Convention, which specifies the permitted circumstances.

References to the Biomedicine Convention articles are to be read subject to the relevant exceptions provided by that Convention and subject to any applicable reservation or derogation.

Note:

I expressed concern about the Praesidium text not reflecting the existing situation, and the need to confine ourselves to existing, justiciable rights. There is another preliminary observation: unlike the ECHR, the Council of Europe’s Convention on Human Rights and Biomedicine permits the Community to accede (although I believe it has not yet done so). The Biomedicine Convention is not an existing active instrument and we will have to consider very carefully what should be included, which rights are common to Member States’ constitutional traditions, and ensure that we reflect the language and exceptions of the Convention on Human Rights and Biomedicine. I have asked for advice on the detailed position in the UK at the moment. But in order to produce a draft for discussion I have very tentatively suggested the short Part A wording and the Part B note above, and may revert with further wording.

Article 4

(Prohibition of torture and inhuman treatment)

Article 4 recites the text of Article 3 of the ECHR, the rights in which are guaranteed by that provision, read with ECHR Articles 17 and 18.

Article 5

(Prohibition of forced or compulsory labour)

The rights in Article 5 are the rights guaranteed by Article 4 of the ECHR, read with ECHR Articles 17 and 18. The full ECHR text of Article 4 is as follows: [...]

Article 6

(Liberty and security)

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, read with ECHR Articles 17 and 18. The full text of ECHR Article 5 is as follows: [...]

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 8 March 2000 (13.03)
(OR. fr)****CHARTE 4149/00****CONVENT 13****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
- New proposal for Articles 1 to 12 (now 1 to 16)
Reference documents: CHARTE 4123/1/00 REV 1 CONVENT 5 and
CHARTE 4137/00 CONVENT 8

Following the discussions of the Convention, which met as a Working Party, the new wording of Articles 1 to 12 has been drawn up, taking account of the comments made. Each Article is followed by a statement of reasons. Part II contains two horizontal Articles which are not under discussion but feature by way of illustration.

The order of the Articles is provisional. A general presentational outline for the Charter is being drawn up.

I. Draft Articles

Article 1. Dignity of the human person

The dignity of the human person shall be respected and protected in all circumstances.

Statement of reasons

This Article is inspired by the principles common to the constitutional traditions of Member States and by Article 1 of the 1989 Declaration of the European Parliament. The concern was that it should appear as the first Article of the Charter, since dignity of the human person is the very foundation of fundamental rights. The Universal Declaration of Human Rights sets out this principle in its preamble:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Respect for the dignity of the human person constitutes an inherent limitation to all the other rights, which may not be used to infringe that dignity.

It has been suggested that a second paragraph should be added to this Article, defining the scope of the Charter in a horizontal fashion. This paragraph could read as follows:

"The provisions of this Charter shall be applicable to the institutions and organs of the Union in the framework of the powers and tasks conferred on them by the Treaties, and to the Member States when implementing Community law. They shall not establish any competence or new tasks for the Union nor shall they extend the latter's competence and tasks."

Another solution would be to include this provision in the preamble or to make it a separate Article.

Article 2. Right to life

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

Statement of reasons

Paragraph 1 is taken from Article 2 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

The exceptions referred to in Article 2(2) of the Convention apply in the context of this Charter in accordance with Article 6 of the Treaty on European Union which refers to the European Convention on Human Rights.

Paragraph 2 is taken from the second sentence of Article 1 of Protocol No 6 to the European Convention on Human Rights. Article 2 of the Protocol is worded as follows:

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

Although this provision is not included in the Charter, it applies in the European Union context in accordance with Article 6 of the TEU.

However, it was deemed necessary to include these provisions not only because of their intrinsic importance but also because abolition of the death penalty is now an objective of the Union to be realised through the CFSP and may also have a role to play with regard to cooperation in criminal matters (Title VI TEU). The 1998 declaration of the Council on the death penalty indicates that the Union is working towards the universal abolition of the death penalty.

Article 3. Right to the respect of integrity

- 1. Everyone has the right to the respect of his physical and mental integrity.**
- 2. In the fields of medicine and biology, the following principles in particular must be respected:**
 - **prohibition of eugenic practices**
 - **respect of the informed consent of the patient**
 - **prohibiting the making of the human body and its products a source of financial gain**
 - **prohibition of the cloning of human beings**

Statement of reasons

These principles are set out in the Convention on Human Rights and Biomedicine. They are accompanied by separate provisions on consent, particularly where a person is unable to give his consent, and by restrictions. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for its development to take account of future progress in this area.

Article 4. Prohibition of torture and inhuman treatment

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

Statement of reasons

This Article is taken from Article 3 of the European Convention on Human Rights.

Article 5. Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Statement of reasons

This Article is taken from Article 4 of the European Convention on Human Rights. The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. Although these definitions have not been included in the Charter, they retain their force in accordance with Article 6 of the TEU. This paragraph reads as follows:

"For the purpose of this Article the term "forced or compulsory labour" shall not include:

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

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in specific cases and in accordance with a procedure prescribed by law.

Statement of reasons

Article 5 of the European Convention on Human Rights defines the cases in which a person may be deprived of his liberty as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;*
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

- (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The aim of Article 6 of the Charter is not to allow any cases of deprivation of liberty other than those authorised by the European Convention on Human Rights, as is indicated by the reference to specific cases. Insofar as the Charter applies within the Union, these rights should in particular be respected when, in accordance with Title VI of the Treaty on European Union, the Union adopts framework decisions for harmonisation in criminal matters.

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Statement of reasons

This Article reproduces Article 13 of the European Convention on Human Rights:

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

The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Johnston, Case 222/84, ECR I 651). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties: an action for annulment when the conditions for admissibility have been fulfilled or a preliminary ruling on admissibility when the case is brought before a national judge. The wording of the Article has been adapted to take account of the specific characteristics of the Union. Thus, reference to a national authority has been deleted, since the Charter applies only to institutions and organs of the Union and since, in this framework, an action may be brought either before the Community judge or before the national judge who is the common law judge as regards application of Community law. Accordingly, reference to a national authority has been replaced with reference to a court because the Court precedent refers to judicial protection.

Article 8. Right to a fair trial

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure the effectiveness of access to justice.

Statement of reasons

This Article follows Article 6(1) of the European Convention on Human Rights, which reads as follows:

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

The limitations have not been included, but they apply in the Charter framework pursuant to Article 6 of the TEU and the general clause on limitations which will appear in the Charter. It should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 9. Rights of the defence

Everyone who has been charged shall be presumed innocent until proved guilty according to law and has the right to respect of his rights to defence.

Statement of reasons

This Article is taken from Articles 5(2) and 5(3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Given the decision taken in favour of concise drafting, it was not thought necessary to include this Article in full, but in accordance with Article 6 of the TEU these provisions, which clarify the principles set out in the Article of the Charter, are applicable in Community law.

Article 10. No punishment without law

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

Statement of reasons

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights. Article 7 of the European Convention on Human Rights is worded as follows:

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

In paragraph 2, the word "civilised" has simply been replaced by the more modern term "democratic"; this does not change in the meaning of this paragraph which refers to crimes against humanity.

Article 11. Right not to be tried or punished twice

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

Statement of reasons

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

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

The wording of this Article is not intended to deprive paragraph 2 of the Article in Protocol No 7 of its legal effect, as that applies in Community law pursuant to Article 6 of the TEU. The "non bis in idem" principle applies in Community law (see an important precedent, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v Commission [1966] ECR 150 and a recent case, the Court's decision of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v Commission, not yet published).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour, his home and the confidentiality of his communications.

Statement of reasons

This Article is based on Article 8 of the European Convention on Human Rights, which reads as follows:

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

The term "honour" has been added to the text of the Convention. It is taken from a number of national constitutions. "Communication" has replaced "correspondence" to take account of developments in means of communication. Respect for family life is covered by a separate Article. Paragraph 2 on limitations has not been included but it is applicable under Union law pursuant to Article 6 of the TEU and the clause on limitations in the Charter. A special Article will be given over to data protection. It is therefore not mentioned here.

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right.**
- 3. Protection of the family on a legal, economic and social level shall be ensured.**

Statement of reasons

The first paragraph of this Article is based on Article 8 of the European Convention on Human Rights and paragraph 2 on Article 12 of that Convention, which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right."

Reference to legislation as regards marital law is consistent with subsidiarity and with the diversity of national situations. Paragraph 3 applies to the Union when it adopts measures within its powers to take account of family protection needs. A specific Article will be given over to the rights of children.

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion.

Statement of reasons

This wording reproduces Article 9 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The fact that the Charter does not incorporate the limitations set out in paragraph 2 does not deprive those restrictions of their effects under Union law, pursuant both to Article 6 of the TEU and to the general clause on limitations contained in the Charter. The Court of Justice of the European Communities endorsed religious freedom in the Prais Case (Judgment of 27 October 1976, Case 130/75, ECR 1589). Given the decision in favour of concise drafting for the Charter, the implications of religious freedom have not been included, but this is not intended to deprive these provisions of their effect as they are only the implications of the general principle.

Article 15. Freedom of expression

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**
- 2. Art, science and research shall be free of constraint.**

Statement of reasons

This Article incorporates the principles of Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Paragraph 2 has not been included but it is applicable under Union law pursuant to Article 6 of the TEU and to the general clause on limitations included in the Charter. The Court of Justice has endorsed the principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (Judgment of 18 June 1991, Case C-260/89, ECR I-5485).

The paragraph includes provisions contained in much national legislation. The European Court of Human Rights considers that artistic freedom is part of freedom of expression. The freedom of science and research is subject, as are all the other rights, to the respect of human dignity laid down in Article 1 of the Charter.

Article 16. Right to education

- 1. No person shall be denied the right to education, including in particular the right to receive free compulsory education.**
- 2. The founding of educational establishments shall be free of constraint.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.**

Statement of reasons

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

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

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. The principle of academic freedom is not included, but it constitutes both a structural principle of academic organisation and the guarantee of the freedom of expression in this area. The Charter in no way infringes this principle.

II. Horizontal articles

It has been acknowledged that it is essential for the Charter to contain a number of horizontal Articles to resolve the problems of its scope and limitations and relationships with the European Convention on Human Rights. It is proposed that the scope be dealt with in Article 1. As for the other matters, although they have not been the subject of specific discussions, they have been broached on several occasions in the course of the proceedings. The discussions have made it possible to clarify the clauses contained in CHARTE 4123/1/00 REV 1 CONVENT 5. However, these are still tentative texts which are not intended for discussion but which provide material for consideration, and which will be discussed subsequently.

The possible general clause on the scope of the Charter is set out in the statement of reasons for Article 1.

Article X. Limitations

Without prejudice to provisions affording more protection than this Charter or the European Convention on Human Rights, any limitation on respect for the rights and freedoms which it recognises must be provided for by the law. It must not infringe the essential content of the rights and freedoms in question and, subject to the principle of proportionality, remain within the limits necessary for the protection of legitimate interests in a democratic society.

Statement of reasons

This provision, which sets out the principles relating to the limitations on guaranteed rights, has the effect of incorporating all the limitations laid down by the European Convention on Human Rights where those afford more protection than measures which might be taken on the basis of the general clause on limitations. According to the European Convention as interpreted by the European Court of Human Rights, the term "law" must be understood in the material not the formal sense. It can cover sub-legislative, customary or case law standards. The law must be accessible and allow the individual to foresee the consequences of his behaviour (see especially the Hurvig judgment of 24 April 1990, paragraphs 28 et seq.).

Article Y. Level of protection

No provision of this Charter may be interpreted as placing restrictions on the protection afforded by the European Convention on Human Rights.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. März 2000**CHARTE 4150/00****CONTRIB 37****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend die Anmerkungen der deutschen Länder zur Aufzeichnung des Präsidiums. (Charte 4123/1/00 REV 1 Convent 5 - Vorschläge für die Artikel 1 bis 9).¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

**FREISTAAT
THÜRINGEN**

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der StaatskanzleiAn den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer EU-Charta der Grundrechte
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Sekretariat des KonventsFax 00322 285 7837
e-mail: Jean-Paul.Jacqué@consilium.eu.int

Geschäftszeichen:	Ihr Zeichen, Ihre Nachricht vom	Telefon	Datum
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**Anmerkungen der deutschen Länder zur Aufzeichnung des Präsidiums
Charte 4123/1/00 REV1 Convent 5**
hier: Vorschläge für die Artikel 1 bis 9

Sehr geehrter Herr Vorsitzender,

zu den durch das Präsidium für die informelle Sitzung des Konvents am 24./25. Februar 2000 vorgelegten Vorschlägen für die Artikel 1 bis 9 eines Entwurfs der Charta der Grundrechte der Europäischen Union haben sich die deutschen Länder im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild verschafft. Ich erlaube mir, Ihnen diese erste Einschätzung zu übermitteln und möchte Sie herzlich bitten, unsere Anregungen im Verlaufe der Diskussion im Konvent zu berücksichtigen.

Ich bitte um Ihr Verständnis, dass auf Grund unverhersehbarer anderweitiger politischer Termine weder ich noch mein Vertreter, Herr Dr. Weber, an der kommenden informellen Sitzung des Konvents teilnehmen können.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Thüringer Staatskanzlei
Referat 33

23. Februar 2000

**Erstes Meinungsbild der Länderarbeitsgruppe zur Erarbeitung eines Entwurfs der Charta
der Grundrechte der Europäischen Union
zum Dokument
Charte 4123/1/00 REV 1 CONVENT 5 (Stand 15. Februar 2000)**

Die Arbeitsgruppe der deutschen Länder hat am 22. Februar 2000 das o.g. Dokument einer ersten Prüfung unterzogen und erlaubt sich dazu folgende Anmerkungen:

Generell wurde kritisch angemerkt, dass sich die Artikelabfolge streng an dem Aufbau der EMRK orientiert. Bezüglich der Artikelabfolge wäre jedoch besonderes Augenmerk auf die Wertigkeit der Regelungsinhalte zu legen.

Zu Artikel 1: Die Würde des Menschen

Absatz 1:

Hier wurde im Länderkreis bereits die Frage nach dem persönlichen und sachlichen Anwendungsbereich der Charta aufgeworfen und festgestellt, dass u.U. an dieser Stelle eine entsprechende Aussage getroffen werden müsste.

Absatz 2:

Die Integration dieser Passage in Artikel 2 des Entwurfs erscheint überlegenswert. Ausserdem stellt sich die Frage nach dem Zusammenhang des sog. "kleinen Asylrechts" zur Formulierung "unmenschliche Behandlung".

Absatz 3:

Sollte als eigenständige Norm formuliert werden. Problematisch erscheint die Interpretation des Begriffs "Zwangs- und Pflichtarbeit" unter dem Gesichtspunkt, dass in einigen Ländern das Landesrecht die Verpflichtung zu sog. "Hand- und Spanndiensten" enthält. Auch unter dem Stichwort "Arbeit statt Strafe" erscheint die derzeitige Formulierung des Abs. 3 zu unpräzise.

Zu Artikel 2: Recht auf Leben

Absatz 2-4:

Aus Ländersicht bestehen grundsätzliche Bedenken zu den vorgeschlagenen bioethischen Formulierungen. Dies betrifft insbesondere den Alternativentwurf zu Absatz 2. Insgesamt erscheint der Einstieg in die Problematik zu intensiv und nicht ausgewogen. So wird z.B. die Problematik der Nichteinwilligungsfähigkeit oder die Frage der gewinnbringenden Vertreibung von Blutplasma nicht angeschnitten. Grundsätzlich erscheinen die Ausführungen der Alternativformulierung zu Absatz 2 nicht ausgewogen.

Unabhängig davon stellt sich die Frage, ob die Materie nicht besser sekundärrechtlich zu regeln ist. Die Arbeitsgruppe der Länder spricht sich jedenfalls gegen die Aufnahme der Alternativformulierung in den Entwurf aus.

Absatz 3:

Sollte wie folgt gefasst werden:

”Niemand darf zum Tode verurteilt oder hingerichtet werden.”

Zu Artikel 3: Freiheit und Sicherheit

Absatz 1:

Der Begriff ”Sicherheit” erscheint noch interpretationsbedürftig zu sein. Ist er im Licht des EGV zu sehen oder eröffnet die Formulierung weitergehende Ansprüche gegenüber den Nationalstaaten insbesondere in den Bereichen Justiz und Inneres? Eine Harmonisierung des in den Mitgliedstaaten diesbezüglich geltenden Rechts wird abgelehnt. Für den Bereich der Schutz- und Abwehrrechte wird die Vollständigkeit des Grundrechtskatalogs unterstützt, nicht aber bei derivativen oder originären Leistungsrechten in den genannten Bereichen.

Sollte ”Sicherheit” i.S. eines Willkürverbots gemeint sein, bestehen keine Bedenken.

Absätze 2-5:

Erscheinen insgesamt zu detailliert. Die Länder melden hierzu weiteren Prüfbedarf an.

In Absatz 2 wäre in Anlehnung an die EMRK wohl besser von ”Freiheitsentzug” zu sprechen.

Bezüglich Absatz 3 wird darauf hingewiesen, dass ”hinreichender Verdacht” nicht indentisch ist mit dem im deutschen Recht enthaltenen Begriff des ”dringenden Tatverdachts”.

Die ”Haftentlassung während des Verfahrens” ist eine Rechtsfolge und muss daher an dieser Stelle nicht erwähnt werden.

Absatz 5:

Hier stellt sich die Frage, ob dies nicht Regelungsmaterie des Sekundärrechts sein sollte.

Ausserdem wäre der Begriff ”Entschädigung” dem Begriff ”Schadensersatz” vorzuziehen.

Zu Artikel 4: Recht auf ein wirksames Verfahren

Handelt es sich hier um Rechte, die der Charta entspringen oder insgesamt um alle innerhalb der Mitgliedstaaten der EU verbrieften Rechte? Angeregt wird ausserdem, vom einem ”fairen oder gerechten” Verfahren zu sprechen.

Zu Artikel 5: Recht auf ein gerechtes Verfahren

Absatz 1:

Vorgeschlagen wird, die Worte ”in billiger Weise” zu ersetzen durch das Wort ”angemessen”.

Desweiteren stellt sich die Frage, ob nicht ähnlich wie in Art. 6 Abs. 1 Satz 2 EMRK unter den dort genannten Gründen von einer öffentlichen Verhandlung abgesehen werden sollte, da die dort aufgeführten berechtigten Interessen Dritter und Umständen auch die des Angeklagten dem Anspruch auf eine öffentliche Verhandlung entgegenstehen könnten.

Absatz 2:

Hier sollte der Zugang zum Recht "garantiert" werden.

Absatz 3 a)-d):

Erscheint insgesamt zu detailliert. Ausserdem sollte in Ziffer a) besser von einer Unschuldsvermutung ausgegangen werden.

Zu Artikel 6: Nullum crimen sine lege

Interpretationsbedarf besteht hier hinsichtlich des Begriffs "dem Gesetz". Ist hier das inländische bzw. internationale Recht gemeint?

Zu Artikel 7: Ne bis in idem

Ist diese Norm auf den jeweiligen Nationalstaat zu beziehen oder soll sie auf die gesamte EU ausgedehnt werden? Letzteres entspräche nicht der deutschen Sicht, die davon ausgeht, dass sich der Grundsatz "ne bis in idem" nur auf den betroffenen Staat bezieht. Ansonsten würde sich der Grundsatz des Strafklageverbrauchs auf die gesamte EU erstrecken.

Zu Artikel 8: Achtung des Privat- und Familienlebens

Die Bestimmung muss entzerrt werden.

Absatz 1:

Besser wäre anstatt von "Identität" von "Persönlichkeit" zu sprechen oder wird hier auf die genetische Identität angespielt?

Absatz 2:

Sollte als eigenständige Bestimmung aufgenommen werden, wobei der Bereich des Familienlebens eher zu Artikel 9 gehört, während der übrige rechtliche Regelungsgehalt des Absatzes eigenständig bestehen sollte. Vorgeschlagen wird angesichts der dynamischen Entwicklung von Übertragungsmedien von "Mitteilungen" zu sprechen, anstatt auf den Post- und Fernmeldeverkehrs abzustellen. Grundsätzlich wird vorgeschlagen auf die "Unverletzlichkeit" der genannten Schutzbereiche abzustellen und nicht von "Gewährleistung" zu sprechen.

Zu Artikel 9: Familienleben

Von der Aufnahme dieses Artikels in den Chartaentwurf ist abzusehen, da dies sekundärrechtlich zu regeln ist und keine weiteren Kompetenzen der EU eröffnet werden sollen.

Zu den aufgeworfenen Querschnittsfragen haben sich die deutschen Länder grundsätzlich bereits erstmals im Beschluss der Europaminister vom 2./3. Dezember 2000 geäußert, der Beschluss ist in Anlage beigefügt.

24. Europaministerkonferenz der Länder am 2./3. Dezember 1999 in Frankfurt / Main

Beschluß

TOP 5 Charta der Grundrechte der Europäischen Union

Berichterstatter: Niedersachsen, Sachsen

1. Die Europaminister- und senatoren begrüßen die Initiative des Europäischen Rates von Köln im Juni 1999, durch ein zu diesem Zweck einzurichtendes Gremium eine Charta der Grundrechte der Europäischen Union erarbeiten zu lassen. Sie würdigen die unmittelbar nach der Beschlussfassung des Europäischen Rates von der Bundesregierung eingeleitete Beteiligung der Länder an den Vorbereitungsarbeiten. Durch die Teilnahme von Vertretern der Länder im Europäischen Grundrechtsgremium, das am 17.12.1999 seine Arbeit aufnehmen wird, werden auch die Erfahrungen und Auffassungen der Länder in die Grundrechtarbeit auf europäischer Ebene einfließen können.

2. Grundrechte stellen die Personen und deren zu schützenden Lebensbereich, insbesondere politischer, wirtschaftlicher, sozialer und kultureller Art, in den Mittelpunkt. Mit einer Charta der Grundrechte bekennen sich die Mitgliedstaaten und die beteiligten Organe und Institutionen der Europäischen Union dazu, den europäischen Einigungsprozess auch weiterhin zum Wohle und im Interesse der Bürger zu gestalten und jedes Handeln der Europäischen Union an diesem Wertfundament zu messen. Eine in sich geschlossene und verständliche Darstellung der europäischen Grundrechte ist daher ein wichtiger Schritt zu einem wirklichen Europa der Bürger.

3. Grundrechte sind Ausdruck grundlegender gemeinsamer Werte- und Rechtsüberzeugungen innerhalb der Europäischen Union. Eine Grundrechtecharta trägt zur weiteren Identitätsbildung der Europäischen Union bei und vermittelt eine klare Orientierung für Beitrittskandidaten.

4. Grundrechte der Europäischen Union sollen zuerst ihre eigenen Organe und Institutionen binden. Bei der Umsetzung und Durchführung der gemeinschaftsrechtlichen Regelungen haben aber auch die Mitgliedstaaten und ihre Gliederungen die Erfordernisse des Grundrechtsschutzes in der Gemeinschaftsrechtsordnung zu berücksichtigen. Eine Charta der Grundrechte der Europäischen Union ist geeignet, innerhalb ihres Anwendungsbereichs das einheitliche Verständnis der Grundrechte im Gemeinschaftsrecht zu fördern.

5. Die Europaminister und –senatoren der Länder unterstreichen die ungeschmälerte Wirkung und Bedeutung der in den nationalen Verfassungen verbrieften Grundrechte. Eine Charta soll nicht einer Harmonisierung der in den Mitgliedstaaten und in den Ländern und Regionen geltenden Grundrechte dienen. Die Europäische Union muß auch in Zukunft die Bedeutung und Traditionen nationaler und internationaler Verbriefungen von Grundrechten mit ihren Besonderheiten achten und respektieren. Insbesondere die Bindung der Mitgliedstaaten an die Europäische Menschenrechtskonvention und der Rechtsweg zum Europäischen Gerichtshof für Menschenrechte müssen unberührt bleiben
6. Die Europäische Grundrechtecharta wird unmittelbare rechtliche Wirkung erst mit einer späteren förmlichen Einbeziehung in das Vertragswerk nach dem Verfahren des Art. 48 EUV erhalten. Die vorgesehene feierliche Erklärung Ende 2000 ist ein förderlicher Schritt hierzu. Die inhaltlichen Beratungen müssen sich deshalb von Anfang an mit allen rechtlichen Auswirkungen einer Charta der Grundrechte der Europäischen Union befassen. Die Europaminister und –senatoren bekräftigen, dass mit Blick auf die angestrebte Integration der Charta in das Vertragswerk nur solche Inhalte aufgenommen werden dürfen, die später auch bindende Wirkung entfalten können. Aus diesem Grund darf es keine Aufnahme von politischen Handlungszielen in die Charta geben.
7. Eine Charta der Grundrechte verstärkt die rechtstaatliche Bindung und Begrenzung der Ausübung öffentlicher Gewalt in der Europäischen Union. Die Europaminister und –senatoren betonen, dass mit der Ausformulierung einer europäischen Grundrechtecharta das in Art. 5 EU-Vertrag und Art. 5 Abs. 1 EG-Vertrag verankerte Prinzip der begrenzten Einzelermächtigung unangetastet bleiben muß. Die Aufnahme einer Charta der Grundrechte in das Gemeinschaftsrecht darf nicht den bestehenden Anwendungsbereich des Gemeinschaftsrechts erweitern. Bei der Gestaltung und Ausformulierung der einzelnen Rechte ist daher strikt darauf zu achten, dass ihnen nicht neue Handlungsermächtigungen für Organe und Institutionen der Europäischen Union zu entnehmen sind.

Protokollnotiz von Bayern, Brandenburg und Sachsen:

Die Länder Bayern, Brandenburg und Sachsen weisen darauf hin, dass eine präzisere Kompetenzabgrenzung das mit der Grundrechtecharta verbundene Risiko einer Ausdehnung der EU-Zuständigkeiten verringern würde.

8. Die Europaminister und –senatoren verbinden mit der auszuarbeitenden Charta der Grundrechte der Europäischen Union die vorstehenden Eckwerte, die entsprechend dem Arbeitsfortschritt im Grundrechtgremium unter Beteiligung aller betroffenen Fachpolitikbereiche weiterentwickelt und konkretisiert werden sollten. Sie bitten deshalb das Vorsitzland, baldmöglichst den Bundesrat auf der Grundlage dieses Beschlusses zu befassen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 March 2000**CHARTE 4151/00****CONTRIB 38****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter sent by Mr. Buttiglione, member of the European Parliament, to Mr. Herzog, President of the Convention. ¹

¹ This text has been submitted in English only.

Bruxelles, 20 February 2000

Dear Mr. President,

One fundamental right of the human person, that we want to see affirmed in our European Charter of Human Rights and Duties, is the right not to be discriminated because of one's nationality, of one's race, of one's sex, of one's religion or philosophical belief and of the colour of one's skin.

Discrimination on this basis is a grave offence against human rights, denies to some men a full participation in the human community and not only hinders the full development of the personality of the person who is the object of discrimination but also impoverishes the whole society in which the person is discriminated depriving it of the creative and constructive contribution of this person.

Discrimination denies the fundamental unity of the human family and the fundamental equality of all men.

There is however in these last years a certain cultural propensity to enlarge the catalogue of the causes of discrimination that should be rejected and considered illegal. There are even some philosophers who consider discrimination to be an evil in itself, reject therefore all kind of discrimination and consider even discrimination to be the only possible evil.

I think that this is going too far.

Even if in the every day use of the word discrimination acquired the meaning of bad or negative discrimination the original meaning of to discriminate, resulting also from its etymology, is to make distinction. In this sense it does not contradict the principle of equality that prescribes that the same situations should be treated in the same way but prescribes also that different situations should be treated in different ways. So to discriminate between situations that are essentially different does not imply any violation of human rights. Where an essential or pertinent difference is present it would be a violation of human rights not to take into account, not to consider it and to treat different situations as if they were equal. So in this case it is only correct to treat a man who is blind in a way that is different from that in which we treat a man who enjoys the full vision of both his eyes. To support the blind with some kind of public support constitutes a positive discrimination that does not violate the rights of the not blind.

In the same way a man and a woman who bind themselves with a vow of marriage, give birth to a certain number of children, provide for their nourishment and education and are taken care of by them in their old age, exercise a positive social function that provides a fundamental pre/condition for the very existence of society.

It is therefore only correct that the legislation should defend the rights of the family, recognise its social function and provide different kinds of encouragement to the foundation of family and of support to existing families.

The refuse of all discriminations, if taken at face value, would imply an absolute moral relativism that considers any form of behaviour to be equal to any other, and we should therefore be obliged to treat in the same way the killer and the victim, the robber and the robbed or the healthy and the sick and so forth. The principle of non discrimination in the larger sense would imply a renunciation to passing not only any value judgement but also any functional judgement and any judgement in general because to judge means exactly the same as to discriminate: to make distinction in order to treat different state of affairs in different and appropriate forms.

For the above mentioned reasons we must be very careful when confronted with proposal to enlarge the traditional catalogue of prohibitions of discriminations. The question we should consider before we decide whether a discrimination is legitimate or not is whether differences between two state of affairs justify the fact that they are not treated in the same way.

There is today an important pressure to add to the traditional catalogue of condemned discrimination the discrimination because of one's sexual preference. I think that on this point we should be very careful. What does "sexual preference" really mean? First of all it means that our sex (masculine or feminine), the fact of being males or females, is not a natural condition but rather the object of a cultural determination or of an individual decision through which we make a decision of being males or females. It cannot however be denied that we have a body that, as a rule and with very few exceptions, is either a male or a female body. If we decide to be a female, but we have a male body, we cannot give to our male body female character, we cannot become pregnant, we cannot bear children. What we can do is to practice a homosexual lifestyle.

This is not the appropriate place to discuss the causes of homosexuality. We are only concerned with the social role and significance of homosexual behaviour. Shall we say that here we have something similar to being a male or a female and that therefore we have a particular right to non discrimination? It is clear that nobody should be discriminated because of what he does and because of his sexual preference within his private sphere, in so far as adult and consenting human being are involved and no violence is exercised and no damage is inflicted.

We have here a general and broad protection of the right to privacy that includes within its borders also the defence of homosexual behaviour within the private sphere. This is what is generally meant with the expression toleration of homosexuality. This implies that no human being should be punished, persecuted, offended or discriminated just for practising homosexuality. If this is the aim we want to pursue, than we need not affirming a particular right to non discrimination on the basis of sexual preference. The defence of the right to sexual preference is contained in the defence of the right to privacy and the right to sexual preference is a specification and determination of the general right to privacy. Another interpretation is however possible of the right to non discrimination on the basis of sexual preference. This interpretation transforms the aforementioned right into right to affirmative action in the public sphere. Affirmative action means that homosexuality as such is a life style that has a right to public expression and is a vested interest that must be considered and protected as such. There is a great difference between the recognition and the respect of the rights of the homosexual individual, that is of the human being who happens to be a homosexual, and the affirmation of the rights of homosexuality as such.

If we recognise the rights of homosexuality as a lifestyle we might be confronted with the demand that children be exposed in their teens, when their sexual identity is being formed, to homosexual influence with a presentation of homosexuality as sexual preference or sexual lifestyle equally legitimate as heterosexuality.

Homosexual couples could demand the same rights as married ones. It seems that this would be unreasonable because heterosexual married couples have a social function, that of procreating new human beings and educating them as citizens, that of creating a bond of vertical solidarity among the generations and a bond of horizontal solidarity among brothers, sisters, siblings and so forth. This is the reason why the family is the fundamental cell of society that deserves to be encouraged and supported by the state, because if the family decays and disappears the very existence of the broader communities like the state might be endangered.

The family is a community that has a right to existence and protection in the public sphere and the same is true for the heterosexual lifestyle upon which procreation and family life is based. There is no reason to recognise the same right to homosexual couples who do not perform the same reproductive and educational function.

It is reasonable that the taxpayer should accept an additional burden to help traditional families because in his old age he will be assisted with the recourses created through the work and the contributions of the sons and daughters born to life in the families. The partners in a homosexual couple may regulate their reciprocal relations through the instruments of the civil law, they have no children that may compel one of the partners to renounce completely or only in part to a professional career causing a justified claim to particular protection. In the case of a homosexual partnership we have two individuals who live together and have a right to non interference but no right to public support.

It is not difficult to imagine other cases in which relevant differences in fact may justify relevant differences in treatment. I shall mention only the difficult problem of the protection of local identities, of specific relations between a culture and a territory that may deserve to be preserved in the framework of a right of local communities to identity and culture.

But on this point I shall take the liberty of sending you perhaps another letter.

With best regards,

yours truly

Rocco Buttiglione

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 mars 2000**CHARTE 4152/00****CONTRIB 39****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de M. José Barros Moura, représentant du Parlement du Portugal. ¹

¹ Ce text a été soumis seulement en langue française.

PRÉFACE

L'État européen est un État social, et cela bien avant que les États ne s'intègrent dans l'Union. Ils ont tous apporté avec eux le sens de la responsabilité de collectivité face aux besoins des citoyens. Quoique, dans l'histoire de chaque pays, des cheminements spécifiques aient conduit à des formes différentes dans l'exercice de cette responsabilité, dans tous les États de l'Union, les droits sociaux sont, à des degrés différents sans doute, respectés, défendus et promus. D'où un espace commun qui a déjà une dimension sociale.

Le comité estime que le moment est venu de rassembler ce qui, dans ce volet social, est déjà codifié et, simultanément, d'entamer le processus vers la codification de ce qui, dans cet espace commun, correspond aux aspirations et aux besoins des Européens. Certes, L'État social est aujourd'hui sous attaque et nettement en crise, mais cela ne veut pas dire qu'il faille renoncer à ses principes. Au contraire, il faut trouver des conditions nouvelles pour le repenser, car il est l'expression du «souci de l'autre», de la valorisation des ressources humaines, et, de ce fait, dynamisateur, en profondeur, de la compétitivité à visage humain.

Si «modèle social européen» il y a, c'est aussi au niveau de la mise en commun des expériences des différents systèmes nationaux que de nouvelles percées pourront être trouvées. C'est dire que la réflexion sur les droits sociaux et leur mise en œuvre dans les conditions du monde d'aujourd'hui doivent avoir la place qui leur revient dans l'édifice de l'Union européenne.

La mise en œuvre du marché unique, s'achevant dans l'Union économique et monétaire, constitue un objectif cible qui a conduit à la mobilisation et à la réorganisation des acteurs économiques des pays de l'Union européenne. De même, le déclenchement ferme d'un processus conduisant à l'union sociale européenne deviendra un objectif capable de faire progresser la construction de l'Union.

L'urgence est là: à la fois interne et externe. Interne parce qu'il s'agit de la sécurité de la vie des Européens qu'il faut assurer face aux questions posées par le phénomène persistant qu'est la rareté du travail ainsi que face aux nouvelles données démographiques. Urgence externe aussi parce que la position économique de l'Union dans le marché mondial ainsi que l'efficacité de notre aide au développement passe avant tout par la possibilité d'offrir de nouveaux «modèles» qui permettent à chaque pays de trouver ses propres voies pour une société à la fois de progrès économique et de justice sociale.

La question sociale, qui, au début de l'industrialisation, s'exprimait surtout dans les rapports capital-travail, s'est enrichie. Y ont contribué, à la fois, le changement radical des composantes de la production et l'émergence de droits sociaux couvrant pratiquement tous les aspects des conditions de vie des personnes. Droits civiques et droits sociaux deviennent interdépendants. Dans la tradition européenne, les droits sociaux et les droits civiques sont inséparables. C'est «la liberté et les conditions de la liberté», c'est le visage en miroir de «démocratie et développement».

La citoyenneté y apparaît en clair. C'est dire que, en posant la question des droits sociaux, nous touchons d'emblée à tout l'ensemble des droits qui s'expriment dans la «citoyenneté». Approfondir cette citoyenneté dans le cadre de l'Union ne pourra être, pour chaque pays, qu'une occasion d'aller plus loin dans sa propre citoyenneté.

Car, si l'évolution des droits sociaux dans les pays de l'Union oblige celle-ci à faire un pas décisif dans sa construction, ce n'est que dans le cadre de ses compétences que sa responsabilité s'exprimera. Plus qu'ailleurs, les droits sociaux épousent le diversifié, le multiple dans l'espace de l'Union: les responsabilités des États membres en sortent renforcées.

À travers l'histoire de l'Union, la citoyenneté a graduellement pris corps. Une étape juridique importante a été consignée dans le traité de Maastricht. Mais l'Union pratique déjà le respect et la promotion de la dimension sociale de la citoyenneté. Le Parlement et la Commission y ont posé des jalons, le premier à travers ses propositions concernant les droits fondamentaux (1989-1996), la deuxième à travers les différents volets de politiques sociales qu'elle stimule ou coordonne, et surtout par la charte sociale, dont l'initiative lui revient.

Ces droits sociaux qui s'enchevêtrent avec les droits civiques et qui explicitent la citoyenneté ne peuvent avoir, aux yeux du comité, qu'une suite: la proposition d'un «bill of rights» doit devenir une cible importante dans l'évolution de l'Union. C'est pourquoi le comité propose, dans une première étape, c'est-à-dire pendant la prochaine conférence intergouvernementale, que soient intégrés des droits fondamentaux sociaux et civiques dans le traité et que soit ainsi rendu explicite l'engagement de l'Union dans la formulation d'un «bill of rights qui puisse nous guider à l'aube du XXI siècle.

Une fois ces propositions incluses dans le traité, le comité recommande que ce travail s'achève au cours d'une seconde étape qu'il considère d'une importance capitale pour le futur de l'Union: il s'agit de parfaire le «bill of rights» encore embryonnaire. Par l'intérêt immédiat et direct qu'un tel processus peut susciter il dynamisera l'engagement des citoyens européens, des groupes sociaux et économiques, bref de la société civile de tous les pays de l'Union.

Ainsi, pour le comité, le défi actuel ne consiste pas uniquement à amender, dans le domaine qui lui revient, telle ou telle disposition des traités. Il s'agit d'un autre souffle, d'une autre ampleur. Il s'agit d'une véritable refondation de l'Union européenne. Relever ce défi est l'exigence du temps présent et la garantie d'un nouvel éveil des Européens à leur appartenance, en tant que citoyens, à l'Union.

Le travail de ce comité a été, pour sa présidente, une occasion enrichissante de vivre une telle appartenance. Dans un délai extrêmement court — le Comité a tenu sa première réunion en octobre 1995 et la dernière en février 1996 —, les membres du comité ont été capables d'exprimer leur conscience de citoyens européens, et cela non pas en dépit de leurs expressions nationales, mais exactement à partir d'elles et de leur richesse propre. L'intérêt qu'ils ont porté à notre tâche, les compétences qu'ils ont mises à la disposition du comité et leur contribution pendant et entre les sessions de travail donnent la mesure de ce que l'on peut faire si l'on tient vraiment à l'Europe.

Mais cela n'aurait pas été possible sans les qualités exceptionnelles — de talent, de savoir interdisciplinaire, de dévouement et d'écoute intelligente à toute suggestion — du rapporteur. L'équipe du secrétariat de la DG V a été un soutien compétent et efficace dans l'accomplissement de la mission du comité.

À tous, je veux témoigner publiquement ma reconnaissance, en avouant le plaisir que j'ai eu à travailler avec de tels collaborateurs.

Maria de Lourdes Pintasilgo

PROPOSITIONS DU COMITÉ DES SAGES ■

- I. Engager une réflexion d'ensemble en Europe sur nos conceptions du travail, de l'activité et de l'emploi afin que nos politiques soient en mesure d'assurer à chacun la place qui lui est due dans la société.
- II. Préciser les modalités d'une rénovation de notre État providence afin qu'il devienne un meilleur atout de compétitivité et de cohésion sociale et favorise la pleine activité de chacun.
- III. Faciliter la mise en œuvre de politiques permettant aussi bien aux hommes qu'aux femmes de concilier les responsabilités familiales et les responsabilités professionnelles.
- IV. Approfondir les conditions d'émergence d'une nouvelle génération de droits civiques et sociaux tenant compte, notamment, des changements technologiques, des progrès des connaissances en matière d'environnement et des changements démographiques.
- V. Renforcer la citoyenneté et la démocratie dans l'Union en traitant de façon indivisible les droits civiques et les droits sociaux.
- VI. Préciser les motifs et les modalités de l'intervention de l'Union en matière sociale, conformément aux principes de subsidiarité et de proportionnalité.
- VII. Franchir lors de la prochaine conférence intergouvernementale, une première étape, en inscrivant dans les traités un socle de droits civiques et sociaux fondamentaux («bill of rights»), en précisant ceux qui bénéficient d'une protection juridictionnelle immédiate et ceux qui ont un caractère plus programmatique et qui seront approfondis dans une deuxième étape (voir proposition n° XIII). Tous ces droits seraient ouverts aux citoyens de l'Union. Certains de ces droits pourraient également bénéficier, dans les conditions appropriées, aux citoyens des pays tiers.

- VIII. Inclure parmi les droits mentionnés dans la proposition n° VII l'interdiction de toute discrimination fondée notamment sur la race, la couleur, le sexe, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance, le handicap ou toute autre situation.
- IX. Par exception, poser le principe selon lequel chaque État doit mettre en place, dans les conditions fixées par lui, un revenu minimal pour les personnes qui ne parviennent pas à accéder à un emploi rémunéré et qui ne bénéficient pas d'autres sources de revenu.
- X. Regrouper en un seul traité, avec numérotation continue des articles, l'ensemble des textes existants.
- XI. Donner des bases juridiques plus solides à la Cour de justice en étendant aux pactes internationaux signés par les États membres les références juridiques auxquelles la Cour se réfère au titre de l'article F et en levant les restrictions de l'article L.
- XII. Plutôt que d'adhérer à la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, du 4 novembre 1950, instaurer un recours spécial pour la protection des droits fondamentaux qui serait attribué à une juridiction d'appel propre à l'Union et composée de juges non permanents provenant des tribunaux constitutionnels ou supérieurs des États membres.
- XIII. Prévoir dans le nouveau traité un article qui engage un processus large et démocratique d'élaboration collective, au niveau de l'Union, d'une liste complète des droits et des devoirs civiques et sociaux. Lancé par le Parlement européen sur proposition de la Commission, ce processus, auquel les parlements nationaux doivent être étroitement associés et auquel participeraient non seulement les partenaires sociaux traditionnels, mais aussi les organisations non gouvernementales, devrait déboucher dans les cinq ans sur une nouvelle conférence intergouvernementale.

- XIV. Regrouper l'ensemble des dispositions concernant les politiques sociales, et notamment le protocole social, dans un titre unique du traité.
- XV. Appliquer la règle de la majorité qualifiée dans le domaine social, à l'exception de quelques domaines sensibles (protection sociale, participation).
- XVI. Reconnaître explicitement, dans le traité, le rôle de partenaire des nouveaux acteurs collectifs qui agissent dans la société civile.
- XVII. Mettre en place un statut d'association de droit européen.
- XVIII. Élargir les conditions d'éligibilité des fonds structurels en leur permettant de mener des actions de promotion des droits sociaux fondamentaux.
- XIX. Poser le principe que toute politique européenne doit faire l'objet d'une étude d'impact en termes de cohésion sociale.
- XX. Inclure dans le traité un chapitre sur l'emploi légitimant une action de coordination de l'Union conforme aux principes de subsidiarité et de proportionnalité.
- XXI. Prévoir explicitement la possibilité pour l'Union de mener des actions de coordination et d'expérimentation dans le domaine de la lutte contre l'exclusion sociale.
- XXII. Faire entrer dans le domaine communautaire les politiques d'immigration et d'asile ainsi que les politiques d'entrée, de circulation et de séjour qui concernent les citoyens de pays tiers.
- XXIII. Faire également entrer dans le domaine communautaire les politiques concernant la drogue.
- XXIV. Préciser le concept de service d'utilité publique dans la mesure où ces services de base conditionnent l'exercice de certains droits sociaux.

- XXV. Lancer un programme de travail dans le domaine de la politique sociale européenne et faire apparaître les coûts de la non-Europe sociale.
- XXVI. Constituer des séries statistiques sociales portant sur l'ensemble de l'Union.

RESUMÉ

Dans son deuxième programme d'action sociale (avril 1995), la Commission a prévu la mise en place d'un comité des Sages destiné, notamment, à examiner les suites susceptibles d'être réservées à la charte communautaire des droits sociaux des travailleurs dans le cadre de la révision des traités de l'Union européenne.

Si, pour répondre pleinement à sa mission, le comité a souhaité élargir le champ de sa réflexion, c'est qu'il a eu le sentiment que l'Europe était, plus qu'elle ne le croit elle-même, en péril et que le déficit social actuellement constaté était, pour elle, lourd de menaces. L'Europe ne se construira pas sur fond de chômage et d'exclusion ni sur un déficit de citoyenneté. L'Europe sera l'Europe de tous, de tous ses citoyens, ou ne sera pas.

I — Les questions sociales sont désormais au cœur des défis
auxquels la construction européenne doit répondre

1. L'Union européenne doit affirmer plus nettement son identité

Si elle entend devenir une entité politique originale, elle ne pourra faire l'économie d'une définition claire de la citoyenneté qu'elle offre à ses participants. L'inclusion dans les traités de droits, tant civiques que sociaux, pourrait permettre de nourrir cette citoyenneté et de diminuer la perception d'une Europe élaborée par des élites technocratiques insuffisamment proches des préoccupations quotidiennes. Il ne serait pas inutile de rappeler que le progrès économique n'est qu'un moyen et que le but de l'Union c'est de permettre à chaque citoyen de réaliser son développement potentiel personnel en liaison avec ses semblables et en tenant compte de la nécessaire solidarité avec les générations futures.

2. *Le défi de l'emploi ne sera pas relevé sans un renouvellement important de nos politiques, qui doivent être plus actives et plus efficaces, mais aussi de nos conceptions du travail et de l'activité.*

Si l'Europe refuse à la fois l'aggravation des inégalités et de la marginalisation sociale et la généralisation des politiques d'assistance passive destinées aux personnes en situation d'exclusion, elle devra faire un effort considérable d'innovation, d'organisation et de mobilisation pour construire un mode de développement où chacun aura sa place. Il faudra développer une conception active de la citoyenneté, où chacun acceptera d'avoir des obligations envers autrui. Il faudra renouveler assez profondément nos politiques publiques, qui doivent prévenir autant que guérir, et inciter à l'effort plutôt qu'assister.

De façon plus générale, c'est notre conception même du travail qui doit changer et s'élargir; le modèle du travail à plein temps, déjà altéré par le chômage et les emplois atypiques, subis plus que voulus, évoluera vers des schémas où des périodes d'activités rémunérées alterneront ou se conjugueront avec des phases de formation ou de temps libre, la continuité entre les phases devant être assurée avec un minimum de ruptures; le travail rémunéré monopolisera moins le champ de l'activité sociale légitime; d'autres types d'activités, le plus souvent non rémunérées, prendront une importance sociale plus grande et verront leur rôle reconnu et soutenu par la collectivité. Entre toutes ces formes d'activité et de travail, des relations se noueront, qui peuvent constituer un grand enrichissement collectif si elles sont convenablement maîtrisées et si elles n'entraînent pas de précarité pour les personnes. Un dispositif de sécurité économique et de maîtrise par chacun de son développement personnel reste à construire, la flexibilité sociale au profit des personnes jouant un rôle de contrepoids vis-à-vis de la flexibilité économique.

3. *La construction d'un modèle social rénové original constitue également un atout pour la compétitivité économique européenne.*

Dans l'économie mondialisée que nous connaissons actuellement, la compétitivité est un impératif catégorique qui ne saurait être éludé. Mais celle-ci n'implique pas le démantèlement du *welfare state* ou la réduction des minimums sociaux. Elle nous oblige, en revanche, à changer et à rénover notre système social: en diminuant le poids des charges sociales qui pèsent sur le travail; en développant les droits sociaux, telle la formation, qui facilitent les productions à forte valeur ajoutée; en faisant d'un dialogue social européen renouvelé un levier de compétitivité; en répondant de façon coordonnée au choc démographique, ce qui doit conduire à adapter les régimes de retraite de base et à mettre en œuvre des politiques permettant, aussi bien aux hommes qu'aux femmes de concilier les responsabilités familiales et les responsabilités professionnelles; en s'attaquant aux différentes formes d'exclusion sociale, grâce à des politiques innovantes, plus personnalisées et s'articulant efficacement avec les organisations non gouvernementales; en prenant en compte les questions d'environnement.

4. *Les défis de l'élargissement et de la mondialisation concernent aussi les questions sociales.*

La réussite de l'intégration dans l'Union des pays d'Europe centrale ou orientale ne repose pas seulement sur l'attrait de notre modèle économique, mais aussi sur celui de notre modèle social; or, celui-ci a tendance à s'altérer. Un noyau de normes sociales claires devrait être posé comme une exigence pour ces pays dès lors qu'ils deviennent membres à part entière. Cela suppose que ce noyau soit défini par l'Union.

La mondialisation présente des aspects sociaux qui vont apparaître de plus en plus clairement (en particulier la mondialisation progressive du marché du travail). La question du rythme de diffusion dans les pays émergents des normes sociales en vigueur dans les pays industrialisés devra être posée. Cela pourrait conduire l'Union à ressentir le besoin d'une politique sociale extérieure plus affirmée. L'Union ne saurait défendre le principe de l'universalisation des droits sans définir pour elle-même les droits auxquels elle se réfère.

II – L'agencement en Europe des droits civiques et sociaux et des politiques sociales est actuellement d'une grande complexité

1. *Les États ont des régimes constitutionnels variables, mais ont tous adhéré à un certain nombre de conventions et de pactes, en particulier la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales de 1950, qui contient une procédure remarquable de garantie effective des droits.*

En ce qui concerne les traités de l'Union européenne, on ne peut, à ce stade, parler d'une véritable construction de droits sociaux et civils, mais plutôt de dispositions empiriques qui ont été bâties peu à peu pour accompagner l'unification des économies et permettre, à cet effet, la mise en œuvre d'un minimum de politiques sociales: les articles 117 à 122 du traité de Rome, complétés par l'Acte unique de 1986; la charte communautaire des droits sociaux fondamentaux des travailleurs, adoptée en 1989 par onze États sur douze; les nouvelles dispositions du traité de Maastricht, et notamment son protocole social, adopté par quatorze États sur quinze. Dans l'ensemble, les droits sociaux sont définis en dehors du traité, et principalement pour les travailleurs. Il n'y a pas, dans les traités, un catalogue de droits sociaux fondamentaux auxquels la Cour de justice pourrait se référer pour contrôler les actes communautaires. Cet ensemble a besoin d'être rendu à la fois plus lisible, plus simple, plus cohérent et plus efficace.

2. *Cependant, dans un domaine en permanente évolution, de nombreux problèmes doivent être surmontés.*

Les droits sociaux et les droits civils, civiques et mêmes politiques font-ils partie d'un même ensemble — comme le pense le comité — ou doivent-ils être considérés de façon distincte? Cette distinction en recouvre largement une autre: celle qui existe entre, d'une part, des droits qui consistent à limiter les risques d'empiétement de l'État vis-à-vis de l'autonomie des personnes, droits qui s'expriment essentiellement par des dispositions juridiques, et, d'autre part, des droits à un ensemble de prestations déterminées, droits qui ont un coût et qui nécessitent que des ressources financières soient dégagées.

Mais qui sont les débiteurs des droits ainsi affirmés, qui en assure l'exercice? Qui en fournit les moyens lorsque la collectivité les reconnaît aux individus? La question se pose dans la plupart des cas, mais avec une intensité particulière dans le cas des droits sociaux programmatiques (droit au logement, à l'emploi, etc.). Dans ce cas, l'affirmation des droits est indissociable des politiques sociales qui les mettent en œuvre. Mais il serait illusoire de penser que le respect des droits relève uniquement de la collectivité et des politiques publiques. La mise en œuvre concrète des droits repose aussi sur les relations interpersonnelles et sur les obligations que chacun se sent à l'égard d'autrui; il n'y a pas de droits sans devoirs ni de démocratie sans civisme.

Enfin, la liste des droits fondamentaux n'est pas immuable, d'abord, parce que la conception de la personne s'approfondit et, ensuite, parce que l'évolution des techniques suscite des menaces pour les personnes. Après la première génération des droits civils et politiques, puis celles des droits sociaux, on voit apparaître la possibilité de nouvelles avancées qui doivent être discutées, approfondies et précisées.

3. *Il est indispensable de définir clairement ce qui incombe à l'Union et ce qui incombe aux États membres, en matière de droits fondamentaux notamment.*

La répartition des compétences entre les États membres et l'Union, plus délicate dans le domaine social qu'en matière économique, n'a pas jusqu'ici trouvé de solution claire; il est admis par tous que les principes de subsidiarité et de proportionnalité doivent s'exercer pleinement et jouer un rôle essentiel. Chaque pays doit maintenir ses spécificités.

Notre capacité à développer une union sociale dépendra donc de notre aptitude à définir les terrains ou les fonctions que l'Union doit assumer, soit parce que les États membres ne sont pas en situation d'intervenir efficacement, soit parce que l'intervention de l'Union se révèle plus optimale que celle des États et produit davantage d'externalités:

- mener et coordonner des réflexions prospectives;
- définir un socle de droits fondamentaux qui s'imposent à l'Union et aux États lorsqu'ils agissent sous l'emprise du droit communautaire;
- tirer toutes les conséquences des droits pour tous les citoyens de l'Union à circuler et à séjourner librement sur le territoire des États membres;
- aider à la correction des déséquilibres qui apparaissent;
- aider à la solution de problèmes délicats qui, bien que relevant des États, impliquent des approches communes;
- contribuer au rapprochement des réglementations lorsque des disparités exagérées sont constatées et, éventuellement, imposer des minimums.

III — Préciser, dans une première étape, le contenu d'un socle minimal de droits fondamentaux

Les progrès immédiats à réaliser dans le cadre de la conférence intergouvernementale sont les suivants.

1. Regrouper en un seul traité, avec une numérotation continue des articles, les textes actuellement dispersés dans les quinze traités

2. Donner des bases juridiques plus solides à la Cour de justice des Communautés européennes pour faire appliquer les droits fondamentaux

Les références utilisées par la Cour de justice pour déterminer les principes généraux du droit communautaire seraient étendues, d'une part, à la charte communautaire des droits sociaux des travailleurs, qui se trouverait ainsi indirectement incorporée aux traités, et, d'autre part, aux principaux pactes internationaux signés par les États membres. Elles pourraient être utilisées pour contrôler l'ensemble des actes juridiques de l'Union. À cette fin, les restrictions que l'article L du traité sur l'Union européenne oppose à l'article F devraient être levées.

Cette amélioration, en rendant plus réellement effective l'application de la convention des droits de l'homme du Conseil de l'Europe, pourrait constituer une solution aux nombreux problèmes posés par une adhésion de l'Union à cette convention, qui semblent avoir été sous-estimés jusqu'ici (faible contenu en droits sociaux, nécessité au préalable de faire ratifier par 38 États une révision de la convention). Pour que la Cour de Luxembourg ne soit pas juge en dernier ressort en matière de droits fondamentaux, une juridiction d'appel propre à l'Union et composée de juges non permanents provenant des tribunaux constitutionnels ou supérieurs des États membres pourrait être instituée.

3. Inscrire dès à présent dans le traité une première liste de droits fondamentaux

Cette liste porterait uniquement sur le domaine communautaire, c'est-à-dire les actes de l'Union et ceux que les États adoptent sous l'emprise du droit communautaire. Elle n'implique aucun changement dans le domaine des compétences respectives de l'Union et des États et ne modifie pas les rapports juridiques entre les États membres et leurs ressortissants.

Huit droits seraient reconnus et bénéficieraient d'une protection juridictionnelle directe: égalité devant la loi, interdiction de toute discrimination, égalité entre les hommes et les femmes, liberté de mouvement au sein de l'Union, droit de choisir sa profession et son système éducatif sur l'ensemble du territoire de l'Union, droit d'association et de défense des droits, droit de négociation et action collective.

Quant aux droits constituant des objectifs à atteindre (droit à l'éducation, au travail, à la sécurité sociale, à la protection de la famille, etc.), qui constituent des parties intégrantes du modèle européen, ils seraient énumérés, mais la discussion concernant leur contenu et l'éventuelle édicition de minimums serait renvoyée à la deuxième phase ci-après.

L'importance du chômage dans la Communauté, la nécessité de lutter contre la pauvreté et l'exclusion ont conduit le comité à proposer, dans un seul cas, une clause minimale: le principe devrait ainsi être posé dans le traité, c'est-à-dire au niveau de l'Union, que chaque État membre doit mettre en place un revenu minimal pour les personnes qui ne peuvent, malgré leurs efforts, accéder à un emploi rémunéré et qui ne bénéficient pas d'autres sources de revenu, le montant de cette prestation étant fixé au niveau de chaque État membre.

IV—Engager un processus d'élaboration collective d'un catalogue moderne de droits et de devoirs civiques et sociaux

Le renforcement du traité pour y inclure les droits fondamentaux ne peut être réalisé en une fois. Une liste complète des droits à établir n'est pas disponible actuellement, surtout si l'on souhaite être audacieux et innovant: un gros travail interdisciplinaire et de technique juridique s'impose. Il ne faut pas octroyer des droits par le haut; ceux-ci, au contraire, doivent faire l'objet d'une élaboration démocratique selon une logique de citoyenneté active; il y a là, d'ailleurs, une occasion unique de faire fonctionner concrètement l'espace public démocratique européen.

C'est pourquoi un processus d'élaboration collective devrait être prévu par le traité révisé. L'exercice de consultation devrait être lancé par le Parlement européen sur proposition de la Commission européenne et piloté par un comité ad hoc. Il ferait intervenir les partenaires sociaux habituels, mais aussi les organisations non gouvernementales, un inventaire exhaustif de celles-ci étant effectué dans chaque pays, en fonction des types de droits concernés. Le Parlement européen serait régulièrement informé et consulté sur l'évolution de ce processus, auquel les parlements nationaux seraient étroitement associés.

Au bout de quatre à cinq ans, une fois ce processus consultatif achevé, les gouvernements en tireraient les conséquences sous forme d'un amendement au traité existant, dans le cadre d'une nouvelle conférence intergouvernementale dont le principe devrait être retenu dès maintenant.

V—Intégrer les politiques sociales dans la démarche ordinaire de l'Union

Bon nombre de droits fondamentaux reposent explicitement sur la mise en œuvre de politiques sociales déterminées. Il ne servirait à rien d'intégrer les droits fondamentaux dans les traités sans qu'il en soit de même des politiques sociales qui permettent de les appliquer.

Étant donné qu'il ne s'agit pas ici de l'objet central de son mandat, le comité s'est limité à quelques propositions, reprises ci-après.

1. Dispositions générales

- Regrouper l'ensemble des dispositions concernant les politiques sociales dans un titre unique du traité.
- Lorsqu'une politique sociale de l'Union est nécessaire en termes de subsidiarité et de proportionnalité, appliquer la règle de la majorité qualifiée, à l'exception de quelques domaines sensibles (sécurité et protection sociale, participation).
- Reconnaître explicitement comme partenaire, dans le traité, les acteurs collectifs qui agissent dans la société civile, en particulier les institutions de solidarité qui œuvrent contre l'exclusion et la grande pauvreté et qui peuvent représenter les chômeurs et les exclus.

- Utiliser les fonds structurels pour la promotion des droits fondamentaux.
- Développer l'expertise en sciences sociales et humaines dans le domaine de la politique sociale européenne.
- Examiner systématiquement l'impact des diverses politiques européennes menées sur la cohésion sociale et sur les risques d'exclusion.

2. Dispositions particulières

- Revaloriser la place faite à l'emploi dans le traité et instituer un comité de l'emploi pendant du comité monétaire et se réunissant périodiquement avec lui.
- Permettre à l'Union de mener des actions de coordination et d'expérimentation dans le domaine de la lutte contre l'exclusion.
- Faire entrer dans le domaine institutionnel habituel, qui facilite les prises de décision, la politique d'immigration et d'asile ainsi que les politiques concernant les citoyens des pays tiers.
- Adopter une solution identique pour ce qui concerne la lutte contre les effets de la drogue sur les personnes, qu'il s'agisse de traitement, de prévention ou de contrôle du trafic.
- Préciser dans le traité le concept des services d'utilité publique.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 9 March 2000 (10.03)
(OR. fr)****CHARTE 4156/00****CONVENT 15****NOTE FROM THE PRAESIDIUM**

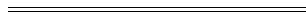
Subject : Draft Charter of Fundamental Rights of the European Union
– Reference document: CHARTE 4149/00 CONVENT 13

You have received the text of Articles 1 to 15 (CHARTE 4149/00) of the draft Charter, drawn up by the Praesidium following the Convention's discussions. That text will be examined at the meeting on 20 and 21 March. To facilitate discussion, members may send proposals for amendments to the Secretariat by 17 March. Obviously any members who have not submitted written proposals may make proposals orally at the meeting.

Those proposals, which will be distributed to the members, are not intended to be examined and put to the vote on 20 March. They will be used by the Praesidium, meeting as a drafting committee, as a basis for the final version of the draft Charter which will subsequently be submitted to the Convention. At that time an official deadline will be set for the submission of amendments and those amendments will be systematically examined by the Convention.

The procedure is thus as follows:

- initial draft articles prepared by the drafting committee following the proceedings of the Convention meeting as a working group;
- written or oral amendment proposals and discussion by the Convention on 20 and 21 March;
- preparation of a new text by the drafting committee on the basis of the discussion;
- submission of written amendments;
- final examination of the amendments and adoption of the draft Charter.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 13 March 2000 (15.03)
(OR. fr)****CHARTE 4160/00****CONTRIB 44****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a contribution by Mr Guy Braibant, representative of the President and the Prime Minister of France.

ADDITIONAL OBSERVATIONS ON THE DRAFT RIGHTS IN CHARTE 4123/00**Article 3**

Paragraph 2 should state that "No one shall be arrested or detained save in the cases and in the manner prescribed by law".

Article 4

For consistency's sake, "court or tribunal" ("juge" in the French) should probably be replaced by "tribunal", the term used in Article 5.

Article 5

A right to compensation in the event of judicial error might be stipulated. Article 3 of the Additional Protocol to the ECHR contains such a right, but limits it to cases where there has been a criminal conviction. A case may be made for broadening the right to compensation, given the seriousness of the effects which such errors can have in civil or administrative matters, and the restricted nature of the action which can be taken in the field of judicial responsibility.

Articles 6 and 7

I believe that at this point the Charter should include the principle of the necessity of punishment, and perhaps the principle of its proportionality.

It seems that the principle of the application of the lightest penalty gives rise to difficulties as regards punishments for offences of a financial nature such as embargoes.

The scope of Article 7 should be limited to criminal matters. It cannot in any case be intended to apply to administrative sanctions.

Article 8

In paragraph 1, the term "identity" should be defined or amended, so that it clearly refers to civil status and legal personality and not to cultural identity.

In paragraph 2, I believe that "confidentiality" should be replaced by "respect", which would offer more protection.

The right to one's image could also be recognised in this Article.

Article Y

Apart from the fact that this Article may give the impression that the Charter restricts certain rights, it does not remove the need for the incorporation into some Articles of definitions or restrictions which would make it easier to transform the rights into reality.

Guy BRAIBANT
Representative of the President of the Republic and of the Prime Minister
to the Convention drawing up the Charter of Fundamental
Rights of the European Union

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 March 2000 (21.03)**CHARTE 4170/00****CONVENT 17****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposed Articles on the rights of citizens (Articles A to J)

The rights of citizens

These Articles refer to rights which the Treaty establishing the European Community places generally under the heading of "Rights of citizens". These Articles are presented together, but their final position in the Charter will depend on decisions taken by the Convention on the overall structure of the Charter. Some limited rights are reserved for citizens (the right to vote and freedom of movement) but others also apply to those residing in the territory of the Member States. Others apply to everyone. Where rights are reserved for citizens alone, should there be a general clause to the effect that such rights may be extended to third-country nationals (Article 63(4) provides for the possibility of extension as regards freedom of movement)?

Article A. Principle of democracy

1. All public authority stems from the people.
2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights and the rule of law, principles which are common to the Member States.
3. The representatives in the European Parliament of the peoples of the States brought together in the Community [the Union] shall be by directly and freely elected universal suffrage and secret ballot.

Comments

Paragraph 1 states the principle of democracy which was enshrined by the Court of Justice in particular in its judgment of 29 October 1980 on Case 138/79 Roquette Frères v. Council [1980] ECR 3333. Although all public authority stems from the people, it does not follow that every public authority must be elected, but it must be appointed or established by an institution whose origin is democratic.

Paragraph 2 follows Article 6(1) of the TEU: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States".

Paragraph 3 follows Article 190(1) of the TEC, which was considered to be preferable to Article 3 of the Additional Protocol to the ECHR: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". This Article takes the form of an international commitment, whereas the Treaty provides for elections in Article 190(1) of the TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage".

Article B. Political parties

Every citizen of the Union has the right to form and to join political parties. Political parties at Union level contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

Comments

Follows the wording on the freedom of association, with the addition of part of Article 191 of the TEC: "Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union". As drafted the first sentence implies that this right may be invoked by a citizen of the Union in any Member State.

Article C. Right to participate in elections to the European Parliament

Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right is exercised in accordance with the detailed arrangements laid down in the Treaty establishing the European Community.

Comments

This text follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State". Given that there are certain specific arrangements laid down by the Treaties, a reference to the arrangements laid down by the Treaties would appear to be necessary.

Article D. The right to participate in municipal elections

Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised in accordance with the detailed arrangements laid down in the Treaty establishing the European Community.

Comments

This text follows Article 19(1) of the TEC: "Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

Article E. The right to good administration [relations with the administration]

- 1. Every person residing in a Member State has the right to have his affairs handled properly, impartially, fairly and within a reasonable time by the institutions and bodies of the Union.**
- 2. This right includes:**
 - **the right of every person to be heard before any individual measure which would affect him personally is taken in relation to him;**
 - **the right of every person to have access to his file, if this access is necessary for him to state his arguments, while respecting the legitimate interests of confidentiality and of business secrecy;**
 - **the obligation of the administration to give reasons for its decisions.**
- 3. Every citizen may address the institutions and bodies of the Union in one of the official languages of the Union and must have an answer in that language.**

Comments

The first paragraph is in response to a request made several times during the Convention, particularly by the Ombudsman.

The principles set out in paragraph 2, which only concern individual decisions, basically result from the case law of the Court and, with regard to the obligation to give reasons, from Article 253 of the Treaty: "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty." The principles for non-contentious administrative procedure are set out in the following judgments in particular: Case 374/87 Orkem [1989] ECR 3283, Case T-450/93 Lisrestal, CFI, [1994] ECR II-1177, Case C-269/90 TU München [1991] ECR I-5469, Case T-167/94 Detlef Nölle [1995] ECR II-2589. The reference to confidentiality refers to the protection of personal data.

Paragraph 3 follows Article 21 of the TEC: "Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language."

The right of access to documents might be placed in this Article.

Article F. Right of access to documents

NB: Depends on where this right will be situated. A draft Article was proposed in 4137/00 CONVENT 8.

Article G. Access to the Ombudsman

Every citizen of the Union and every person residing in the territory of a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. This right shall be exercised under the conditions laid down in the Treaty establishing the European Community and the provisions concerning its implementation.

Comments

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21: "Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

Article H. The right to petition

Every citizen of the Union and every person residing in the territory of a Member State has the right to petition the European Parliament under the conditions laid down in the Treaty establishing the European Community.

Comments

This Article presents the principles resulting from Articles 21 and 194 of the TEC.

Article 21: "Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194."

Article 194 of the TEC: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly."

Article I. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty establishing the European Community.

Comments

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC: "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."

Article J. Non-discrimination

Within the scope of application of the Treaty establishing the European Community and without prejudice to any provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Comments

This right is enshrined in Article 12 of the TEC.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4176/00****CONTRIB 59****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
- Reference document Charte/4149/00 Convent 13

Please find hereafter a proposal for amendment to article 16, point 1, submitted by
Mr. Graham Watson, Member of the European Parliament. ¹

"Basic education shall be available to all citizens as a universal right, free of direct charge and shall
be obligatory for minors".

¹ This text has been submitted in English language only.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 28. März 2000**CHARTE 4177/00****CONTRIB 60****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsvorschläge zu Dokument Charta 4149/00 Convent 13, vorgelegt von Herrn Jürgen Meyer, Mitglied des deutschen Bundestags. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



Prof. Dr. Jürgen Meyer, MdB
Stv. Vorsitzender des Ausschusses für die Angelegenheiten
der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin · Unter den Linden 50 · 2122 / 2124

Berlin

Prof. Dr. Jürgen Meyer
Deutscher Bundestag
Büro: Unter den Linden 50 · 2122 / 2124
✉ Platz der Republik 1, 11011 Berlin
Tel: (030) 227 - 79 12 0
Fax: (030) 227 - 76 31 6
Email: juergen.meyer@bundestag.de

Wahlkreis

Prof. Dr. Jürgen Meyer
Münsterplatz 45
Postfach 36 28
89026 Ulm
Tel: (0731) 6 02 13 61
Fax: (0731) 6 13 21
Email: juergen.meyer@wk.bundestag.de

16 März

Änderungsvorschlag zu Art. 13

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 13 (in der Fassung Convent 13 vom 8. März 2000) ein.

Art. 13 Ehe und Familie

- (1) **Jeder hat das Recht, nach den nationalen Gesetzen und im freien und vollen Einverständnis der künftigen Ehegatten eine Ehe zu schließen und eine Familie zu gründen.**
- (2) **Lebensgemeinschaften, die auf Dauer angelegt sind, haben ein Recht auf Schutz vor Diskriminierung.**
- (3) **Ehe und Familie genießen besonderen Schutz. Alleinerziehende, kinderreiche Familien sowie Familien mit behinderten Angehörigen haben Anspruch auf die besondere Fürsorge durch die öffentliche Gewalt.**

Begründung

Der Schutz der Ehe und des Familienlebens ist ein grundlegendes Grund- und Menschenrecht, welches in der Grundrechtscharta berücksichtigt werden muss.

In Abs. 1 wird zunächst das Recht auf freie Eheschließung und auf Familiengründung gewährleistet. Beide Rechten stellen Abwehrrechte gegen staatliche Eingriffe dar.

Dieses Recht ist in Art. 8 und 12 EMRK, in Art. 16 Allgemeine Erklärung der Menschenrechte, in Art. 23 Abs. 2 und 3 Internationaler Pakt über bürgerliche und politische Rechte (IPbPR), in Art. 6 Abs. 1 (deutsches) Grundgesetz sowie in zahlreichen Verfassungen der Mitgliedstaaten enthalten. Der EuGH hat ausgeführt, dass das Recht auf Eheschließung und der Schutz der Familie bereits jetzt „zu den vom Gemeinschaftsrecht anerkannten Grundrechten gehöre“.¹ Auch der Europäische Gerichtshof für Menschenrechte hat diesen Grundsatz wiederholt bestätigt.²

Die Einschränkung „nach den nationalen Gesetzen“ orientiert sich an der gleichlautenden Bestimmung des Art. 12 EMRK. Hiermit soll vermieden werden, dass der Konvent eine europaweite Definition des Ehebegriffs vornehmen muss.

Die Festlegung auf „im freien und vollen Einverständnis der künftigen Ehegatten“ übernimmt die entsprechende Formulierung aus Art. 23 Abs. 3 IPbPR. Diese Norm ist ebenfalls in der Allgemeinen Erklärung der Menschenrechte enthalten (Art. 16 Abs. 2), womit ihre globale Anerkennung und Würdigung zum Ausdruck kommt.

Abs. 2 berücksichtigt einen soziologischen Wandel in der Gesellschaft, der in einer zeitgemäßen Grundrechtscharta enthalten sein muss. Die Zahl der in Deutschland lebenden nicht-ehelichen Lebensgemeinschaften hat sich zwischen 1978 und 1998 mehr als versechsfacht. Ähnliche Entwicklungen sind in allen europäischen Ländern zu beobachten. Aus diesem Grund berücksichtigen auch konservative Parteien zunehmend diese soziologischen Tatsachen.³ Auch in neuen Verfassungen, beispielsweise in der Verfassung Brandenburgs, ist die Schutzbedürftigkeit von auf Dauer angelegten Lebensgemeinschaften anerkannt (Art. 26 Abs. 2).

¹ Vgl. Wetter, Irmgard: Die Grundrechtscharta des Europäischen Gerichtshofes. Frankfurt a.M. u.a., 1998, S. 168 f, sowie die Verweise auf die Urteile des EuGH in den Fußnoten 660 f.

² Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 421 ff.

³ So z.B. auf dem Kleinen Parteitag der deutschen CDU, vgl. Frankfurter Allgemeine Zeitung

Darüber hinaus berücksichtigen mehr und mehr Mitgliedstaaten der Union auch die Rechte von Homosexuellen, indem sie die Möglichkeit einer eingetragenen Lebenspartnerschaft einräumen, mit dem Ziel, bestehende rechtliche Diskriminierungen zu verhindern. Ohne dass mit Abs. 2 eine Entscheidung zugunsten eines Modells gefällt werden soll, stellt doch das Verbot der Diskriminierung eine Mindestanforderung dar.

Abs. 3 Satz 2 stellt bestimmte Untergruppen von Familien unter den besonderen Schutz der Union. Der Schutz von kinderreichen Familien ist in den Verfassungen Griechenlands (Art. 21 Abs. 2), Italiens (Art. 31) und Polens (Art. 71 Abs. 1) enthalten. Die Verfassung Brandenburgs (Art. 26 Abs. 1) enthält darüber hinaus eine Schutznorm für Alleinerziehende und Familien mit behinderten Angehörigen.

Ebenfalls schützt nach einschlägiger Rechtsprechung des Europäischen Gerichtshofes für Menschenrechte der Art. 8 EMRK Alleinerziehende, die unter den allgemeinen Familienschutz fallen.⁴

Zwar ist innerhalb des Konvents vorgesehen, einen expliziten Artikel zu den Rechten von Kindern zu formulieren; gleichwohl scheint es bereits an dieser Stelle angezeigt, die soziologische Einheit, in der eine Mehrzahl der Kinder lebt, unter besonderen Schutz zu stellen.

⁴ vom 11.12.1999 „Kleiner Parteitag berät über Spenden und Familienpolitik“. Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 424.

Änderungsvorschlag

zu Art. 14

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 14_(in der Fassung Convent 13 vom 8. März 2000) ein.

Art. 14 Gedankens-, Gewissens- und Religionsfreiheit

- (1) Jede Person hat das Recht auf Gedankens-, Gewissens- und Religionsfreiheit. Niemand darf zur Teilnahme an einer religiösen oder weltanschaulichen Handlung oder zur Verwendung einer religiösen Eidesformel gezwungen werden.**
- (2) Niemand ist verpflichtet, seine religiösen oder weltanschaulichen Anschauungen zu offenbaren.**
- (3) Kann ein Unionsbürger die von einer öffentlichen Gewalt auferlegten Pflichten nicht erfüllen, weil sie seinem Gewissen widersprechen, kann das Gemeinwesen im Rahmen seiner Möglichkeiten andere, gleichbelastende Pflichten eröffnen. Dies gilt nicht für Steuern und Abgaben.**

Begründung

Der Abs. 1 Satz 1 folgt dem Vorschlag des Präsidiums und dem gleichlautenden Art. 9 Abs. 1 Satz 1 EMRK.

In Satz 2 wird klargestellt, dass die genannten Rechte Freiheiten in dem Sinne darstellen, dass es keine erzwungene Teilnahme an weltanschaulichen, religiösen oder rituellen Handlungen geben darf. Vergleichbare Regelungen finden sich in den Verfassungen Belgiens (Art. 20), Dänemarks (§ 68), Finnlands (§ 9), Luxemburgs (Art. 20), Schwedens (Kapitel 2 § 2) und Deutschlands (Art. 4 Abs. 1 GG). Auch der Europäische Gerichtshof für Menschenrechte hat in Auslegung des Art. 9 Abs. 1 Satz 1 eine „negative Religionsfreiheit“ anerkannt¹ und von einem „Schutz für Atheisten, Agnostiker, Sektiker und Unbeteiligte“ gesprochen.²

¹ Nachweis siehe in: Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 371.

² Ebenda; S. 368.

Abs. 2 orientiert sich an entsprechenden Regelungen in den Verfassungen Portugals (Art. 41 Abs. 3), Schwedens (Kapitel 2 § 2), Spaniens (Art. 16 Abs. 2), der Slowakei (Art. 41 Abs. 2), Polens (Art. 53 Abs. 7) und Brandenburgs (Art. 13 Abs. 2). Auch der Art. 136 Weimarer Reichsverfassung, der gemäß Art. 140 GG Bestandteil des Grundgesetzes ist, enthält das Recht auf Nichtäußerung seiner religiösen Überzeugungen. Ebenfalls kann ein solches Recht aus Art. 5 Abs. 1 GG abgeleitet werden.³

Abs. 3 konkretisiert die Gewissensfreiheit.

Das Recht auf Kriegsdienstverweigerung, als eine mögliche aber nicht zwingende Form der Gewissensfreiheit, ist in den Verfassungen Deutschlands (Art. 4 Abs. 3 GG) und Portugals (Art. 41 Abs. 6) anerkannt. Zwar wird das Recht auf Kriegsdienstverweigerung in der EMRK nicht explizit gewährleistet (vgl. Art. 4 Abs. 3 b), gleichwohl schreiben Frowein/Peukert in ihrem EMRK-Kommentar zur Glaubens- und Gewissensfreiheit: „Es besteht aber ein Recht darauf, dass der Staat bei Festlegung der Pflichten Rücksicht auf die Religion nimmt.“⁴ Insofern würde die vorgeschlagene Formulierung zur Positivierung dieses Recht führen.

Gleichwohl wird in Abs. 3 durch die einschränkende Formulierung „im Rahmen seiner Möglichkeiten“ und „dies gilt nicht für Steuern und Abgaben“ vermieden, dass es zu einer willkürlichen und ausufernden Geltendmachung von Gewissensnot kommt. Entsprechende Fälle hat der Europäische Gerichtshof für Menschenrechte auch immer wieder zurückgewiesen.⁵

³ Maunz/Düring/Herzog u.a.: Grundgesetz Kommentar. München, 1991, Band 1 (Lieferung 1 – 29), Art. 5 Rdnr. 40.

⁴ Ebenda, S. 378.

⁵ Ebenda, S. 376 ff.

Änderungsvorschlag

zu Art. 15

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 15 (in der Fassung Convent 13 vom 8. März 2000) ein.

Art. 15 Freiheit der Meinungsäußerung

- (1) Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben.**
- (2) Die Pressefreiheit und die Freiheit der Berichterstattung werden gewährleistet. Die Organe der Union sind im verpflichtet, der Presse Auskünfte zu erteilen.**
- (3) Kunst, Wissenschaft, Forschung und Lehre sind frei.**

Begründung

Abs. 1 übernimmt die vorgeschlagene Formulierung des Präsidiums.

Abs. 2 fügt einen neues, bisher unbeachtetes Recht ein. Hierbei kann es aber keinen Zweifel geben, dass die Pressefreiheit zu den vornehmsten Rechten in einem demokratischen und rechtsstaatlichen Gemeinwesen zählt. Sie ist ein Leberelement der Demokratie. Aus diesem Grund findet es sich in nahezu allen Verfassungen der Mitgliedstaaten.

Die Auskunftspflicht, die in Satz 2 geregelt ist, ist in der Bundesrepublik Deutschland einfachgesetzlich auf Länderebene gewährleistet. Zwar läßt sich aus Art. 5 Abs. 1 Satz 2 (deutsches) Grundgesetz (GG) keine Informationspflicht des Staates an die Presse ableiten, gleichwohl kommen Maunz/Düring/Herzog in ihrem GG-Kommentar zu dem Ergebnis, dass , sich

eine Regierung oder eine Behördenorganisation, die sich nachweisbar den Vorwurf der Pressefeindlichkeit zugezogen hat, auch unter verfassungsrechtlichen Gesichtspunkten die Frage stellen lassen müssen, ob es sich bei ihrem Verhalten ausschließlich um eine durchaus zulässige Zurückhaltung gegenüber der Presse oder nicht doch um eine allgemeine, dem demokratischen Prinzip zuwiderlaufende Öffentlichkeitsfeindlichkeit handelt.“¹ Diesen Grundsatz zu beachten, empfiehlt sich für die Union ganz besonders, da auf europäischer Ebene erst von einer „entstehenden Öffentlichkeit“ gesprochen werden kann.

Abs. 3 ergänzt den Präsidiumsvorschlag um das Wort „Lehre“. Die Freiheit der Forschung und Lehre ist ein unbestrittenes Menschenrecht, welches sich u.a. in Art. 15 Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte findet. Ebenfalls ist die Freiheit der Lehre in nahezu jeder Verfassung der Mitgliedsländer enthalten.

Der gesamte Artikel 5 ist in vielen Verfassungen und Menschenrechtsverträgen mit einer Schrankenklausel versehen worden. Gemäß der Diskussionslage im Konvent wird eine solche Schranke hier zunächst nicht formuliert, da erst Klarheit über die Rechte herrschen muss, bevor man über Schranken nachdenkt. Schon jetzt kann aber festgestellt werden, dass sich eine allgemeine Schrankenklausel, die sich an Art. 20 Abs. 2 Internationaler Pakt über bürgerliche und politische Rechte² anlehnen würde, anbietet.

¹ Maunz/Düring/Herzog u.a.: Grundgesetz Kommentar. München, 1991, Band 1 (Lieferung 1 – 29), Art. 5 Rdnr.138.

² Jedes Eintreten für nationalen, rassischen oder religiösen Haß, durch das zu Diskriminierung, Feindseligkeit oder Gewalt aufgestachelt wird, wird durch Gesetz verboten.“

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4178/00****CONTRIB 61****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter observations by Mr Fischbach and Mr. Krüger to the document
Charte 4149/00 Convent 13.¹

¹ This text has been submitted in French and English languages.

16.3.2000

**CONTRIBUTION OF MR FISCHBACH AND MR KRÜGER,
COUNCIL OF EUROPE OBSERVERS**

COMMENTS ON DOCUMENT “CONVENT 13”

Statement of reasons

Document Convent 13 is based on the idea that as a result of Article 6 TEU the European Convention on Human Rights (ECHR) is already, as such, part of European Union law and accordingly of the future Charter. While that view deserves to be maintained, it nonetheless remains to be explicitly confirmed by the Court of Justice of the European Communities. Applying the ECHR “as general principles of Community law” (Article 6 § 2 TEU) must probably be distinguished from applying it *per se*; otherwise the question would arise why the substantive provisions of the ECHR had not already been integrated as such into the Treaties. That applies even more to the ECHR’s Protocols, which have not yet been ratified by all the European Union’s member States; Protocol No. 7, for instance, referred to in Article 11 of document Convent 13, has been ratified by only eight of the fifteen member States.

In the absence of such confirmation by the Court of Justice, and for the avoidance of any misunderstanding detrimental to legal certainty, it would be as well not only to reproduce in the statement of reasons the complete text of the relevant provisions of the ECHR but also to specify in the text of the Charter that the statement of reasons forms an integral part of the Charter.

If care is not taken to ensure that it is made clear through the statement of reasons that the relevant provisions of the ECHR form an integral part of the Charter, there would be at least two types of consequence:

- (a) Certain provisions of the Charter would afford a lower level of protection than the ECHR. That is true, for example, of Article 6 (Convent 13), whose second sentence reads: “No one shall be deprived of his liberty, *save in specific cases* and in accordance with a procedure prescribed by law.” Without the further text in Article 5 ECHR, which *exhaustively* lists these “specific cases”, the Charter would afford a lower level of protection than the ECHR (see, in this connection, Mr Fischbach’s oral remarks of 24 February 2000, document Contrib 31).
- (b) Other provisions would be either unrestricted or – as the case might be – subject to a general limitation clause. In many cases, however, the special restrictions resulting from the ECHR and its case-law can be expected to provide greater protection than the restrictions resulting from a general clause (see, in this connection, Article X in doc. Convent 13 and Mr Fischbach’s remarks referred to above).

It is accepted, however, that none of the Charter's provisions will be able to be interpreted as restricting the protection afforded by the ECHR (Article Y of doc. Convent 13).

The proposal approach would also have the advantage of increasing the Charter's readability and clarity inasmuch as readers would not have to consult another instrument in order to discover the real scope of the Charter's provisions.

Article 4 (Prohibition of torture and inhuman treatment)

This provision, which is meant to reproduce Article 3 ECHR, should read: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Articles 8 and 9 (Right to a fair trial – defence rights)

According to the settled case-law of the European Court of Human Rights, paragraphs 2 and 3 of Article 6 "represent specific applications of the general principle stated in paragraph 1 of the Article. The presumption of innocence embodied in paragraph 2 and the various rights of which a non-exhaustive list appears in paragraph 3 ('minimum rights', '*notamment*') are constituent elements, amongst others, of the notion of a fair trial in criminal proceedings'."

In document Convent 13 the principle (the right to a fair trial), reproduced in Article 8, is separated from its applications (the presumption of innocence and the rights of the defence), which appear in Article 9. Yet the list of defence rights taken over from Article 6 §§ 2 and 3 ECHR in the statement of reasons for Article 9 (Convent 13) remains illustrative and not exhaustive, as is apparent from the expression "minimum rights". It may therefore be supposed that other judicial applications of the principle will supplement the list in Article 9. For that reason it would be desirable to combine Articles 8 and 9.

A solution would then remain to be found for the current second sentence of Article 8, on free legal aid. In its present version, and in so far as it applies to criminal proceedings, it duplicates Article 6 § 3 (c) ECHR, taken over in the statement of reasons for Article 9 of the Charter. These two provisions should therefore be harmonised, in a single Article. The simplest thing would no doubt be to extend the application of Article 6 § 3 (c) ECHR to cover all proceedings (criminal and other) governed by such a single Article.

Article Y (Level of protection)

It would be desirable to word this Article as follows:

"No provision of this Charter shall be interpreted as restricting the protection afforded by the European Convention on Human Rights *as interpreted by the European Court of Human Rights.*"

Since the entry into force of the ECHR, the European Court of Human Rights has considerably extended its scope and strengthened its requirements. Steps should be taken to ensure that regard is had to that when the Charter is being interpreted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4179/00****CONTRIB 62****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter draft amendments to document Charte 4149/00 Convent 13 by Lord Goldsmith, QC, Personal Representative of the Government of the United Kingdom. ¹

¹ This text has been submitted in English language only.

17 March 2000

M. Jean-Paul Jacqué
Charter Praesidium
Brussels

DRAFT AMENDMENTS TO CONVENT 13

1. Thank you for sending me Convent 13 with the Praesidium's latest draft Articles 1-16. I would like to table the following written amendments.
2. I welcome the Praesidium's work to bring these Articles more in line with the language and approach of the ECHR. I feel that we must go further, however. The explanatory notes as presently drafted provide some guidance as to the Convention's rationale for particular draft Articles. But they cannot be taken as having the same legal force and effect as a clear definition of the right, tying the right to the corresponding existing right, eg under the ECHR. The reference to Article 6 of the TEU does not appear to me adequate to achieve the intended objective. I therefore regard a full and integrated Part B as essential if we are to stay within the remit given by the Cologne Conclusions.
3. In submitting my draft amendments, I have therefore included language for Part B. Please note that the Part A text is offered on the basis that it must be given the solid legal ground I propose for Part B. Without Part B, my Part A proposals do not stand and the full text of the relevant ECHR Articles would have to be substituted. "A language" is in bold and "B language" is in italics. Part B would also need to include the General Provisions tabled in my paper CONTRIB 36 but we can discuss this matter when we come to horizontal articles. Naturally, I reserve my position on these important horizontal matters.
4. For ease of reference, however:
 - i) I have included the appropriate Part B language alongside the corresponding Part A right. I envisage the two would be in different parts of the document;
 - ii) I have also therefore attached at Annex 1 how the document would look. It will be seen that I have proposed titles instead of the 'Part A' shorthand; namely 'Proclamation of Rights' and 'Definition of Rights'.

[Signed]

Lord Goldsmith QC

PROPOSED AMENDMENTS

Article 1/Object and Purpose

Amendments:

- Amend title to **Object and Purpose**
- Delete **The dignity of the human person shall be respected and protected in all circumstances.**
- Substitute:
 - 1) **All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law without any discrimination. In recognition of this, the European Union Institutions respect, within the spheres of their competence, the fundamental rights set out below.**
 - 2) **The following provisions are addressed to the bodies and institutions of the European Union in the exercise of the powers and tasks assigned to them by the Treaties. They neither establish new tasks or competences for the Union nor do they extend its existing tasks or competences.**
 - 3) **The fundamental rights are listed below in Part A. Part B explains the nature, full extent and application of these rights.**

B: 1(1): The principle of respect for the inviolable dignity and equality of the human person is the foundation for statements of fundamental rights throughout the European Union. That principle has effect in accordance with the constitutional traditions of Member States and is respected by the Union bodies and institutions. The principle of non-discrimination is the right in article 14 of the ECHR when read with articles 2-12, articles 1 and 2 of Protocol 1 and article 2 of Protocol 6 and read with articles 16, 17 and 18. The full text of ECHR article 14 is as follows [...]

Notes:

- ‘ Object and Purpose’ follows the Vienna Convention on the Law of Treaties and is perhaps a more accurate description than just ‘Article 1’.
- I have proposed no Part B text for Article 1.2.

Article 2 Right to Life

Amendments:

- Delete in 2.1: **Everyone has the right to Life**
- substitute in 2.1 **Everyone’s right to life shall be protected by law**

No amendment to Article 2.2 (**No one shall be condemned to the death penalty, or executed**)

B: The rights in Article 2 are the rights guaranteed by Article 2 of and Articles 1, [2], 3 and 4 of Protocol 6 to the ECHR, read with ECHR Articles 17 and 18². The full ECHR Article 2 is as follows [...]. The full text of relevant provisions of ECHR Protocol 6 is as follows [...]

Article 3 Right to the respect of physical and mental integrity

Amendment:

- Delete this Article

Note:

- In a spirit of co-operation I previously suggested as an experiment language on the following lines:

Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine

B: The right set out in this Article comprises the following principles:

- (a) the principle of informed consent should be respected;*
- (b) the human body and its parts shall not, as such, give rise to financial gain;*
- (c) research on human beings shall only be carried out under appropriate conditions for their protection;*
- (d) organ removal from living donors shall only be permitted under specified circumstances and with the consent of the person concerned.*

The principle in (a) above is covered by the general rule given in Article 5 of the Convention on Human Rights and Biomedicine. It will not be applicable in all circumstances; for example, where a person is not able to give informed consent the relevant rules given in Articles 6, 8, 17 and 20 of the Biomedicine Convention must be applied. Where a person suffers from a serious mental disorder the principles given in articles 7 and 26 of the Biomedicine Convention will be applicable if certain criteria are met.

The principle in (b) above is that laid down in Article 21 of the Biomedicine Convention.

The appropriate protective conditions referred to in (c) above are set out in Articles 16 and 17 of the Biomedicine Convention.

The principle in (d) above is laid down in Article 19 of the Biomedicine Convention, which specifies the permitted circumstances.

References to the Biomedicine Convention articles are to be read subject to the relevant exceptions provided by that Convention and subject to any applicable reservation or derogation.

Article 4 Prohibition of torture and inhuman treatment

Amendment:

² It will need to be considered later where in the Charter we should set out the text of ancillary provisions of this kind.

- add the words ‘**or punishment**’ at the end so that it reads:

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

B: The right in Article 4 is the right in Article 3 of the ECHR, the rights in which are guaranteed by that provision, read with ECHR Articles 17 and 18.

Article 5 Prohibition of slavery and forced labour

Amendment:

- Delete numbers and punctuation so that the Article reads:

No one shall be held in slavery or servitude or required to perform forced or compulsory labour

B: The right in Article 5 is the right guaranteed by Article 4 of the ECHR, read with ECHR Articles 17 and 18. The full ECHR text of Article 4 is as follows: [...]

Article 6 Liberty and Security

Amendments:

- Delete ‘. No one shall be deprived of his liberty’
- Replace with and cannot be deprived of it
- Add the word ‘limited’ before ‘specific cases’ so that it reads:

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

B: The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, read with ECHR Articles 17 and 18. The full text of ECHR Article 5 is as follows: [...]

Article 7 Right to an effective remedy

Amendment:

- Delete this Article

Note:

- I have no proposal to offer regarding remedies at this stage and believe that consideration of this matter must be deferred until we are clear what rights will be included in the Charter and what approach is to be adopted regarding the horizontal issues. I should simply note at this stage that the Praesidium text is narrower than the ECHR Article 13 and inconsistent with it in other respects.

Article 8 Right to a fair trial

Amendments:

- Add after 'reasonable': **period of any criminal charge against him or her, or in determining his or her civil rights and obligations.**
- Delete: **time by an independent and impartial tribunal established by law.**
- Add: **Hearings shall be by an independent and impartial tribunal established by the law.**
- Delete second sentence: **Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure the effectiveness of access to justice.**
- Add: **If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.**

So that the Article reads:

Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by the law.

If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.

B: The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR read with Article 17 and 18. The full text is as follows [...]

Article 9 Rights of the defence

Amendment:

- Delete the Article (see revised Article 8 above)

Article 10 No punishment without law

Amendments:

- Delete Article 10 draft text
- Substitute: **No one shall be punished except under the law**

B: The right in article 10 is the right guaranteed by article 7 of the ECHR read with articles 17 and 18. The full text of article 7 is as follows: [...]

Article 11 Right not to be tried or punished twice

Amendments:

- Delete: **again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.**
- Add: twice for the same criminal offence

so that the Article reads:

No one shall be tried or punished twice for the same criminal offence

B: The right in article 11 is the right guaranteed by article 4 of Protocol 7 to the ECHR read with articles 17 and 18. The full text of article 4 is as follows: [...]

Article 12 Respect for Private Life

Amendments:

- Delete: **privacy, his honour, his home and the confidentiality of his communications**
- Add: or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

so that the Article reads:

Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

B: The right in article 12 is the right guaranteed by article 8 of the ECHR read with articles 17 and 18. The full text of article 8 is as follows: [...]

Article 13 Family life

Amendments:

- Delete 13.1
- Delete 13.2
- Add: **Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right.**
- Delete 13.3

B: The right in article 13 is the right guaranteed by article 12 of the ECHR read with articles 17 and 18. The full text of article 12 is as follows: [...]

Article 14 Freedom of thought, conscience and religion

Amendment:

- Add: **Restrictions can only be placed on this right in limited, specified circumstances.**

So that the Article reads:

Everyone has the right to freedom of thought, conscience and religion. Restrictions can only be placed on this right in limited, specified circumstances.

B: The right in article 14 is the right guaranteed by article 9 of the ECHR read with articles 17 and 18. The full text of article 9 is as follows: [...]

Article 15 Freedom of expression

Amendments:

- Delete: **This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**
- Delete: **Art, science and research shall be free of constraint.**
- Add: **Restrictions can only be placed on this right in limited, specified circumstances.**

So that the Article reads:

Everyone has the right to freedom of expression. Restrictions can only be placed on this right in limited, specified circumstances.

B: The right in article 15 is the right guaranteed by article 10 of the ECHR read with articles 16, 17 and 18. The full text of article 10 is as follows: [...]

Article 16 Right to Education

Amendments:

- Delete: **, including in particular the right to receive free compulsory education**
- Delete: **The founding of education establishments shall be free of constraint**
- Delete: **The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.**

So that the Article reads:

No one shall be denied the right to education.

B: The right in article 16 is the right guaranteed by article 2 of the First Protocol to the ECHR read with articles 17 and 18 and any reservations on this Protocol. The full text of article 2 is as follows: [...]

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

Note:

- Education is an area where special care is needed to ensure no extension to Community competence. The UK's reservation on the second sentence to Article 2 of the First Protocol to the ECHR must be fully protected in the Charter.

PROCLAMATION OF RIGHTS

(PART A)

Article 1 Object and Purpose

- 1) All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law without any discrimination. In recognition of this, the European Union Institutions respect, within the spheres of their competence, the fundamental rights set out below.
- 2) The following provisions are addressed to the bodies and institutions of the European Union in the exercise of the powers and tasks assigned to them by the Treaties. They neither establish new tasks or competences for the Union nor do they extend its existing tasks or competences.
- 3) The fundamental rights are listed below in Part A. Part B [Definition of Rights] defines the nature, full extent and application of these rights.

Notes:

- ‘ Object and Purpose’ follows the Vienna Convention on the Law of Treaties and is perhaps a more accurate description than just ‘Article 1’.
- I have proposed no Part B text for Article 1.2.

Article 2 Right to Life

(1) Everyone’s right to life shall be protected by law

(2) No one shall be condemned to the death penalty, or executed

Article 4 Prohibition of torture and inhuman treatment

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

Article 5 Prohibition of slavery and forced labour

No one shall be held in slavery or servitude or required to perform forced or compulsory labour

Article 6 Liberty and Security

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

Article 8 Right to a fair trial

(1) Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by the law.

(2) If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.

Article 10 No punishment without law

No one shall be punished except under the law

Article 11 Right not to be tried or punished twice

No one shall be tried or punished twice for the same criminal offence

Article 12 Respect for Private Life

Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

Article 13 Family life

Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right.

Article 14 Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Restrictions can only be placed on this right in limited, specified circumstances.

Article 15 Freedom of expression

Everyone has the right to freedom of expression. Restrictions can only be placed on this right in limited, specified circumstances.

Article 16 Right to Education

No one shall be denied the right to education.

Note:

- Education is an area where special care is needed to ensure no extension to Community competence. The UK's reservation on the second sentence to Article 2 of the First Protocol to the ECHR must be fully protected in the Charter.

DEFINITION OF RIGHTS

(PART B)

This Part defines the nature, full extent and application of the fundamental rights referred to in [Part A] [the Proclamation of Rights].

General Provisions

Where in this Charter reference is made to an Article of the ECHR or its Protocols, it shall be interpreted in accordance with the jurisprudence of the Strasbourg organs from time to time.

[Reference to reservations/derogations]

Note:

- It may be possible to shorten the Part B texts for ECHR rights using a umbrella Article such as ‘Each Article in this document refers to the rights guaranteed by the corresponding Articles of the ECHR, as specified below, read with Articles 17 and 18 and where applicable 16 of the Convention’.

Article 1 Object and Purpose

1(1): The principle of respect for the inviolable dignity and equality of the human person is the foundation for statements of fundamental rights throughout the European Union. That principle has effect in accordance with the constitutional traditions of Member States and is respected by the Union bodies and institutions. The principle of non-discrimination is the right in article 14 of the ECHR when read with articles 2-12, articles 1 and 2 of Protocol 1 and article 2 of Protocol 6 and read with articles 16, 17 and 18. The full text of ECHR article 14 is as follows [...]

Article 2 Right to Life

The rights in Article 2 are the rights guaranteed by Article 2 of and Articles 1, [2], 3 and 4 of Protocol 6 to the ECHR, read with ECHR Articles 17 and 18³. The full ECHR Article 2 is as follows [...]. The full text of relevant provisions of ECHR Protocol 6 is as follows [...]

Article 4 Prohibition of torture and inhuman treatment

The right in Article 4 is the right in Article 3 of the ECHR, the rights in which are guaranteed by that provision, read with ECHR Articles 17 and 18.

Article 5 Prohibition of slavery and forced labour

The right in Article 5 is the right guaranteed by Article 4 of the ECHR, read with ECHR Articles 17 and 18. The full ECHR text of Article 4 is as follows: [...]

³ It will need to be considered later where in the Charter we should set out the text of ancillary provisions of this kind.

Article 6 Liberty and Security

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, read with ECHR Articles 17 and 18. The full text of ECHR Article 5 is as follows: [...]

Article 8 Right to a fair trial

The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR read with Article 17 and 18. The full text is as follows [...]

Article 10 No punishment without law

The right in article 10 is the right guaranteed by article 7 of the ECHR read with articles 17 and 18. The full text of article 7 is as follows: [...]

Article 11 Right not to be tried or punished twice

The right in article 11 is the right guaranteed by article 4 of Protocol 7 to the ECHR read with articles 17 and 18. The full text of article 4 is as follows: [...]

Article 12 Respect for Private life

The right in article 12 is the right guaranteed by article 8 of the ECHR read with articles 17 and 18. The full text of article 8 is as follows: [...]

Article 13 Family life

The right in article 13 is the right guaranteed by article 12 of the ECHR read with articles 17 and 18. The full text of article 12 is as follows: [...]

Article 14 Freedom of thought, conscience and religion

The right in article 14 is the right guaranteed by article 9 of the ECHR read with articles 17 and 18. The full text of article 9 is as follows: [...]

Article 15 Freedom of expression

The right in article 15 is the right guaranteed by article 10 of the ECHR read with articles 16, 17 and 18. The full text of article 10 is as follows: [...]

Article 16 Right to Education

The right in article 16 is the right guaranteed by article 2 of the First Protocol to the ECHR read with articles 17 and 18 and any reservations on this Protocol. The full text of article 2 is as follows: [...]

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

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4180/00****CONTRIB 63****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations de M. Guy Braibant, Représentant Personnel du Gouvernement de la France, sur le document CHARTE 4149/00 CONVENT 13. ¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 17 mars 2000

**NOUVELLES OBSERVATIONS SUR LES ARTICLES 1 A 16
FAISANT L'OBJET DU DOCUMENT « CHARTE 4149/00 » DU 8 MARS 2000**

Article 6

Il faudrait remplacer « dans des cas spécifiques et selon les voies légales » par « dans les cas et selon les formes prévues par la loi ».

La rédaction de la seconde phrase ne convient pas : elle semble ouvrir un champ à la fois très flou et plus vaste que celui permis par la CEDH pour les cas d'atteinte légale à la liberté.

Le fait de ne pas reprendre les cas précis d'atteintes énumérés à l'article 5 de la CEDH n'est pas gênant dans la mesure où la « clause plancher » prévoit que la Charte ne peut être moins protectrice que la CEDH.

Article 8

Les deux propositions devraient faire l'objet de deux paragraphes distincts.

Dans le second paragraphe, il faudrait supprimer « gratuite ». D'une part, l'aide juridictionnelle peut comporter ou non la gratuité des frais du procès. D'autre part, cette disposition pourrait être interprétée comme remettant en cause les systèmes qui, comme ceux qui existent en France, permettent de refuser l'aide juridictionnelle pour des raisons tenant au caractère sérieux du recours et pas seulement aux ressources de l'intéressé.

Article 9

Le titre proposé pour cet article est trop restrictif.

Par ailleurs, je crois préférable de le scinder en deux paragraphes, le premier consacrant le droit à la présomption d'innocence et le second celui au respect des droits de la défense.

Enfin, le second paragraphe pourrait être ainsi rédigé : « Le respect des droits de la défense en garanti à toutes personnes accusée ».

Article 10

Dans le premier paragraphe, la notion de « droit de l'Union », qui est imprécise et n'ajoute rien, devrait être supprimée.

Article 11

Afin de préciser que ce droit ne s'applique qu'à l'intérieur de la matière pénale et ne prohibe pas le cumul de sanctions disciplinaires et pénales pour un même fait, il convient de compléter cet article de la manière suivante : « ... par un jugement pénal définitif... ».

Article 13

Dans le paragraphe 2, il est préférable de se référer aux « lois nationales relatives à l'exercice de ce droit » plutôt qu'aux « lois des Etats membres », afin de se rapprocher du texte de la CEDH et d'éviter de poser des difficultés concernant les compétences respectives des Etats membre de l'Union.

Le paragraphe 3, tel qu'il est rédigé, aurait sans doute plus sa place parmi les droits économiques et sociaux.

Article 15

Le paragraphe 2 me semble devoir être supprimé. En effet, la liberté de l'art n'est pas contestable mais est couverte par la liberté d'expression. Quant à affirmer que la recherche et la science sont libres, cela me paraît difficile, comme le prouvent assez les débats relatifs au caractère éthique d'avancées récentes.

Au demeurant, cette phrase est en rupture avec tout le reste du texte qui proclame des droits et des libertés en faveur des individus et non d'activités génériques ou de concepts - dont les contours seraient en outre certainement à définir.

Article 16

Je crois qu'il nous faudrait trouver, pour le deuxième paragraphe, une formule permettant d'éviter que les sectes ne créent des établissements d'enseignement.

Guy BRAIBANT

**Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits fondamentaux de l'Union européenne**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4181/00****CONTRIB 64****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from Mr. Erling Olsen, Personal Representative of the Government of Denmark on document Charte 4149/00 Convent 13. ¹

¹ This text has been submitted in English language only.

Dr. polit. Erling Olsen Søbrennen 14 DK-2820 Gentofte
Tlf. +45 39 65 58 38 Fax +45 39 65 87 43 e-mail: eoaul@post11.tele.dk

Comments by Dr. Erling Olsen

17 March 2000

As foreseen in CONVENT 15 I wish to submit some written comments to document CONVENT 13. My comments are based on the following assumptions:

- That the Charter must address itself to relations between EU-citizens (and other persons within the jurisdiction of the Union) and the EU institutions (not the Member States) in order to be understood and appreciated by our citizens, (wording along the lines of TEU Article 6 paragraph 2 and Article 46 (d)).
- That the Charter in its implementation does not raise conflicts with other international procedures for the effective implementation of human rights, in particular the European Convention on Human Rights.
- That the Charter should reflect existing rights.
- That the provisions of the Charter shall be applicable to the institutions and organs of the Union within their existing competences. The Charter shall not extent nor create new competences for the Union.

Based on the above mentioned assumptions I believe that we will serve our citizens best by dividing the document into two interdependent parts. One Part (A) where we set out the fundamental rights and freedoms in a short and clear way making them easily read and understood and a second Part (B) explaining in more detail the exact scope of the Fundamental Rights concerned by preferable quoting the relevant/corresponding Article in for instance the European Convention on Human Rights.

This having been said, I wish at this stage of our proceedings to offer the following specific comments on COVENT 13 as presently drafted:

Re: Article 1

I can support the wording of this Article. As the text is primarily derived from the Universal Declaration of Human Rights the Commentary should start off with the quotation from that Declaration.

Concerning the horizontal issue of the applicability of the Charter as mentioned in the Commentary I find that such a provision concerning the scope of application could be drafted as a separate Article and not only as part of the preamble. The wording should reflect my before-mentioned comments under first and fourth indent. I propose the following wording: “The provisions of this Charter shall apply to the institutions and organs of the Union in the framework of the powers and tasks conferred on them by the Treaties. They shall not establish any competence or new tasks for the Union nor shall they extend the latter’s competence and tasks”.

Re: Article 2

As a general observation I wish to underline that we must be cautious not to differ with the text of the European Convention on Human Rights (ECHR). We can not solve the problem by simply making a reference to TEU article 6 as regards to, for example, the exemptions. In my opinion this is far from sufficient to guarantee the relevant interpretation and limitations laid down in the correspondent Articles in the ECHR. I also believe we have to draw attention to the relevant case-law of the European Court of Human Rights. I suggest that in the statement of reasons (part B) we should for every Article quote the relevant corresponding text from the ECHR and make a reference to the jurisprudence of the European Court of Human Rights. It must be obvious to everyone that the first part (part A) can only be read in conjunction with the second part (part B), which spells out, inter alia, the relevant exceptions to the rule.

Re: Article 3

I support paragraph 1 but I find that paragraph 2 should be deleted. In the Commentary (part B) we could make a reference to the basic principles contained in the Convention on Human Rights and Biomedicine.

Re: Article 5

I refer to my general observation under Article 2.

Re: Article 7

The article describes how the other provisions under the Charter should be enforced. This article seems to me to have a more horizontal character and may therefore be deleted from this part of the Charter.

Re: Article 8

I suggest that the text in the first paragraph be extended in accordance with Article 6 (1) of the ECHR by the wording “In the determination of his civil rights and obligations or of any criminal charge against him...”. This precision is very important to underline.

Re: Article 9

I refer to my observations made under article 2. It should be considered to insert the principle that “everyone has the right not to be compelled to testify against himself or to confess guilt”. This fundamental principle is derived from the case law of the European Court of Human Rights and also to be found in the UN Convention on Civil and Political Rights (Article 14).

Re: Article 10

I prefer to keep the exact wording of Article 7 in the EHCR.

Re: Article 11

I refer to my general observation made under Article 2.

Re: Article 12

I refer to my general observation under Article 2.

Re: Article 13

As regards to Paragraph 1, I refer to my general observation under Article 2.

I suggest, however, that the first and second paragraph are combined and propose the following wording: “Everyone has the right to respect for his family life and the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right”.

Paragraph 3 appears to be merely a policy statement rather than a fundamental right or freedom and should in my opinion be deleted.

Re: Article 14

I refer to my general observation under Article 2.

Re: Article 15

I refer to my general observation under Article 2.

Re: Article 16

Paragraph 2 is not quite clear and the Commentary is silent on this paragraph. Paragraph 2 should be deleted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 30 March 2000**CHARTE 4182/00****CONTRIB 65****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Prof. Dr. George Papadimitriou, Personnel Representative of the Government of Greece, on document Charte 4149/00 CONVENT 13 and Charte 4170/00 CONVENT 17.¹

¹ This text has been submitted in English language only.

PROF. DR. GEORGE PAPADIMITRIOU

30 SINA Str. - 106 72 ATHENS

TEL. 36.17.443, 36.35.137

FAX: 36.29.353

Comments to the document “Convent 17”

I. Principle of Democracy (Articles A and C)

1. Articles A and C should be integrated in one article due to their close connection. The provision of article C recognizes the right to vote and to stand as a candidate at elections for the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. In this sense, it specifies the right laid down in article A paragraph 3 and it extends its content.

2. Paragraph 2 of article A is identical to article 6 paragraph 1 of the Conventions and is included in Title I. It should remain in its present place in order to retain its wide normative content not only for the field of fundamental rights but also for the structure and the function of the Union. It should be stressed out that article 6 paragraph 1 is the most important new provision in the Conventions for the institutional identity of the Union. For all the aforementioned reasons it should be deleted from article A.

3. Despite the inherent difficulties, the wording of paragraph 1 could probably be altered as follows: “All public authority stems from the peoples of the Union”.

4. Paragraph 3 of article A is already included in article 190 paragraph 1 of the Conventions. Its incorporation in the Charter does not create any problems regarding the systematic and normative approach of the division of the Conventions related to the European Parliament.

5. Article A’s paragraphs are renumbered according to the abovementioned remarks.

II. *The right to participate in municipal elections (Article D)*

1. This article is in its essence identical to article 19 paragraph 1 of the Conventions. Its incorporation in the Charter is a right choice keeping its existing wording and content.

2. Article D is renumbered as article B.

III. *Political Parties (Article B)*

1. Article B should only recognize the right of every person to establish political parties and participate in their function. On the other hand, the wording of the article which is related to the position of the political parties in the Union should remain, in its current form, a part of article 191 of the Conventions.

2. Article B is renumbered as article C.

IV. *The right to good administration (Article E)*

The wording of article E paragraph 2 should be altered as follows:

“This right especially includes”

2. The right of article E paragraph 3 which corresponds to article 21 paragraph 3 of the Conventions should be recognized not only for citizens but for every person.

Article E is renumbered as article D.

V. *Right of access to documents (Article F)*

1. The incorporation of this article appears to be a necessary enrichment of the Charter and therefore it should be included.

2. Article F is renumbered as article E.

VI. Freedom of Movement (Article I)

1. This article is identical to article 18 paragraph 1 of the Conventions. Its incorporation in the Charter is necessary, but in the chapter regarding individual rights.

2. It should be examined, though, whether paragraph 2 of article 18 should remain as it is in the Conventions.

VII. Non-discrimination (Article I)

1. This article corresponds to article 12 paragraph 1 of the Conventions. Its content could be enriched by mentioning at least some of the criteria of article 13 of the Conventions i.e. sex, national origin, religion.

VIII. Problems of legislative technique

The transfer of provisions from the Conventions to the Charter is a process that gives rise to many problems. Relatively, a legislative technique should be developed with great care because this choice is inevitably going to expand.

bouli/com.art.17/24.3.00

**Comments to the document “Convent 13”
(Articles 15 - 16, Section II)**

I. Freedom of expression (Article 15)

1. The wording of the second sentence of article 15 paragraph 1 is altered as follows: “This freedom extends to all means of expression and especially includes...”.

2. Paragraph 2 of article 15 should be detached and form a separate article. On the other hand, the content of research should be further defined in order to avoid extreme expressions of that freedom.

II. Right to education (Article 16)

Paragraph 1 of article 16 should be altered as follows:

“Every person has a right to education, which especially includes the claim for free...”.

2. In paragraph 2 of article 16, it should be elaborated whether it refers to all the levels of education or only to the basic level.

3. In paragraph 3 of article 16, the wording should be altered as follows:

“The right of the parents to ensure the learning and education of their children according to their religious and philosophical beliefs should be exercised in order to serve the child’s best interest”.

4. The Charter should also include provisions for the new forms of education i.e. continuing education.

III. Horizontal articles (Section II)

In article X the possibility should be examined of including the wording of the relevant article of the European Convention on Human Rights.

March 24, 2000

Bouli/Com.Art. 13/24.3.00

PROF. DR. GEORGE PAPADIMITRIOU

30 SINA Str. - 106 72 ATHENS

TEL. 36.17.443, 36.35.137

FAX: 36.29.353

Criteria for the inclusion of a right in the Charter

In drafting the Charter, two simple questions arise : (a) what rights are to be included in the Charter and (b) what the content of those rights should be. The answer to those questions may be prompted by certain criteria which can be used as “working tools”, first, for inclusion of a right in the Charter and, second, for determination of the content of that right. Here the following criteria suggest themselves in particular :

1. Recognition of a right in the case-law of the Court of Justice of the European Communities

The first criterion to suggest itself is recognition of a right in the settled case-law of the Court of Justice of the European Communities. This is indeed the “raw material” which is designed to constitute the system of protection of fundamental rights in the European Union.

2. Rights safeguarded in European and International Conventions

A comparable but clearly separate criterion is, in addition, the safeguarding of a fundamental right in related European and international conventions. Here certain distinctions must be made which will determine the order in which recourse will be made to them. The texts to which express reference is made in the Treaties of Maastricht and Amsterdam, that is to say the European Convention on Human Rights (and its Protocols), the European Social Charter (1961) and the Community Charter of the Fundamental Social Rights of Workers (1989), take precedence. It is worth pointing out that those texts, being expressly referred to in the Treaties, constitute sources of Community Law.

Secondly, recourse may be made to other international texts (regional and universal, general and special) for the protection of rights such as, for instance, the United Nations Covenant on Civil and Political Rights and the United Nations Covenant on Economic, Social and Cultural Rights (1966).

3. *The constitutional traditions of the Member States*

A different version of the same criterion is recourse to the constitutional traditions of the Member States (Article 6(2) of the TEU) for the purpose of ascertaining each time whether and with what content a specific right is safeguarded. In that connection two problems arise in particular: (a) whether a right must be expressly laid down or whether it is sufficient for it to be grounded in the Constitution and (b) whether the laying down or grounding of a right in all Constitutions without exception is required or only in the majority of Constitutions. Clarification is also necessary as to whether an overwhelming or a clear majority is required.

4. *Significance of the right for the Community legal order*

In order for a right to be included in the Charter its significance for the Community legal order must always be substantiated. The value of that criterion can be shown if it is borne in mind that the beneficiaries of the system that is being fashioned are the citizens of the European Union and the system is directed at its institutions, with the aim of protecting the citizen vis-à-vis Community powers rather than vis-à-vis any other powers.

On that point it is worth noting that, as the competences of the European Union are gradually broadened to cover new areas, the protection of the European citizen must correspondingly be broadened with the redefinition of rights or the establishment of new rights. The Charter does not therefore aim to provide a solution once and for all to the problem, since it will be enriched in the future “in waves”, with other rights top, in parallel with the progress of European unification.

5. *The degree of institutional development in the European Union*

The above criteria facilitate the task of identifying the rights which mark the current level of protection of the European citizen vis-à-vis Community power. In cases where the further broadening of fundamental rights is considered to be required, the degree of institutional development in the European Union figures as a criterion, with the inclusion in the Charter of

rights which reinforce the democratic and social character of the Union under the rule of law. This is a criterion whose use would contribute to strengthening the system of protection of fundamental rights and the better fulfillment of its task. That prospect finds support in particular in Article 6(2) of the TEU, in which for the first time democracy and the rule of law are declared to be principles of the European Union.

Is the Charter to be binding or declaratory ?

1. One of the preliminary questions which rightly preoccupied the Convention from the beginning of its work is the nature of the Charter, in other words the question whether the Charter will be binding or merely declaratory. The answer is vital, not only for the determination of the ultimate objective of the Convention but also for the choice of method by which the Charter will be drafted and for the shaping of its provisions.

2. Of crucial significance for the answer to that question is of course the content of the mandate given to the Convention by the Cologne Summit. However also significant - and this has not as yet been emphasized as much as it should be - are the provisions of the constitutional texts of the European Union which refer, directly or indirectly, to the need to protect the European citizen vis-à-vis the powers of the Community institutions. Consequently recourse to the content of the mandate is a necessary but not sufficient condition for determining the nature of the Charter. It is vital to clarify, first, the content of the mandate, which forms part of a very important political decision and, second, the related provisions of the Treaties, which have a normative quality.

3. In the relevant passage of the Conclusions of the Cologne European Council, it is stated “at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident”. It is not, at first sight, easy to understand from the above formulation whether the leaders of the States and Governments were intending to draft a binding or a declaratory text. However, the fact that the term “rights which apply” was used enables the conclusion to be drawn that they had in mind the drafting of a binding text with provisions binding by definition or with provisions which acquire a binding character due to their normative relevance to binding provisions.

4. The development of Article 5, paragraphs 1 and 2, of the TEU bears out that position. Paragraph 2 states that the Union is to respect fundamental rights, as guaranteed by the European Convention on Human Rights, and as they result from the constitutional traditions common to the Member States. In addition, paragraph 1 elevates the principle of rule of law to a fundamental principle of the Union. Since, therefore, paragraph 2 specifies the progress towards establishing a Union governed by the rule of law and paragraph 1 expressly declares the rule of law to be one of its principles, there is a direct requirement to draft a Charter with binding force which will set out the above principle and give it a specific content. The same applies, *mutatis mutandis*, with the reference in Article 6, paragraph 1, of the TEU to the principle of democracy as a principle of the Union. The Convention should, therefore, from the beginning direct itself on the basis of the above provisions to drawing up a text that will be of a binding character, overcoming any contrary arguments, without, however, exceeding the mandate given by the Cologne Summit.

5. It is also worth noting that in Annex IV of the Cologne Conclusions express reference is made to the prospect of incorporating the Charter in the Treaties and by extent, to the establishment of its binding character. Even though that version stands under the condition of the relevant decision of the member-states, the mere mentioning in the Cologne Conclusions of the possibility of incorporation for the Charter, implies for the Convention an obligation independent of its possibility to be realized. It is about the obligation to draft a Charter in a form capable to correspond to the needs dictated by the possibility in the Cologne Conclusions.

March 24, 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 28. März 2000**CHARTE 4183/00****CONTRIB 66****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Anmerkungen der Arbeitsgruppe der deutschen Länder, vorgelegt von Herrn Jürgen. Gnauck, Vertreter des deutschen Bundestags, zu Dokument Charta 4149/00 Convent 13.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Sekretariat des Konvents

Fax: 0032-2-285 7837
e-mail: Jean-Paul.Jacqué@consilium.eu.int

Geschäftszeichen:
33/KI-03145

Ihr Zeichen, Ihre Nachricht vom

Telefon

Datum
17.3.2000

**Anmerkungen der Arbeitsgruppe der deutschen Länder zum Vermerk des Präsidiums
CHARTE 4149/00 CONVENT 13**

Neuer Vorschlag für die Artikel 1 bis 12 (jetzt 1 bis 16)

Sehr geehrter Herr Vorsitzender,

das Präsidium hat für die informelle Sitzung des Konvents am 20./21. März 2000 neue Vorschläge für die Artikel 1 bis 12 (jetzt 1 bis 16) eines Entwurfs der Charta der Grundrechte der Europäischen Union vorgelegt. Die deutschen Länder haben sich im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild verschafft. Ich erlaube mir, Ihnen diese Einschätzung zu übermitteln und möchte Sie herzlich bitten, unsere Anregungen im Verlaufe der Diskussion im Konvent zu berücksichtigen.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Thüringer Staatskanzlei

Erfurt, 16. März 2000

**Anmerkungen der Arbeitsgruppe der deutschen Länder zur
Erarbeitung eines Entwurfs der Charta der Grundrechte der
Europäischen Union
zu Dokument**

CHARTE 4149/00 CONVENT 13 neuer Vorschlag für die Artikel 1 bis 12 (jetzt 1 bis 16)

Die Arbeitsgruppe der deutschen Länder hat am 14. März 2000 das o.g. Dokument einer ersten Prüfung unterzogen (eine Stellungnahme zu dem Korrigendum vom 16. März 2000 war nicht mehr möglich) und erlaubt sich dazu folgende Anmerkungen:

Generell wird festgestellt, dass eine endgültige Stellungnahme zu den vorgeschlagenen Artikeln erst erfolgen kann, wenn ein alle Artikel umfassender Entwurf der Charta vorliegt, der - insbesondere anhand der Platzierung der einzelnen Artikel im Chartatext - eine systematische Gesamtanalyse ermöglicht.

Zu Artikel 1. Würde des Menschen

Die Europäische Union ist eine Wertegemeinschaft, in der die Würde des Menschen im Mittelpunkt steht. Darum wird ausdrücklich begrüßt, dass im vorliegenden Entwurf die Würde des Menschen als Fundament der Grundrechte an die Spitze der Grundrechte der Charta gestellt wurde. Allerdings wird in Anlehnung an die Erklärung des Europäischen Parlaments von 1989 und an Artikel 1 Grundgesetz für die Bundesrepublik Deutschland folgende Formulierung bevorzugt:
" *Die Würde des Menschen ist unantastbar.* "

Essentielle Anforderung der Länder an den Regelungsgehalt der Charta ist, dass diese eine Aussage zu ihrem Anwendungsbereich enthält. Eine entsprechende Aussage lediglich in der rechtlich unverbindlichen Präambel der Charta wäre nicht akzeptabel. Ausdrücklich unterstützt wird aus diesem Grund der Vorschlag, dem Artikel 1 einen Absatz 2 hinzuzufügen, in dem der Anwendungsbereich der Charta bereichsübergreifend festgelegt wird. Eine auf diese Weise an exponierter Stelle im Chartatext vorangestellte Generalklausel ist für das Verständnis der nachfolgenden Regelungsinhalte der Charta aus Sicht der Länder unabdingbar.

Zu Artikel 2. Recht auf Leben

Der vorgelegte Formulierungsvorschlag wird ausdrücklich unterstützt.

Zu Artikel 3. Recht auf Unversehrtheit

Zu Absatz 1 wird die vorgelegte Formulierung unterstützt.

Zu Absatz 2 melden die Länder erheblichen Prüfvorbehalt an. Der dort gewählte Wortlaut wird der Komplexität der aufgeworfenen Probleme nicht gerecht.

Es wird vorgeschlagen, einzuhaltende Grundsätze (unter anderem für Medizin und Biologie als potentielle bioethische Problembereiche), etwa unter enger Bezugnahme auf die Würde des Menschen und die körperliche Unversehrtheit besser allgemein und in einem separaten Artikel zu formulieren.

Grundsätzlich wird darauf hingewiesen, dass nicht alle Mitgliedstaaten dem Übereinkommen des Europarates über Menschenrechte und Biomedizin beigetreten sind.

Die unter Absatz 2 (Spiegelstriche 1 bis 3) aufgeführten Grundsätze erscheinen stark interpretationsbedürftig; eine Aufnahme in den Chartatext wird daher abgelehnt.

Wo liegt die Grenze zwischen lauterer und verwerflichen eugenischen Praktiken?

Hat die Nutzung des menschlichen Körpers oder einzelner Teile zur Erzielung von Gewinnen (z.B. im Falle des Blutplasmas) ausschließlich negativen – also verbotswürdigen - Charakter?

Generell sollte geprüft werden, ob nicht bereits Artikel 1 i.V.m. Artikel 3 Absatz 1 ausreichenden Schutz vor Missbrauch für die aufgeworfenen Problembereiche umfasst.

Zu Artikel 4. Verbot der Folter und der unmenschlichen Behandlung

Der Formulierungsvorschlag wird zur Kenntnis genommen.

Zu Artikel 5. Verbot der Sklaverei und der Zwangsarbeit

Der Textvorschlag wird inhaltlich unterstützt; jedoch besteht weiterer Prüfbedarf hinsichtlich der hierzu erforderlichen Schrankenwirkung. Einem Missverständnis dahingehend, dass zwar das Verbot von Zwangs- und Pflichtarbeit, nicht aber dessen Einschränkungen aus der EMRK übernommen werden sollten, muss vorgebeugt werden.

Zu Artikel 6. Recht auf Freiheit und Sicherheit

Der Begriff "Sicherheit" erscheint aus Ländersicht weiterhin nicht akzeptabel. Ist er im Lichte der EMRK zu sehen oder eröffnet die Formulierung weitergehende Ansprüche gegenüber den Mitgliedstaaten und ihren Untergliederungen in den Bereichen Justiz und Inneres? Eine Eröffnung von Leistungsrechten in den genannten Bereichen wird ausdrücklich abgelehnt

Sind mit den in Satz 2 genannten "besonderen Fällen" die in Artikel 5 EMRK festgelegten Fälle gemeint oder soll damit eine Art Verhältnismäßigkeitsgrundsatz in die Norm eingefügt werden? Jedenfalls wird Wert auf das kumulative Vorliegen der Voraussetzungen "in besonderen Fällen" und "auf die gesetzlich vorgeschriebene Weise" gelegt.

Zu Artikel 7. Recht auf wirksame Beschwerde

Es wird vorgeschlagen, die Überschrift umzuformulieren in "Rechtsweggarantie", und den Artikel gegebenenfalls wie folgt zu fassen: "Jeder Person, deren Rechte und Freiheiten durch Maßnahmen der Europäischen Union oder in Anwendung des Gemeinschaftsrechts verletzt worden sind, steht der Rechtsweg offen."

Vor der Verankerung einer Rechtsschutzgarantie müsste geklärt werden, durch welche Gerichte (EuGH, nationale Gerichte) der Rechtsschutz gewährt werden soll.

Zu Artikel 8. Recht auf ein unparteiisches Gericht

Soweit hier die generelle Forderung nach einer öffentlichen Verhandlung enthalten sein sollte, wird dies strikt abgelehnt, da dieser Forderung berechnete Interessen Dritter und unter Umständen auch die des Angeklagten entgegenstehen können. Artikel 6 Absatz 1 EMRK ermöglicht zwar den Ausschluss der Presse und Öffentlichkeit zum Schutz der Prozessparteien. Zeugen wären aber von dieser Regelung nicht umfasst.

Die Aufnahme eines Satzes 2 zur Prozesskostenhilfe wird grundsätzlich skeptisch gesehen. Ist eine solche Regelung notwendig? Reichen die mitgliedstaatlichen Regelungen hierzu nicht aus? Unabhängig davon wird äußerster Wert darauf gelegt, festzustellen, dass der Begriff "unentgeltliche Prozesskostenhilfe" auch Stundungen, Ratenzahlungen, Darlehen u.ä. umfasst. Die Garantie unentgeltlicher Prozesskostenhilfe ohne konditionalen Bezug zur Unerlässlichkeit dieser Hilfe, um den Zugang zum Recht zu gewährleisten, wird strikt abgelehnt.

Zu Artikel 9. Recht der Verteidigung

Der vorgelegte Textentwurf wird unterstützt.

Zu Artikel 10. Keine Strafe ohne Gesetz

Zu Absatz 1 wird die vorgelegte Formulierung unterstützt.

Zu Absatz 2 gibt es derzeit keine Anmerkungen.

Zu Artikel 11. Recht, wegen derselben Sache nicht zweimal vor Gericht gestellt oder bestraft zu werden

Nach Art. 54 des Schengener Durchführungsübereinkommens (SDÜ) und Art. 1 des Abkommens vom 25. Mai 1987 zwischen den Mitgliedstaaten der Europäischen Gemeinschaften über das Verbot der doppelten Strafverfolgung verurteilte Urteile aus den Vertragsstaaten die Strafklage in Deutschland.

Allerdings sehen Artikel 55 SDÜ bzw. Artikel 2 des Abkommens von 1987 eine Reihe von Ausnahmemöglichkeiten vor, die in dem dort geregelten Rahmen abweichende Erklärungen zulassen. Hiervon haben die Mitgliedstaaten, darunter auch die Bundesrepublik Deutschland, Gebrauch gemacht. Es liegt eine entsprechende deutsche Erklärung zu dem Abkommen von 1987 vor.

Das Abkommen ist im Verhältnis Deutschland, Dänemark, Frankreich, Italien, den Niederlanden, Portugal und Österreich bereits anwendbar.

Zu Artikel 12. Achtung des Privatlebens

Die vorgelegte Textfassung suggeriert das Vorliegen eines Leistungsrechtes. Es wird vorgeschlagen, den Artikel durch Aufteilung in verschiedene Artikel zu entzerren. Zunächst sollte das Persönlichkeitsrecht als zentrales Freiheitsrecht formuliert werden. Nach hiesiger Sicht wäre der Begriff der "Ehre" davon erfasst und könnte daher entfallen.

Der Schutz der Wohnung sowie die Wahrung des Brief-, Post- und Fernmeldegeheimnisses sollten getrennt und in unterschiedlichen Artikeln niedergeschrieben werden.

Zu Artikel 13. Familienleben

Die Einfügung eines solchen Artikels wird grundsätzlich für verzichtbar erachtet. Es wird darauf hingewiesen, dass die EU keine familienpolitische und familienrechtliche Zuständigkeit besitzt. Die Formulierung darf keinen Schutzauftrag der EU oder eine durch die EU zu sichernde Institutsgarantie herleiten. Hilfsweise wird folgende Formulierung für Absatz 1 vorgeschlagen: "*Jede Person hat das Recht auf Achtung ihrer Ehe und Familie*".

Die vorliegende Formulierung zu Absatz 2 ist obsolet, da sie lediglich festzustellen vermag, dass die Mitgliedstaaten die Ausübung des Rechts in differenzierter Form regeln.

Die Länder sprechen sich für die Streichung des Absatzes 3 aus, da er in der vorliegenden Formulierung ein umfassendes Leistungsrecht gewähren würde.

Zu Artikel 14. Gedanken-, Gewissens- und Religionsfreiheit

Derzeit gibt es hierzu keine Anmerkungen. Es wird jedoch darauf hingewiesen, dass die vorliegende Formulierung das "weltanschauliche Bekenntnis" außer Acht lässt.

Zu Artikel 15. Freiheit der Meinungsäußerung

Derzeit sind keine Anmerkungen veranlasst.

Artikel 16. Recht auf Bildung

Absatz 1 suggeriert in der vorliegenden Form ein umfassendes Leistungsrecht und sollte daher im Sinne eines Elementarschutzes und unter dem Gesichtspunkt des Gleichheitssatzes formuliert werden:

„Gleicher und gerechter Zugang zu vorhandenen Bildungsstätten wird entsprechend den Fähigkeiten und Möglichkeiten des einzelnen eröffnet.“

Es wäre deutlich zu machen, dass die Mitgliedstaaten gleichen und gerechten Zugang zu Bildungsstätten nur im Rahmen der vorhandenen Kapazitäten gewährleisten müssen. Die Verpflichtung zur Schaffung neuer, darüber hinausgehender Kapazitäten muss ausgeschlossen sein.

Gegen Absatz 2 bestehen erhebliche Bedenken. Er muss gestrichen werden, da er in der vorliegenden Form die Gründung von Lehranstalten jeglicher staatlicher Kontrolle entziehen würde.

Absatz 3 muss prinzipiell aus Artikel 16 ausgegliedert werden.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4184/00****CONTRIB 67****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments on document Charte 4149/00 Convent 13 submitted by Mr. Gunnar Jansson, Representative of the Finnish Parliament. ¹

¹ This text has been submitted in English and Finnish language.

Mr Gunnar Jansson,
Representative of the Finnish Parliament,
Vice-president of the Representatives
of the National Parliaments

17 March 2000

COMMENTS ON DOCUMENT "CONVENT 13"

Article 8. Right to a fair trial

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure the effectiveness of access to justice.

Proposed new Article 8:

Everyone has the right to have his case dealt with appropriately and without undue delay by a competent court of law or other authority, as well as to have a decision pertaining to his rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

The consideration of a case by a court of law or other independent organ for the administration of justice shall be public, and the person concerned shall have the right to be heard, the right to receive a reasoned decision and the right to appeal as well as other guarantees of a fair trial and good governance before the court of law or other independent organ for the administration of justice.

Statement of reasons

Paragraph 1 in Article 6 of the European Convention of Human Rights has proved to be difficult to interpret, as it focuses on the consideration of criminal charges and civil litigation relating to the rights and obligations of the individual. However, in its case law the European Court of Human Rights has interpreted the provision as entailing a right to a judicial decision even in respect of cases falling within the sphere of public law, such as withdrawal of an authorisation to engage in business activities or other comparable authorisation, or conflict of interests between a public authority and the individual. Therefore the wording of Article 8, paragraph 1 of the Charter has been extended in scope, in comparison with the European Convention of Human Rights, so as to cover all kinds of cases pertaining to the rights and obligations of the individual as well as the consideration of such cases before competent (administrative) authorities other than courts of law.

Paragraph 1 also provides everyone with the right to appeal against decisions concerning his rights or obligations. This addition makes it possible to restrict the scope of Article 7 of the Charter, in the same way as Article 13 of the European Convention, to exclusively comprise violations of those rights and freedoms which are protected by the Charter.

Paragraph 2 concerns the guarantees of a fair trial and good governance. These include guarantees additional to those falling within the scope of paragraph 1, which are an integral part of the right to a fair trial and good governance. The paragraph enlists as such guarantees the publicity of proceedings, the right to be heard and the right to receive a reasoned decision which traditionally have been considered the most important guarantees of legal protection. Cost-free legal assistance would be part of the guarantees of a fair trial, although it is not explicitly mentioned.

I also agree with the statement of Mr Paavo Nikula and Mrs Tuija Brax about the structure and linguistic form of the Charter of the Fundamental Rights in their proposal.

Gunnar Jansson
Representative of the Finnish Parliament,
Vice-president of the Representatives of the National Parliaments

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4185/00****CONTRIB 68****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments on document Charte 4149/00 Convent 13 submitted by Mr. Paavo Nikula, Personal Representative of the Finnish Government, and Mrs Tuija Brax, Representative of the Finnish Parliament. ¹

¹ This text has been submitted in English and Finnish language.

Mr Paavo Nikula,
Personal Representative of the Finnish Government
Mrs Tuija Brax, Representative of the Finnish Parliament

17 March 2000

COMMENTS ON DOCUMENT "CONVENT 13"

Structure of the Charter of fundamental rights

In our opinion the scope of application of the Charter, referred to in the statement of reasons for Article 1, is an issue that must be regulated in the first part of the document. Furthermore, the issue is of such significance that it should rather be included in a separate Article than merely be mentioned in the preamble. We also find it important to have a specific entity covering all the horizontal questions. For these reasons we would suggest the following kind of structure:

The Charter of fundamental rights would have a preamble, and Part I would contain extensive provisions on all the horizontal questions.

Example:

Part 1 - Horizontal questions

Article 1 - Scope of the Charter

Article 2 - General derogation clause

Article 3 - Charter and domestic provisions on fundamental rights

Article 4 - Minimum level of protection

Part 2 of the Charter would contain the Articles on individual rights to be protected (in consecutive order starting from Article 1), basically as suggested in Convent 13. Part 3 of the Charter would state reasons for each right (similarly in consecutive order starting from 1), basically as suggested in Convent 13. (As an example for the relationship between Part 2 and Part 3 of the Charter, see the comparable structure in Parts I and II of the Revised European Social Charter.)

Wording

In order to avoid unnecessary problems of interpretation, one should make sure that the internal structures of Articles are consistent and the wording is precise. It is not necessary to refine the wording of the text until after agreement on the substance of the Articles has been reached. However, the following aspects relating to the structure of the Charter should be paid attention to already at this stage:

- The Articles should be written in the form of uncontested rights (as in Article 2, paragraph 1) or prohibitions (as in Article 2, paragraph 2). This kind of a formulation is justified as it cannot be interpreted as extending the competence or tasks of the European Union. In this respect provisions ensuring (Article 13, paragraph 3) or guaranteeing a certain right (Article 16, paragraph 3) allow different interpretations. Similarly the Finnish translation of Article 15, paragraph 2 leaves room for interpretation, although the English wording is less problematic.

- The aim with the formulation of Articles in Convent 13 has been to avoid derogation clauses relating to individual rights. However, there is a specific derogation clause in the last sentence of Article 6. The internal structure of the Articles should be consistent. The Convention must determine the legal meaning it wishes to give for a certain derogation clause, in case such derogation clauses are intended to be used.
- The requirement of consistency in the wording, referred to above, also concerns the requirement that limitations must be prescribed by law. Such a requirement has been included in certain Articles (second sentence in Article 6, and paragraph 2 of Article 13). It must be clearly indicated that this kind of a requirement does not entail an obligation upon the Member States to take legislative measures, for example.

Article 4. Prohibition of torture and inhuman treatment

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

Proposed new Article 4:

No one shall be subjected to torture or to inhuman or degrading treatment, nor expelled to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Statement of reasons

The principle of non-refoulement is an established principle in the case law of the European Court of Human Rights, being an integral element of interpretation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. (see e.g. the Soering Case, Eur. Court of H.R., Judgment of July 7, 1989; and especially the Chahal Case, Eur. Court of H.R., Judgment of November 15, 1996).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour, his home and the confidentiality of his communications.

Proposed new Article 12:

Everyone has the right to protection of his private and family life, his honour, his home and the confidentiality of his communications.

Statement of reasons

The substance of Article 12 has been changed so as to make it a clear right. The protection of family life included in Article 8 of the European Convention has been included; see statement of reasons for Article 13.

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right.**
- 3. Protection of the family on a legal, economic and social level shall be ensured.**

Proposed new Article 13:

Article 13. Right to marriage

Everyone has the right to marry and to found a family according to the national laws governing the exercise of this right.

Statement of reasons

The modernised version of the right to marriage corresponds to Article 12, paragraph 2 of the European Convention of Human Rights. The protection of family life (Convent 13: paragraphs 2 and 3 of Article 13) is included in the proposed new Article 12 in which it is given as a right of the individual. This kind of a formulation and structuring is closer to the wording of the European Convention, as well as its object and purpose.

Article 15. Freedom of expression

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**
- 2. Art, science and research shall be free of constraint.**

Statement of reasons

See the statement of reasons for Article 16.

Article 16. Right to education

1. No person shall be denied the right to education, including in particular the right to receive free compulsory education.
2. The founding of educational establishments shall be free of constraint.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.

Proposed new Article 16:

1. **Everyone has the right to education**, including in particular the right to receive free compulsory education.
2. The founding of educational establishments shall be free of constraint.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.

Statement of reasons

The form of a positive right in paragraph 1 is better and corresponds to the interpretation of the European Convention of Human Rights by the Strasbourg organs.

Paragraph 3 has a link to the separate Article on the rights of the child, and these two should later be dealt with together. The Convention on the Rights of the Child emphasises the principle of the best interests of the child, apart from the rights of the parents.

*The last two sentences in the statement of reasons, concerning academic freedom, should be removed and inserted in the statement of reasons for paragraph 2 of Article 15. Apart from academic freedom, the principle of autonomy of university education should be mentioned. (“The principles of academic freedom and **autonomy of university education**...”).*

We also agree with the statement by Mr Gunnar Jansson about article 8 of the Charter of the Fundamental Rights in his proposal.

Paavo Nikula
Personal Representative of the Finnish Government

Tuija Brax
Representative of the Finnish Parliament

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 28 mars 2000**CHARTE 4186/00****CONTRIB 69****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions d'amendements relatives au document
Charte 4149/00 Convent 13, présentées par M. Ben Fayot, Représentant du Parlement
luxembourgeois. ¹

¹ Ce texte a été soumis en langue française seulement.

Monsieur Roman Herzog
Président
de la Convention pour l'élaboration d'une charte des droits fondamentaux de l'UE
Bruxelles

Luxembourg, le 17 mars 2000

Monsieur le Président,

Je vous prie de trouver ci-joint quelques propositions d'amendement concernant les articles 1 à 15 (Charte 4149/00 CONVENT 13).

- **Quant à l'exposé des motifs concernant l'article 1**, je suis d'avis qu'il n'est pas indiqué de le compléter par un paragraphe 2 d'une tout autre nature. Il convient plutôt d'en faire un préambule général pour lequel il suffit d'une phrase: " Les dispositions de la présente charte sont applicables aux institutions et organes de l'Union dans le cadre des compétences et des tâches qui leur sont attribuées par les Traités ainsi qu'aux Etats membres lorsqu'ils mettent en oeuvre le droit communautaire." La dernière phrase est à biffer. Elle ne fait que répéter la première, mais par la négative, et elle crée dès l'abord une impression "négative" quant à la charte.

- **Article 8** : La deuxième phrase peut être modifiée en remplaçant "octroyer" par "accorder" (octroyer, c'est imposer de force). La formulation peut être plus ramassée.

" Une aide juridique gratuite est accordée à ceux qui ne disposent pas de ressources suffisantes pour leur assurer un accès effectif à la justice."

- **Article 9** : Remplacer la 2e partie de la phrase par une nouvelle phrase. L'article se lirait ainsi: " Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie. Le respect des droits de la défense est garanti."

- **Article 13** : Le paragraphe 2 serait à reformuler de la façon suivante:

" 2. Toute personne a le droit de se marier et de fonder une famille conformément aux lois des Etats membres (relatives à l'exercice de ce droit)."

L'élément de phrase entre parenthèses peut être omis à mon avis.

- **Article 15** : Ne suffit-il pas, dans le 2e paragraphe, de ne citer que l'art et la science, la recherche étant une sous-catégorie des deux?

" 2. L'art et la science sont libres. "

- **Article 16** : Cet article comportant deux points de vue - celui de l'enfant (et/ou de l'adulte) et celui des parents - , le paragraphe 2 qui soulève d'importants problèmes dans certains pays peut être omis.

De nombreux problèmes d'interprétation peuvent surgir à cause de l'imprécision et de la multiplicité des termes employés: éducation, instruction, enseignement. L'éducation concerne une approche plus générale, les termes d'instruction et d'enseignement sont ciblés sur l'acquisition de connaissances et de méthodes.

On pourrait proposer la formulation suivante:

" Art. 16 Droit à l'instruction

1. Nul ne peut se voir refuser le droit à l'instruction qui comporte notamment la faculté de suivre gratuitement l'enseignement obligatoire.

2. Le droit des parents d'assurer l'instruction de leurs enfants conformément à leurs convictions est respecté. "

Ce recentrage est indiqué puisqu'il semble acquis qu'il y aura un article sur les droits des enfants dans lequel on pourra revenir sur le problème plus général de l'éducation.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments distingués.

Ben Fayot
représentant de la Chambre des Députés
du Grand-Duché de Luxembourg

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 28 mars 2000**CHARTE 4187/00****CONTRIB 70****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations sur le document Charte 4149/00 Convent 13, présentées par M. Stefano Rodotà, Représentant personnel du Gouvernement de l'Italie. ¹

¹ Ce texte a été soumis en langue française seulement.

Observations sur la proposition de rédaction des articles 1-16 de la Charte des droits fondamentaux de l'Union européenne

art. 3

La référence à certains principes du n° 2 ne peut être limitée uniquement au "domaine de la médecine et de la biologie". En effet, l'intégrité physique et psychique des individus est désormais mise également en danger par des activités d'ordre commercial (comme cela a lieu, par exemple, aux Etats Unis avec les services génétiques fournis directement aux personnes d'organisations d'entreprises). Il faut par conséquent que les principes soient affirmés d'une manière générale, par exemple comme suit:

- Aucune intervention concernant l'intégrité physique et psychique d'un individu ne peut être effectuée sans le consentement libre et informé de l'intéressé.
- Le corps humain et ses parties ne peuvent en aucun cas constituer une source de gain.

L'éventuelle insertion dans la Charte de principes concernant l'eugénétique exige d'être mieux précisés en raison de la nécessité de définir exactement ce que l'on entend justement par "eugénétique", étant donné l'ampleur croissante des possibles interventions génétiques; et de la référence à la clonation qui exige pour le moins une spécification portant sur la "clonation reproductive d'êtres humains".

art. 12

Ajouter "de son propre honneur et de la liberté et du secret de ses communications".

art. 15

Modifier le n° 1 de la manière suivante (voir la Déclaration universelle des droits de l'homme des Nations Unies): "Ce droit comprend la liberté d'opinion et la liberté de chercher, recevoir et diffuser des informations...".

Il est en outre indispensable d'introduire une référence au fait que ce droit est concrètement limité non seulement par de possibles ingérences d'autorités publiques ou contraintes liées aux frontières, mais aussi par des conditionnements économiques découlant surtout des concentrations de la propriété des médias. Il faudrait par conséquent reformuler comme suit la partie finale du n° 1: "sans qu'il y ait possibilité d'ingérences des autorités publiques, de limitations de frontière et de conditionnements découlant des concentrations de la propriété des médias.

Je me suis borné à traiter uniquement les questions les plus importantes. Je suis toute la matinée au numéro 06/6818636

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4188/00****CONTRIB 71****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments and draft amendments on document Charte 4149/00 Convent 13 submitted by Mr. Andrew Duff, member of the European Parliament. ¹

¹ This text has been submitted only in English language.

Andrew Duff

Mr Roman Herzog
President of the Convention
European Union Charter of Fundamental Rights

17 March 2000

1. Explanatory Statements

I write concerning the nature and style of the explanatory memoranda.

On the presumption that the Charter will have mandatory effect upon European Union institutions and agencies, we need to clarify with some urgency the legal force of the accompanying statements.

As I understand it, the proposal of the Praesidium is that the memoranda will have official status; they will be bound formally within the Charter, although they should not themselves carry legal force. The statements will include a definition of the proposed scope of the Article. Their purpose is to explain to those who need to interpret the Charter the intentions of the drafting Convention, and, in particular, to clarify its relationship with the EU Treaties, the ECHR and other international treaties. They are an aid to making the Charter justiciable.

If this understanding is correct, the Convention will not need to crawl over the wording of the explanatory statements with the same rigour as we are bringing to the drafting of the Articles. But we shall have to consider with some care their form and utility.

At the moment, there is no systematic approach to the drafting of the explanatory statements. May I propose that the Convention adopts explicit guidelines in order to encourage a uniformity of approach and comprehension?

May I also propose that each statement contains three specific paragraphs explaining:

1. How the Article has drawn from the ECHR, and why. Where relevant, the articles and protocols of the ECHR should be reproduced in full.
2. How the Article has drawn from other international treaties, and why; and where these documents may be most easily found by a non-specialist readership.
3. The connection between the Article and the competences of the European Union; how it might effect the operation of the EU.

Of these three elements, it is the last which, in my view, may give rise to the greatest complication.

The European Union enjoys no general catalogue of competences. The Treaties are in what one might call a pre-constitutional order. Much rationalisation and simplification is required before the citizen could know clearly how power is exercised within the Union, the responsibilities of each institution and their inter-relationship. However, it is certainly possible to cite the relevant articles of the Treaty, as well as to describe the general principles of European Community law, the relevant jurisprudence of the European Court of Justice and the current *acquis communautaire* in terms of policy. It is also possible — and may certainly be useful for the citizen — for the specific EU decision-making process to be described in a fairly technical manner in each policy area.

This exercise will be absorbing and challenging. I am in no doubt that it will in part be controversial, especially for those who either do not know or who choose not to accept the present scale and scope of European integration. But it must nevertheless be done and done well if the Charter is to remain focused on the European Union and all its works.

I would recommend that we recruit a number of academic specialists to help us in that task, although, naturally, ultimate responsibility for what goes into the explanatory memoranda rests with the Convention. You will see that the European Parliament, in its resolution of yesterday, has called, among other things, for an academic colloquy.

Please accept my compliments.

ANDREW DUFF M.E.P.

Andrew Duff

Mr Roman Herzog
President of the Convention
European Union Charter of Fundamental Rights

17 March 2000

Proposed Amendments

I have the honour to propose various amendments to the Articles contained in CHARTE 4149/00. Some are stylistic, in the interests of plain speech.

Article 2

1. ...
2. **No one shall be condemned to death or executed.**

Article 3

Right to integrity

1. **Everyone's physical and mental integrity shall be respected.**
2. **In the fields of medicine and biology,**
 - **human beings shall not be cloned**
 - **eugenic practices shall be prohibited**
 - **patients shall have the right to informed consent**
 - **the human body and its products shall not be made a source of financial gain.**

Article 13

1. **Everyone's family life or partnership shall be respected.**
2. ...
3. **The legal, social and economic interests of the family or cohabiting partner shall be protected.**

Note: Non-conventional families are now so common in several member states, and their number on the increase, that a failure to recognise this phenomenon explicitly will cause widespread concern and dismay. It is vital that the Charter reflects contemporary society if it is to resonate within it.

ANDREW DUFF M.E.P.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 March 2000**CHARTE 4189/00****CONTRIB 72****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution (motion tabled by the PDS grouping in the German Bundestag) by Mrs Sylvia Kaufmann, Member of the European Parliament. ¹

¹ This text has been submitted in German, English and French languages.

German Bundestag
13/2457
13th electoral term
27.09.95

Printed Paper

**Motion
tabled by the PDS grouping**

Basic rights for persons living in the European Union

The Bundestag is requested to adopt the following motion:

The Federal Government is called upon

1. To take active steps to ensure that the statutory anchoring of the individual and collective basic rights of persons living in the European Union in the Treaty on European Union is placed on the agenda of the 1996 Intergovernmental Conference;
2. To exert its influence towards the 1996 Intergovernmental Conference resulting in the Treaty on European Union being extended to cover basic rights for all persons living in the European Union, enforceable before the European Court of Justice;
3. To work towards amending the Treaty on European Union as regards Union citizenship, with the aim of eliminating the distinction between citizens of the Member States and persons from non-member states to the extent that equal personal, political, social, economic and cultural rights are guaranteed for all persons with permanent residence in the European Union.

These basic rights must correspond to the following provisions:

I. Personal rights

Protection of human dignity

- (1) The dignity of man shall be inviolable. To respect and protect it shall be the duty of all public authority.
- (2) It shall be the duty of every person to recognise the dignity of all other persons. All persons shall acknowledge each other as equals, with all their differences.
- (3) It shall be the right of all persons that their dignity be respected, even at the time of death.

Right to life and safety

- (1) Everyone shall have the right to life, to respect for his physical, mental and spiritual integrity, as well as to personal liberty and safety.
- (2) No one may be sentenced to death, or subjected to torture or to treatment or punishment of an inhuman or degrading nature.
- (3) No one may be subjected to medical, biological or other scientific experiments without their voluntary consent or as a result of exploitation of a situation of personal distress.

Equality

- (1) All persons shall be equal before the law.
- (2) No one may be discriminated against or favoured on grounds of sex, sexual identity, homeland and origin, ethnic affiliation, parentage, nationality and language, as well as religious, ideological or political convictions. Persons with physical, mental or spiritual impairments or with disabilities may not be discriminated against.
- (3) Men and women shall have equal rights. The equal participation of both sexes in all social fields shall be established and safeguarded.
- (4) In the event of existing inequalities, the necessary equilibrium shall be ensured in favour of the disadvantaged.

Free development of personality

- (1) Everyone shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against constitutional order.
- (2) Every woman shall have the right to decide whether to carry a child through to the full term of pregnancy.

Personal liberty

- (1) The liberty of the individual shall be inviolable. It may only be restricted pursuant to a law and taking into account the forms prescribed therein.
- (2) Every person arrested or taken into custody shall be informed, without delay, of the reason for the deprivation of his liberty and the agency which occasioned such deprivation. The next of kin shall be entitled to information concerning the deprivation of liberty. Upon the request of the person arrested or taken into custody, other persons shall also be informed of the arrest or taking into custody, without delay.
- (3) Every person arrested or taken into custody shall, within 24 hours, be brought before the responsible judge, who shall decide on the arrest or taking into custody. Before each judicial decision concerning an order for, or the continuation of, deprivation of liberty, the person involved shall be given the opportunity to call in a legal counsel of his choice.
- (4) No person retained in custody may be subjected to physical or spiritual abuse or harassment.
- (5) No one may be extradited to a country in which the danger exists of him being sentenced to death or tortured.

Freedom of conscience and religion

- (1) Everyone shall have the right to freedom of conscience, religion and thought, as well as freedom of ideological creed.
- (2) The right to conscientious objection shall be guaranteed. Persons who take avail of this right may not be discriminated against.
- (3) Examinations of creed shall be prohibited.
- (4) No one may be compelled to participate in a religious or ideological act, or be prevented from such participation by means of coercion.

Freedom of expression and information

- (1) Everyone shall have the right to freely express his opinion. Freedom of the press and freedom of reporting by means of radio, television and film shall be guaranteed.
- (2) These rights shall include the freedom to obtain information, without hindrance, from generally accessible sources or other legally open sources.
- (3) These rights shall be limited by the statutory provisions for the protection of youth, the preservation of dignity of women and the personal rights of the individual.
- (4) War propaganda shall be prohibited. All advocacy of national and religious hatred, as well as nationalistic, racist, fascist, anti-Semitic and sexist propaganda, shall be prohibited.

Protection of privacy

- (1) Everyone shall have the right to respect and protection of his personal sphere. The confidentiality of non-public communications shall be inviolable.
- (2) Respect of the privacy of posts and telecommunications shall be guaranteed.

Inviolability of the home

- (1) The home shall be inviolable.
- (2) Searches may only be carried out on the order of a judge.

Data protection

- (1) Everyone shall have the right to his personal data and to inspect files pertaining to his person.
- (2) This right shall include the entitlement to consent to the recording, storage, processing, forwarding, correction, or other use of personal data, as well as their contents. Restrictions shall only be permissible by law for persons holding public office.

Freedom of movement

- (1) All persons shall have the right to freedom of movement.
- (2) The right to reside and settle at any desired location may only be restricted by, or pursuant to, a law.

Right of asylum

- (1) Persons persecuted on political, ideological, ethnic or religious grounds, or because of their sex, their sexual identity or a disability, shall have the right of asylum.
- (2) Persons seeking asylum may not be deported or extradited to a country in which the danger exists of their being sentenced to death, tortured, persecuted or subjected to any other kind of repression.
- (3) The right of war refugees and persons in distress to admittance shall be guaranteed.

Protection of minorities

- (1) All persons shall be free to profess their affiliation to a national minority or ethnic group and to style their life accordingly within the framework of constitutional order.
- (2) The entitlement of national, ethnic and religious minorities to protection and promotion of their identity and culture shall be guaranteed.

II. Rights of shaping policy

Right to political participation

- (1) The right of all persons to political participation shall be guaranteed.
- (2) It shall be asserted by means of general, direct, free, equal and secret elections and votes, as well as manifold policy-making and control rights of the individual and social groups.
- (3) Everyone shall have the right to timely and sufficient participation in the decision-making process in the case of public affairs affecting his person.

Freedom of assembly

All persons shall have the right to assemble peaceably without permission.

Freedom of association

- (1) All persons shall have the right to form and join associations. All associations shall have the right to define their internal rules and regulations freely and independently.

- (2) No one may be compelled to join an association.
- (3) The internal rules and regulations of political parties, associations, citizens' groups and initiatives which are devoted to public affairs and which have an influence on the formation of public opinion, must conform to democratic principles. The right to participate in the formation of political will shall be guaranteed.

Right of petition and right to popular initiatives

- (1) Everyone shall have the right to address requests or complaints to the competent agencies and to the parliaments on the national and European level. Everyone shall be entitled to a reply within a reasonable period of time, together with a justification.
- (2) The right to popular initiatives, petitions and referendums in order to enact, amend, repeal or prevent legal acts and political decisions by the European Union shall be guaranteed.

III. Social, economic and cultural rights

Protection of the family and lifestyle

- (1) All persons shall have the right to freely select their type of lifestyle and to establish corresponding cohabitations. All lifestyles shall enjoy equal respect, as well as legal, economic and social protection.
- (2) Special social assistance shall be provided for single parents, cohabitations with numerous children and cohabitations including disabled members.
- (3) Persons who raise children or support and care for persons in need of help within a common household shall be entitled to protection and assistance, as well as social consideration. The compatibility of gainful employment, participation in public life and parenthood shall be promoted.

Children and youths

- (1) Children and youths shall have the right to respect of their dignity as independent personalities. The development of their personalities shall be specially promoted in accordance with their growing skills and needs and they shall be enabled to act independently. They shall enjoy the special protection of society.
- (2) Every child shall be entitled to care and support. The body politic shall promote nursery schools and youth centres, regardless of their sponsorship.
- (3) Children and youths shall be entitled to free upbringing, education and training corresponding to their skills, regardless of their origins and their economic situation.
- (4) Children and youths shall be protected against physical and mental neglect, punishment and maltreatment and sexual abuse. Should the well-being of children and youths be endangered, particularly by the failure of persons having parental powers, the body politic shall be obliged to guarantee the necessary help.
- (5) Child labour shall be prohibited.

Right of ownership

- (1) Property and the right of inheritance shall be guaranteed.
- (2) Property shall impose duties. Its use shall also serve the public weal. It may not impair basic rights and the natural bases of existence.
- (3) Expropriation shall be permitted only in the interests of the public weal. It may only be effected under the provisions pursuant to law and in return for suitable compensation.

Environmental protection

- (1) Everyone shall have the right to protection and preservation of his natural environment. All measures necessary for the preservation, restoration and safeguarding of the natural bases of existence shall be taken.
- (2) Animals shall be protected against avoidable suffering and injury.
- (3) Public and private projects shall be subject to proof of their environmental compatibility pursuant to the provisions of a law.

Right to work and occupational liberty

- (1) Everyone shall have the right to work and labour promotion.
- (2) Everyone shall have the right to choose freely his occupation and place of work and to practise his occupation freely.
- (3) Everyone shall be entitled to humane working conditions which guarantee the protection of his health and safety.
- (4) No one may be arbitrarily denied work, and no one may be forced to perform a specific job.

Freedom of coalition, collective bargaining autonomy, co-determination

- (1) Everyone shall have the right, in order to assert his interests, to form and join trade unions or other associations aimed at shaping working and economic conditions, and to engage freely in their activities.
- (2) Collective bargaining autonomy, the right to strike and other forms of industrial action aimed at safeguarding the interests of the employees shall be guaranteed. Lockouts shall be prohibited.
- (3) Employees shall have the right to regular information concerning the economic and financial situation of their company.
- (4) The right of co-determination of employees in all decisions which may affect their interests shall be guaranteed.

Social protection

- (1) Everyone shall have the right to protection of his health and to health care.
- (2) All persons shall have the right to social security.
- (3) All persons shall have the right to suitable living accommodation.

Right to education

- (1) Everyone shall have the right to education and training. Access to higher education and vocational education shall be free.
- (2) The freedom of life-long learning and the freedom of teaching shall be guaranteed. To this end, the right to progress through all levels of education within the context of equal opportunities for all, including the safeguarding of the material conditions, shall be guaranteed.
- (3) The right of parents to raise their children according to their religious and ideological convictions shall be guaranteed, respecting the right of the child to its own development.

Freedom of art and science

- (1) Art and science shall be free. They shall receive public promotion.
- (2) Free and equal access to art and culture, as well as to research, shall be guaranteed.
- (3) Research entailing special risks shall be subject to public notification. It may be restricted by law if it should be deemed capable of violating human dignity or impairing the natural bases of existence.

Right to sport, leisure time and recreation

Everyone shall have the right to sport, leisure time and recreation.

IV. Procedural rights**Access to the law**

- (1) Everyone shall have the right to complete information concerning his rights.
- (2) Everyone shall have the right to a due process of law before a judge appointed by law. Special tribunals shall be prohibited.
- (3) Everyone shall have the right to his case being heard fairly, equitably, publicly and within a reasonable period of time by an independent and impartial court of law on a legal basis. He shall have the right to judicial hearing.
- (4) Access to the law shall be guaranteed. Legal aid shall be provided for those persons who do not have sufficient means to finance legal assistance.
- (5) Everyone shall have the right to lodge an appeal against a court decision, which shall lead to the complete review of a decision made against him. It shall be prohibited to impose a more severe punishment in the event of an appeal for the benefit of the person affected.
- (6) No one may be discriminated against for asserting his procedural rights.

Rights of sanction

- (1) No one may be held accountable for acts or omissions for which they bore no responsibility at the time of their commission according to valid law.
- (2) No one may be held accountable for acts or omissions which he did not commit culpably. It shall be assumed that everyone is innocent until conclusively proven guilty.
- (3) No one may be prosecuted or convicted anew for an act for which he has already been convicted.

V. General provisions**Validity of basic rights**

- (1) These basic rights shall be binding on legislation, executive powers, the dispensation of justice and, insofar as stipulated, third parties, as directly applicable law.
- (2) The basic rights shall also apply to legal entities to the extent that the nature of the rights permits.

Level of protection

None of these provisions may be interpreted as a restriction of the protection afforded by the laws of the Union, the laws of the Member States and international law.

Abuse of rights

None of these provisions may be interpreted in such a way that any right may arise to perform an activity or act aimed at impairing or abolishing these rights and freedoms.

Legal protection

All persons shall be entitled to lodge a complaint with the European Court of Justice claiming that one of his basic rights as guaranteed herein has been violated by the public authorities.

Right to resist

All persons shall be entitled to the right to resist obvious violations or unlawful elimination of the democratic principles of the European Union by the public authorities.

Bonn, 26 September 1995

Dr. Gregor Gysi and Grouping

Justification

The 1996 Intergovernmental Conference to review and revise the Maastricht Treaty provides the opportunity of finally setting clear political examples aimed at overcoming the crisis in the process of European integration and of doing justice to the global requirements of the present day and the future. However, this presupposes the existence of the political will to eliminate the misorientation and aberrations of the Maastricht Treaty and its deficits, all of which are bemoaned by every political body in Germany.

The aberrations and deficits of the Maastricht Treaty include a lack of attunement to public concerns and a lack of democracy. The slogan "A People's Europe", propagated for many years by the EU Commission, governments and political parties, is still nothing more than hollow words on a piece of paper.

This motion will put basic rights for the European Union up for debate. Enforceable basic and human rights must be guaranteed for all persons with permanent residence in the European Union, not just for the so-called Union citizens, as an integral component of the Treaty on European Union. This primarily involves two aspects:

First of all, the deficits in the protection of basic rights must be eliminated, which arose from the national states surrendering sovereign rights to the European Union. This gave rise to a new, separate bearer of sovereign power. However, the protection of the basic rights of citizens living in the European Union remained limited to national frameworks and, consequently, only applicable to national sovereign rights.

Secondly, the process of European integration needs a new stimulus, which can only be achieved through fundamental democratisation. The people living in the European Union must be given the opportunity of helping to shape their present and future in the social, cultural, economic and political field in their regions, nations and the European Union. Only thus can a peaceful, socially just, democratic and environment-conserving Europe be forged and assume its role as an equal partner in this one world, without nationalism and xenophobia.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 30. März 2000**CHARTE 4191/00****CONTRIB 74****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsanträge zu Dokument 4149/00 CONVENT 13, vorgelegt von Herrn Ingo Friedrich, Mitglied des Europaparlaments. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Dr. Ingo Friedrich, MdEP
Vizepräsident des Europäischen Parlaments
Mitglied im EU-Grundrechtskonvent

Änderungsanträge zu Dokument Convent 13
Vorschlag für die Artikel 1-12 (jetzt 1 bis 16).

Änderungsantrag 1:

Artikel 1. Würde des Menschen

"Die Würde des Menschen wird (*unter allen Umständen*) geachtet und geschätzt.

- "*unter allen Umständen*" streichen-

Änderungsantrag 2:

neuen Artikel 2 einfügen (nach Artikel 1)

Artikel 2 (neu) Bindungswirleung der Charta

"Die Bestimmungen dieser Charta richten sich an die Organe und Einrichtungen der Union bei der Wahrnehmung der ihnen durch die Verträge zugewiesenen Zuständigkeiten und Aufgaben sowie an die Mitgliedstaaten bei der Anwendung des Gemeinschaftsrechts Sie begründen weder neue Aufgaben oder Zuständigkeiten der Union noch erweitern sie deren bestehende Aufgaben oder Zuständigkeiten".

Änderungsantrag 3:

Artikel 6

Recht auf Freiheit (*zwei Wörter streichen*)

Jede Person hat das Recht auf Freiheit (*zwei Wörter streichen*). **Die Freiheit darf nur in besonderen Fällen und nur auf die gesetzlich vorgeschriebene Weise entzogen werden.**

- "*„ und Sicherheit*" streichen-

Änderungsantrag 4:**Artikel 12. Achtung des Privatlebens**

Jede Person hat Anspruch auf Achtung Ihres Privatlebens, ihrer Persönlichkeit (1 Wort streichen) Ihrer Wohnung sowie des Brief-, Post- und Fernmeldegeheimnisses.

-"Ehre" streichen: "Persönlichkeit" einfügen

Änderungsantrag 5**Art. 13 Familienleben**

- (1) Jede Person hat das Recht auf Achtung Ihres Familienlebens.
- (2) (neu) Das Recht, eine Ehe einzugehen und eine Familie zu gründen, wird gewährleistet. Die Ausübung dieses Rechts regelt sich nach den Gesetzen der Mitgliedstaaten).
- (3) Der rechtliche, wirtschaftliche und soziale Schutz der Familie wird im Rahmen der Zuständigkeiten der Union gewährleistet.

Der ehemaglige Absatz 2 wird ersetzt (s.o.), Einfügung Absatz 3.

Änderungsantrag 6:**Artikel 14. (Gedanken-,) Gewissens- und Religionsfreiheit**

"Jede Person hat das Recht auf (Gedanken-,) Gewissens- und Religionsfreiheit."

"Gedanken-," streichen sowie Artikel 14 umbenennen -

Änderungsantrag 7**Artikel 16 Recht auf Bildung**

- (1) **Niemandem darf das Recht auf Bildung verwehrt werden; dazu gehört insbesondere die Möglichkeit, unentgeltlich am Pflichtschulunterricht teilzunehmen.**
- (2) **(neu) Ein gleichberechtigter Zugang zu staatlichen Ausbildungsmöglichkeiten ist zu gewähren.**

- (3) **Die Gründung von Lehranstalten ist frei.**
- (4) **Das Recht der Eltern, die Erziehung und den Unterricht ihrer Kinder entsprechend ihren eigenen religiösen und weltanschaulichen Überzeugungen sicherzustellen, wird geachtet.**

-Absatz 2 neu einfügen

Dr. Ingo Friedrich, MdEP

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 27 March 2000 (30.03)
(OR. fr,en)****CHARTE 4192/00****CONVENT 18****NOTE FROM THE PRAESIDIUM**

Subject: Draft Charter of Fundamental Rights of the European Union
– Proposals for social rights

Members of the Convention will find below an initial series of articles on social rights. The list is not exhaustive, and proposals for other articles will follow. The Praesidium is currently studying articles relating to wages and health. You are reminded that the original list of social rights drawn up for discussion by the Convention included the following:

Economic and social rights/objectives*Right to work and choose an occupation*

1. Right to work: objective of a high level of employment, freedom to choose and engage in an occupation (Article 127 EC, Article 1 Social Charter, Point 4 Community Charter of Social Rights).

Working conditions

2. Right to safety and health at work: right or political objective? (Article 140 EC, Article 3 Social Charter, Point 19 Community Charter of Social Rights, Article 13 EP Decl. 1989).
3. Fair remuneration and minimum wage: distinguish between what is a right and what constitutes a political objective (Article 4 Social Charter, Article 4 Community Charter of Social Rights, Article 13 EP Decl. 1989).

4. Right to weekly rest period and paid leave: right or political objective? (Article 2 Social Charter, Point 8 Community Charter of Social Rights).
5. Pensions: right or political objective? (Article 23 Social Charter, Points 24 and 25 Community Charter of Social Rights).
6. Free access to placement services: right or political objective? (Article 1 Social Charter, Point 6 Community Charter of Social Rights).

Training

7. Vocational guidance and continuing training: right or political objective? (Articles 9 and 10 Social Charter, Point 15 Community Charter of Social Rights).

Collective labour rights

8. Workers' right to information and consultation (Article 137 EC, Article 6 Social Charter, Point 17 Community Charter of Social Rights).
9. Right to collective bargaining (Article 137 EC, Article 6 Social Charter, Point 12 Community Charter of Social Rights, Article 14 EP Decl. 1989).
10. Right to strike (Article 6 Social Charter, Point 13 Community Charter of Social Rights, Article 14 EP Decl. 1989).

Social protection

11. Right to health: right or political objective? (Article 152 EC, Article 11 Social Charter, Point 19 Community Charter of Social Rights, Article 15 EP Decl. 1989).
12. Right to social security, right to social and medical assistance: right or political objective? (Article 13 Social Charter, Point 10 Community Charter of Social Rights, Article 15 EP Decl. 1989).
13. Protection of maternity (Article 8 Social Charter).
14. Protection of children and young persons (Article 17 Social Charter, Points 20 et seq. Community Charter of Social Rights).
15. Integration of disabled persons (Article 15 Social Charter, Point 26 Community Charter of Social Rights).

The order of the rights will be reviewed subsequently as for civil and political rights.

Article I. Equality between men and women

Equality between men and women must be ensured with regard to work and employment and social protection.

Comment

See point 16 of the Community Charter: "Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed. To this end, action should be intensified to ensure the implementation of the principle of equality between men and women as regards in particular access to employment, remuneration, working conditions, social protection, education, vocational training and career development ..."

Article II. Right to choose an occupation

Everyone has the right to choose and to engage in his occupation or business, without prejudice to the rules in the Treaty relating to the free movement of persons.

Comment

This right is recognised without any ambiguity in the case law of the Court as a fundamental right (see judgment of principle in Case 4/73 Nold [1974] ECR 491). A reference to the rules in the Treaty on the free movement of persons seems necessary, in order to establish that this right benefits those to whom freedom of movement applies.

Article III. Workers' right to information and consultation

Workers and their representatives have the right to effective information and consultation within the undertaking which employs them, particularly in the context of collective redundancy procedures and decisions relating to conditions of work and to the working environment.

Comment

See Articles 21 and 29 of the revised Social Charter:

"Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking."

"Article 29 - The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned."

These Articles did not appear in the Social Charter of 1961. They are mentioned in points 17 and 18 of the Community Charter. Article 137 of the TEC gives competence to the Community with regard to the information and consultation of workers.

Article IV. Freedom of association, rights of collective bargaining and collective action

1. Employers and workers have the right to associate freely, including at European Union level, in order to form the professional or trades union organisations of their choice to defend their economic and social interests.

Every employer and every worker has the right to join or not to join these organisations, without this causing him any personal or professional harm.

2. Employers or employers' organisations, on the one hand, and workers' organisations, on the other hand, have the right, under the conditions laid down by national legislation and practice, to negotiate and conclude collective agreements, including at European Union level.

3. Workers and employers have the right in cases of conflicts of interest to take collective action at European Union level should the occasion arise, including the right to strike.

Comment

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. The rights of collective bargaining and collective action are recognised by the revised Social Charter (Article 6) and by the Social Charter. It is mentioned in point 12 of the Community Charter. It is recognised in the case law of the European Court of Human Rights as stemming from Article 11 of the Convention (Swedish train drivers union 1976). Finally, Articles 138 and 139 of the TEC deal with social dialogue at a Community level and provide for the conclusion of collective agreements.

Article 6 of the revised Social Charter reads as follows:

"Article 6 - The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1 to promote joint consultation between workers and employers;

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4 *the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.”*

This text was taken from the original version of the Social Charter. The same wording is found in point 13 of the Community Charter. The addition of a reference to national legislation is necessary because, pursuant to Article 137(6) of the TEC, the Community does not have competence with regard to the right to strike in Member States. In this respect, therefore, it must recognise the national legislation in force. However, the Community does have competence with regard to its own employees.

The right to collective action has been recognised by the European Court of Human Rights as one element of the trade union rights recognised by Article 11 of the European Convention on Human Rights (Schmidt and Dahlström, Sweden, 1976).

Article VII. Right to equal remuneration for equal work

Every worker has the right to equal remuneration for work of equal value.

Comment

This right is mentioned in Article 4 of the revised Social Charter:

"Article 4 - The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

- 1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
- 2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- 3 to recognise the right of men and women workers to equal pay for work of equal value;
- 4 to recognise the right of all workers to a reasonable period of notice for termination of employment;
- 5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

This right appeared in the same form in the Social Charter of 1961. It is mentioned in point 5 of the Community Charter.

Article VI. Right to rest periods and annual leave

Every worker has the right to a weekly rest period and to an annual period of paid leave.

Comment

This right is referred to in Article 2 of the revised Social Charter:

"Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- 1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;*
- 2. to provide for public holidays with pay;*
- 3. to provide for a minimum of four weeks' annual holiday with pay;*
- 4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;*
- 5. to ensure a weekly rest period which shall, as far as possible, coincide with the days recognised by tradition or custom in the country or region concerned as a day of rest;*
- 6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;*
- 7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work."*

This Article was already part of the 1961 Social Charter. It is referred to in point 8 of the Community Charter. Article 137 of the EC Treaty establishes Community competence as regards working conditions.

Article VII Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions

Comment

This right is referred to in Article 3 of the revised Social Charter:

"Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

2 to issue safety and health regulations;

3 to provide for the enforcement of such regulations by measures of supervision;

4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions."

This right featured in Article 3 of the 1961 Social Charter and in point 19 of the Community Charter. Article 137 of the EC Treaty gives the Union competence in this area.

It is proposed that the following rights should be added:

Article VIII. Protection of children and young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age and, in any case, not lower than fifteen years.

Young people under eighteen years of age must have working conditions which suit their age and be protected against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.

Comment

This text is based on Article 7 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 20 to 23). First of all it reproduces the main thrust of point 20, which provides for a minimum employment age, linked to the end of compulsory schooling, which cannot under any circumstances be less than 15 years. However, the Charter begins as follows: "Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, ..."

The second paragraph is based on point 22 of the Charter, which stipulates that labour regulations applicable to young workers must be adjusted to take account of their development and vocational training needs. The wording of the paragraph comes chiefly from Article 1(3) of Directive 94/33/EC on the protection of young people at work.

Article IX. Right to protection in cases of termination of employment

Workers have the right not to have their employment terminated without valid reason and to adequate compensation or other appropriate relief if their employment is terminated without valid reason.

Comment

Article 24 of the revised European Social Charter.

Article X. Right to vocational training and guidance

Everyone must have access, without discrimination, to appropriate vocational training and guidance and to benefit therefrom throughout his working life.

Comment

This Article is inspired, on the one hand, by paragraph 15 of the Community Charter of the Fundamental Social Rights of Workers, which provides that "*every worker of the European Community must be able to have access to vocational training and to benefit therefrom throughout his working life.*" On the other hand, it is also based on Articles 9 and 10 of the European Social Charter, which guarantee the right to vocational guidance and training respectively.

Article 140 of the EC Treaty provides for co-operation and co-ordination between the Member States in matters relating, inter alia, to basic and advanced vocational training. Furthermore, Article 150 is the foundation of the Community's vocational training policy.

Article XI. Right of employed women to protection of maternity

Every employed woman has the right to maternity leave of at least fourteen weeks before and/or after childbirth.

Comment: Article 8 of the revised Social Charter and Directive 92/85/CE of 19 October 1992

Article XII. Right to parental leave

Every worker has the right to parental leave of least 3 months following the birth or adoption of a child.

Comment

Article 27 of the Revised European Social Charter provides for the right to parental leave.

Furthermore, Directive 96/34, which implements the framework agreement of the social partners on this issue, lays down minimum requirements for parental leave of at least three months.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 29 March 2000
(OR. fr)****CHARTE 4193/00****CONVENT 19****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposals for social rights (draft Articles on rights relating to health and social protection)

Article XIII Social security

Every worker and his dependants have [everyone has] the right to social protection, including an adequate level of social security benefits, in accordance with each Member State's own procedures.

Article XIV Right to social assistance

Any person who is without adequate resources [and who is unable to secure such resources by his own efforts or from other sources] must receive appropriate social assistance enabling him to live in dignity.

Article XV Right of access to health care

Everyone must be able to benefit from measures to safeguard their health and, in case of sickness, to have access to health care.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 29. März 2000**CHARTE 4195/00****CONTRIB 76****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsvorschläge zu Dokument Charta 4170/00
CONVENT 17 und Charta 4137/00 CONVENT 8, vorgelegt von Herrn. Jürgen Meyer,
Vertreter des deutschen Bundestags.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



Prof. Dr. Jürgen Meyer, MdB
Stv. Vorsitzender des Ausschusses für die Angelegenheiten
der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin · Unter den Linden 50 · 2122 / 2124

Berlin

Prof. Dr. Jürgen Meyer
Deutscher Bundestag
Büro: Unter den Linden 50 · 2122 / 2124
✉ Platz der Republik 1, 11011 Berlin
Tel: (030) 227 - 79 12 0
Fax: (030) 227 - 76 31 6
Email: juergen.meyer@bundestag.de

Wahlkreis

Prof. Dr. Jürgen Meyer
Münsterplatz 45
Postfach 36 28
89026 Ulm
Tel: (0731) 6 02 13 61
Fax: (0731) 6 13 21
Email: juergen.meyer@wk.bundestag.de

24 März 2000

Änderungsvorschlag zu Art. I

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. I (in der Fassung Convent 17) ein.

Art. I Freizügigkeit

- (1) **Alle Unionsbürger und –bürgerinnen haben das Recht, sich im Hoheitsgebiet der Mitgliedstaaten frei zu bewegen und aufzuhalten.
Allen Bürgern und Bürgerinnen von Drittstaaten steht dieses Recht in gleichem Umfang zu, wenn sie sich seit fünf Jahren rechtmäßig im Hoheitsgebiet der Mitgliedstaaten aufhalten.**
- (2) **Allen Unionsbürgern und –bürgerinnen steht es frei, das Hoheitsgebiet der Mitgliedstaaten zu verlassen und wieder dorthin zurückzukehren.**

(3) Die Rechte nach Abs. 1 und 2 können durch Bestimmungen eingeschränkt werden, die im Einklang mit den in dieser Charta enthaltenen Grundsätzen stehen.

Begründung:

Abs. 1 Satz 1 übernimmt den Formulierungsvorschlag des Präsidiums unter Herausnahme der Schrankenbestimmung. Letzteres ist im Sinne der – vom Konvent immer wieder geforderten – sprachlichen Klarheit notwendig. Eine Schrankenbestimmung wird deshalb in einem gesonderten Abs. 3 formuliert.

Die Gleichstellung der Bürger von Drittstaaten in Abs. 1 Satz 2 folgt dem Hinweis im Einleitungsvermerk des Präsidiums. Sie wird an dieser Stelle angeführt, damit dieses Recht keine Auswirkungen auf den Abs. 2 – und damit insbesondere auf ein so kaum gewolltes dauerhaftes Recht zur jederzeit erneuten Einreise – hat.

Eine Gleichstellung von Drittstaatlern beim Recht auf Freizügigkeit ist nach Art. 63 Nr. 4 EGV möglich. Eine solche Regelung entspricht u.a. Art. 13 Allgemeine Erklärung der Menschenrechte, Art. 12 Internationaler Pakt über bürgerliche und politische Rechte (IPbpR) und Art. 2 Protokoll Nr. 4 EMRK.

Das in Abs. 2 enthaltene Recht zur Einreise und zum Verlassen des Hoheitsgebietes der Union orientiert sich an entsprechenden Regelungen in Art. 13 Abs. 2 Allgemeine Erklärung der Menschenrechte, Art. 12 Abs. 2 IPbpR und Art. 2 Abs. 2 Protokoll Nr. 4 EMRK.

Eine Schrankenbestimmung, wie sie in Abs. 3 enthalten ist, findet sich in vergleichbaren Artikeln in der EMRK und dem IPbpR. Die dortigen Schrankenbestimmungen unterliegen ihrerseits wieder Schranken, indem diese „in einer demokratischen Gesellschaft durch das öffentliche Interesse“ geboten (Protokoll Nr. 4 Art. 2 Abs. 4 EMRK) bzw. „die Einschränkungen mit den übrigen in diesem Pakt anerkannten Rechte vereinbar“ sein müssen (Art. 12 Abs. 3 IPbpR). Insbesondere bei der EMRK ist das Gebot der Verhältnismäßigkeit zu beachten.¹ Dem folgend wird in Abs. 3 als Schranken-Schranke der „Einklang mit den in dieser Charta enthalten Grundsätzen“ eingeführt. Die in Abs. 3 enthaltene Abweichung zu meinem früher eingebrachten umfassenden Chartaentwurf (Charte 4102/00: Art. 19 Abs. 3 „die im Einklang mit den Grundlagen der Union stehen“) erklärt sich aus der mittlerweile fortgeschrittenen Integration der Union und der mit der Charta entstehenden Möglichkeit, die Schranken-Schranke präziser zu formulieren.

¹ Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 846.

Änderungsvorschlag zu Art. 19

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 19_(in der Fassung Convent 8 vom 24. Februar 2000) ein.

Art. 19 Asyl

- (1) Jeder, der politisch verfolgt wird oder unmenschlicher oder erniedrigender Bestrafung oder Behandlung ausgesetzt ist, genießt Asylrecht. Frauenspezifische Asylgründe sind zu berücksichtigen.**
- (2) Niemand darf in einem Staat abgeschoben werden, wenn stichhaltige Gründe für die Annahme bestehen, dass nach der Abschiebung die in Abs. 1 beschriebenen Maßnahmen drohen.**
- (3) Kollektivausweisungen von Ausländern sind nicht zulässig.**

Begründung:

Das Recht auf Asyl findet sich u.a. in Art. 14 Allgemeine Erklärung der Menschenrechte, in den Verfassungen der Bundesrepublik Deutschland (Art. 16 a), Frankreichs (heute noch gültige Präambel der Verfassung von 1946), Italiens (Art. 10), Portugals (Art. 33 Abs. 6), Spaniens (Art. 13 Abs. 4), der Slowakei (Art. 53) und Polens (Art. 56).

Die in Abs. 1 Satz 2 enthaltene Aufnahme von frauenspezifischen Aslygründen lehnt sich an die international zunehmende Erkenntnis an, dass Frauen als soziologische Gruppe oftmals besonderen Verfolgungen ausgesetzt sind.² In diesem Zusammenhang sei hier auf die systematische Vergewaltigung von muslimischen Frauen während der kriegerischen Auseinandersetzungen im Gebiet des ehemaligen Jugoslawiens hingewiesen und die - damit zusammenhängende -

² Mit der Aufnahme der frauenspezifischen Asylgründe präzisiere ich meinen früher eingebrachten Grundrechtsentwurf (Charta 4102/00).

Berücksichtigung von Vergewaltigung als spezifische Kriegsverbrechen seitens der UNO.
Mit der Aufnahme einer solchen Präzisierung der Verfolgung, würde die Union zur Positivierung eines modernen Grundrechts beitragen, wie sie schon jetzt vereinzelt Berücksichtigung findet.³

Das in Abs. 2 verbrieftete Recht auf Schutz vor Abschiebung in bestimmten Fällen findet sich nicht nur in vielen Verfassungen der Mitgliedsländer (Finnland, Frankreich, Griechenland, Italien, Portugal, Spanien), sondern u.a. auch in Art. 3 UN-Folterkonvention und in Art. 33 Abs. 1 Genfer Flüchtlingskonvention.

Der Abs. 3 übernimmt den Formulierungsvorschlag des Präsidiums.

³ Verwaltungsgericht Magdeburg am 20. Juni 1996, Koalitionsvertrag der rot-grünen Bundesregierung vom 20. Oktober 1998.

Editors' note to CHARTE 4196/00,
**Contributo di M. Andrea Manzella (Parlamento
Italiano): Risoluzione della Giunta Per Gli Affari
Delle Comunità europee del Senato Italiano
(datata 15/03/00):**

The Council has no record of a French version of this document existing.

PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 31 marzo 2000
(OR. FR)****CHARTE 4196/00****CONTRIB 77****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei diritti fondamentali dell'Unione europea

Si allega la "Risoluzione della Giunta per gli affari delle Comunità europee" presentata dal Sen. Andrea Manzella, rappresentante del Parlamento europeo.¹

¹ Testo pervenuto solo in lingua italiana.

Roma, 16 marzo 2000

Prot. n.

Caro Presidente,

ho il piacere di inviarLe copia della risoluzione sulla Carta dei diritti fondamentali dell'Unione europea approvata lo scorso 15 marzo dalla Giunta per gli affari delle Comunità europee del Senato.

Con i più cordiali saluti

On. Roman HERZOG
Presidente della Convenzione
per la redazione della
Carta dei diritti fondamentali
dell'Unione europea
Bruxelles

SENATO DELLA REPUBBLICA

XIII LEGISLATURA

Doc. XXIV
n. 15

RISOLUZIONE DELLA GIUNTA PER GLI AFFARI DELLE COMUNITÀ EUROPEE

d'iniziativa del senatore BESOSTRI

approvata nella seduta del 15 marzo 2000

ai sensi dell'articolo 50, comma 2, del Regolamento, a conclusione dell'esame svoltosi nelle sedute dell'11 novembre e 16 dicembre 1999 e 9 e 15 marzo 2000 del seguente affare: redazione della Carta dei diritti fondamentali dell'Unione europea

13 - COM - RIS - 00015 - 0
TIPOGRAFIA DEL SENATO (150)

La Giunta per gli affari delle Comunità europee del Senato, in sede di esame dell'affare assegnato ai sensi dell'articolo 50, comma 2, del Regolamento, in merito alla redazione della Carta dei diritti fondamentali dell'Unione europea;

considerando le decisioni del Consiglio europeo di Colonia del 3 e 4 giugno 1999 e di Tampere del 15 e 16 ottobre 1999, in merito all'istituzione di un organismo, che ha assunto la denominazione di Convenzione, incaricato di redigere un progetto di Carta dei diritti fondamentali dell'Unione europea da trasmettere al Consiglio europeo;

visto il progetto di risoluzione sull'elaborazione di una Carta dei diritti fondamentali dell'Unione europea approvato il 1^o marzo 2000 dalla Commissione affari costituzionali del Parlamento europeo;

preso atto dell'auspicio formulato dal Presidente della Repubblica italiana nell'allocuzione di Trieste del 23 febbraio 2000 che la Carta dei diritti fondamentali dei cittadini dell'Unione europea sia approvata entro l'anno dal Consiglio europeo e che costituisca «il primo, fondamentale nucleo della Costituzione europea»;

acquisiti i contributi dei membri e degli osservatori e gli altri documenti presentati alla suddetta Convenzione incaricata della redazione della Carta;

preso atto del Progetto di articolato della Carta dei diritti fondamentali elaborato dal Presidium della suddetta Convenzione;

preso atto delle audizioni svolte l'8, il 15, il 23 e il 29 febbraio 2000 nell'ambito dell'indagine conoscitiva congiunta svolta dalla Giunta per gli affari delle Comunità europee del Senato e dalla XIV Commissione permanente, politiche dell'Unione europea, della Camera dei deputati;

visto il Trattato sull'Unione europea, e in particolare gli articoli 6 e 7, e visto il Trattato sulla Comunità europea e, in particolare, le disposizioni sulla cittadinanza dell'Unione;

considerando che il 14 febbraio 2000 ha avuto inizio la Conferenza intergovernativa sulla revisione dei Trattati in conformità con le decisioni assunte dai Consigli europei di Helsinki e di Colonia;

rilevando il progetto di raccomandazione presentato dalla Delegazione del Senato alla Conferenza degli organismi specializzati negli affari comunitari (COSAC) di Helsinki dell'ottobre del 1999;

evidenziando come debba ritenersi superata la distinzione fra diritti dell'uomo \pm oggetto della Dichiarazione universale del 10 dicembre 1948 e della Convenzione del 4 novembre 1950 \pm e diritti del cittadino, salvo che per alcuni diritti di natura politica, civile e sociale espressamente legati alla nozione di cittadinanza europea;

rilevando pertanto che le dimensioni del fenomeno dell'immigrazione non consentono di considerare la condizione dello straniero come una posizione individuale bensì richiedano un approccio comprensivo nei confronti del tema dei diritti umani;

sottolineando come il tema dei diritti umani sia intrinsecamente connesso alla parità di trattamento e opportunità dell'uomo e della donna;

tenendo conto delle altre convenzioni europee ed internazionali sui diritti umani e, in particolare, della Convenzione sui diritti del fanciullo del 1989, della nuova Carta sociale europea del 1996, della Convenzione sui diritti dell'uomo e la biomedicina del 1997 e della Convenzione sulla protezione dei dati a carattere personale del 1981;

auspicando che l'elaborazione di una Carta dei diritti possa costituire il nucleo di una riorganizzazione dei Trattati che contempra una parte di natura costituzionale sui diritti fondamentali ed il quadro istituzionale ed una parte dedicata alla definizione delle politiche attualmente disciplinate dai Trattati e delle politiche che in futuro gli Stati membri vorranno attribuire all'Unione;

auspicando che su tali temi prenda posizione la prossima COSAC di Lisbona del 29 e 30 maggio 2000, anche su iniziativa della delegazione del Senato;

auspicando che la suddetta Convenzione proceda all'elaborazione di un progetto di Carta coerente con i suddetti orientamenti e presenti il testo finale al Consiglio europeo in tempo utile affinché tale testo possa essere esaminato nell'ambito della Conferenza intergovernativa;

sottolineando la necessità di:

affermare l'indivisibilità dei diritti fondamentali sia nel senso di una loro trasmissibilità tra pilastro e pilastro, sia nel senso dell'uguale trattamento per i diritti civili e politici, da un lato, e dei diritti sociali, dall'altro;

affermare l'inviolabilità dei diritti fondamentali anche per gli stranieri, salvo le naturali differenziazioni per i diritti politici, per evitare che l'Europa presenti un duplice volto, con pratiche di discriminazione al suo interno e pretesa di clausola democratica nelle sue relazioni esterne;

collegare visibilmente i diritti fondamentali al concetto di cittadinanza europea, ora troppo ristretto nel tessuto normativo dei Trattati;

rendere realmente giustiziabili i diritti fondamentali, sia integrando le istanze di giurisdizione europea con le giurisdizioni nazionali, sia integrando, attraverso meccanismi di rinvii e ricorsi, la giurisdizione delle due Corti europee di Lussemburgo e di Strasburgo;

prevedere una clausola evolutiva che consenta un aggiornamento della Carta anche in forza di pronunce della Corte di giustizia delle Comunità europee e del richiamo alle Convenzioni europee in relazione alle mutate esigenze in materia di tutela dei diritti fondamentali che potrebbero manifestarsi in conseguenza di fenomeni quali lo sviluppo delle biotecnologie e delle tecnologie dell'informazione e la scoperta di nuovi fattori di pericolo per la salute umana e l'equilibrio ecologico;

connettere i diritti fondamentali con le politiche fondamentali per non limitare il progetto di Carta a semplice proclamazione o catalogo dei diritti ma per considerare ciascun diritto come l'espressione finale di una politica reale complessiva;

impegna il Governo ad adoperarsi affinché:

- a)* la Conferenza intergovernativa includa nel proprio ordine del giorno la procedura di adozione del progetto di Carta dei diritti fondamentali elaborato dalla suddetta Convenzione;
- b)* il negoziato sulle riforme istituzionali si concluda inserendo le disposizioni della Carta sui diritti fondamentali nel contesto dei Trattati ovvero di un protocollo allegato;
- c)* nell'ambito del negoziato sulle riforme istituzionali siano adottate delle disposizioni volte ad assicurare il carattere vincolante dei diritti fondamentali sanciti dalla Carta, a definire gli strumenti di tutela di tali diritti e ad assicurare misure di raccordo e di coordinamento con gli strumenti di tutela dei diritti umani riconosciuti dalla Convenzione europea sui diritti dell'uomo del 1950 e dalle altre convenzioni stipulate nell'ambito del Consiglio d'Europa, onde evitare la configurazione di una divisione dell'Europa basata su eventuali differenze sostanziali nello status giuridico rispettivamente garantito dall'ordinamento del Consiglio d'Europa e dal diritto dell'Unione europea.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 5 April 2000 (06.04)
(OR. fr)****CHARTE 4199/00****CONTRIB 80****COVER NOTE**

Subject : Draft EU Charter of Fundamental Rights

Please find below the European Parliament resolution, adopted on 16 March 2000 (Report by Mr Duff and Mr Voggenhuber).¹

¹ The text was submitted in all languages.

EU Charter of Fundamental Rights

A5-0064/2000

European Parliament resolution on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 – 1999/2064(COS))

The European Parliament,

- having regard to the decision of the European Council on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999),
- having regard to its position as representative of the peoples of the European Union,
- considering that the Union should strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union (Article 2 of the EU Treaty),
- having regard to the fact that the Union must respect fundamental rights "as they result from the constitutional traditions common to the Member States, as general principles of Community law" (Article 6 of the EU Treaty),
- having regard to the Preamble of the United Nations Charter and the Universal Declaration on Human Rights adopted by the UN General Assembly in its resolution 217 A (III) on 10 December 1948 in Paris,
- having regard to its numerous initiatives in the matter of fundamental and citizens' rights, in particular to its resolution of 12 April 1989 on the Declaration of Fundamental Rights and Freedoms ¹,
- having regard to its initiatives in the matter of a constitution for the European Union, in particular its resolution of 12 December 1990 on the constitutional basis of European Union ² and its resolution of 10 February 1994 on the Constitution of the European Union ³,
- having regard to the conclusions of the Cologne European Council and the conclusions of the Tampere European Council,
- having regard to its resolution of 16 September 1999 on the drawing up of a Charter of Fundamental Rights ⁴,
- having regard to its resolution of 27 October 1999 on the European Council meeting in Tampere ⁵,
- having regard to the outstanding importance of the forthcoming enlargement of the Union and the Intergovernmental Conference,

¹ OJ C 120, 16.5.1989, p. 51.

² OJ C 19, 28.1.1991, p. 65.

³ OJ C 61, 28.2.1994, p. 155.

⁴ OJ C 54, 25.2.2000, p. 93.

⁵ Texts adopted at that Sitting, point 15.

- having regard to the setting-up on 17 December 1999 in Brussels of the Convention to draft a European Union Charter of Fundamental Rights,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities, the Committee on Petitions and the Committee on Employment and Social Affairs (A5-0064/2000),
- A. whereas the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law (Article 6 of the EU Treaty),
- B. whereas the creation of an ever closer Union among the peoples of Europe (Article 1 of the EU Treaty) and the maintenance and development of the Union as an area of freedom, security and justice (Article 2 of the EU Treaty) are based on general and absolute respect for human dignity, which is unique to each person, yet common to all, and inviolable,
- C. whereas the Union must respect "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law " (Article 6 of the EU Treaty),
- D. whereas some specific rights are already enshrined in the Treaties,
- E. whereas the fundamental freedoms and rights unavoidably stemming from the recognition of human dignity require genuine, comprehensive legal protection and effective legal guarantees,
- F. whereas the primacy of Union law and significant powers of its institutions, which affect individuals, make it necessary to strengthen the protection of fundamental rights at European Union level,
- G. whereas the increase in the powers of the Union and the European Community, especially in the sensitive field of internal security, together with the limits on parliamentary or judicial controls in that field, make it obvious that there is an urgent need for a European Charter of Fundamental Rights,
- H. whereas as the Union develops an imbalance must not be created between the objective of security and the principles of freedom and law,

- I. whereas fundamental freedoms can be restricted without parliamentary approval, both in the framework of the Union Treaty and of Community law, despite the fact that this is incompatible with the constitutional traditions common to the Member States,
- J. whereas, even in the case of legitimate restrictions of fundamental rights, the inherent nature of such rights may in no case be infringed,
- K. whereas the economic aspect of European integration must henceforth be supplemented by a genuine political, democratic and social union,
- L. whereas fundamental social freedoms ought to be strengthened and developed at European Union level,
- M. whereas the Union's common foreign and security policy, which will in future include defence, must be developed in compliance with fundamental rights,
- N. whereas new conflicts with fundamental freedoms can arise from developments in, for example, biotechnology or information technology, and whereas a consensus on fundamental rights at European level constitutes an important contribution towards finding a global solution to the problem,
- O. whereas there are serious indications of a rise in racism and xenophobia,
- P. whereas it is important that, while respecting the role of every national language, the European Union and its Member States attend to the protection of the diversity of the languages and cultures of Europe, especially regional and minority languages and cultures, and to this end guarantee to the citizens of the Union, through appropriate means of support, that they can maintain and develop their own languages and cultures in the public and private domain,
- Q. whereas the human right to asylum must be maintained according to the provisions of the Geneva Refugee Convention,
- R. whereas a European Union Charter of Fundamental Rights, in the same way as national provisions concerning fundamental rights, should not in any way conflict with the European Convention on Human Rights,
- S. whereas the Union's accession to the European Convention on Human Rights following the necessary amendments to the Treaty on European Union would represent an important step towards the strengthening of the protection of fundamental rights in the Union,
- T. whereas the creation of an ever closer union among the peoples of Europe is inseparably linked with the task of increasing, in addition to fundamental rights, citizens' rights, namely the political, economic and social rights associated with Union citizenship,
- U. whereas a charter of fundamental rights constituting merely a non-binding declaration and, in addition, doing no more than merely listing existing rights, would disappoint citizens' legitimate expectations,

- V. whereas the Charter of Fundamental Rights should be regarded as a basic component of the necessary process of equipping the European Union with a constitution,
1. Welcomes the drafting of a European Union Charter of Fundamental Rights, which will contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries; welcomes therefore the progress made in this connection since the European Council meeting in Tampere, in particular the establishment of the joint Convention composed of representatives of the Heads of State and Government, the European Parliament, the parliaments of the Member States and the Commission;
 2. Notes that the establishment of a binding European list of fundamental rights will confer a more secure legal and moral basis on the process of European integration, will give concrete form to the common basis that exists at the level of the constitutional state and will provide more transparency and clarity for citizens;
 3. Offers its full support and cooperation in drafting the Charter of Fundamental Rights of the European Union;
 4. Notes that the recognition and shaping of fundamental and citizens' rights is one of the primary tasks of parliaments;
 5. Calls on its delegation to the Convention drafting the charter vigorously to defend the position set out in this resolution;
 6. Intends to vote in plenary on the adoption of the Charter at the appropriate time and deems it advisable to publish in advance its objectives regarding the Charter of Fundamental Rights as set out hereunder;
 7. Points out that its final assent to a Charter of Fundamental Rights depends to a large extent upon whether the charter:
 - (a) has fully binding legal status by being incorporated into the Treaty on European Union;
 - (b) subjects any amendment to the Charter to the same procedure as its original drafting, including the formal right of assent for the European Parliament;
 - (c) contains a clause, requiring the consent of the European Parliament whenever fundamental rights are to be restricted in any circumstances whatsoever;
 - (d) contains a clause stipulating that none of its provisions may be interpreted in a restrictive manner with regard to the protection guaranteed by Article 6(2) of the Treaty on European Union;
 - (e) includes such fundamental rights as the right of association in trade unions and the right to strike;

- (f) recognises that fundamental rights are indivisible by making the charter applicable to all the European Union's institutions and bodies and all its policies, including those contained in the second and third pillars in the context of the powers and functions conferred upon it by the Treaties;
 - (g) is binding upon the Member States when applying or transposing provisions of Community law;
 - (h) is innovative in nature by also giving legal protection to the peoples of the European Union in respect of new threats to fundamental rights, for example from the fields of information technology and biotechnologies, and confirms, as an integral part of fundamental rights, and especially women's rights, the general non-discrimination clause and environmental protection;
8. Resolves to hold a scientific colloquium to advise Parliament and to carry out public hearings of representatives of society in general;
 9. Will strongly support initiatives for a broad societal discussion in the Member States, involving social partners, NGOs and other representatives of civil society;
 10. Calls for recognition of the contribution that can be made by organisations representing civil society to the drafting of the Charter;
 11. Proposes to grant the States applying for accession observer status in the Convention drafting the Charter and to begin a continuous exchange of opinions with them in the context of the European Conference;
 12. Emphasises that the charter should not replace or weaken Member States' provisions concerning fundamental rights;
 13. Supports the agreement reached by the Convention that the charter should be drafted on the presumption that it will have full legal force;
 14. Emphasises the need to incorporate in the charter, in addition to the rights already enshrined in the EU Treaty, the standards applicable to the Union that are set out in the international conventions signed by the Member States within the context of the United Nations, the Council of Europe, the International Labour Organisation and the Organisation for Security and Cooperation in Europe;
 15. Calls upon the IGC to:
 - (a) put the incorporation into the Treaty of the Charter of Fundamental Rights on its agenda and to give it at that conference the position which it deserves in view of its paramount importance for an ever closer union among the peoples of Europe;

- (b) enable the Union to become a party to the ECHR so as to establish close cooperation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights;
 - (c) add a reference to the European Social Charter and to the appropriate ILO and UN conventions to the reference to the European Convention on Human Rights in Article 6 of the Treaty on European Union;
 - (d) give all persons protected under the charter access to the Court of Justice of the European Communities by supplementing existing mechanisms for judicial review;
16. Instructs its President to forward this resolution to the Convention responsible for drafting the European Union Charter of Fundamental Rights, the Intergovernmental Conference, the Council, the parliaments of the Member States, the Commission and the Court of Justice and the European Court of Human Rights.
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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 29 mars 2000**CHARTE 4200/00****CONTRIB 81****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de M. Hubert Haenel, représentant du Parlement français.¹

¹ Ce texte a été soumis en langue française seulement.

SÉNAT*Republique Française*

Paris, le 17 mars 2000

Hubert HAENEL**CONTRIBUTION AU PROJET DE
CHARTRE EUROPEENNE DES DROITS FONDAMENTAUX****Proposition d'inclure dans la Charte
une déclaration des responsabilités des citoyens****A - Justification :**

Il paraît nécessaire de compléter l'énoncé des droits fondamentaux par un énoncé des devoirs et responsabilités des citoyens pour deux principales raisons :

1. La Charte va, pour l'essentiel, codifier les droits fondamentaux déjà reconnus. Elle va donc comprendre deux catégories de droits :

– les droits-libertés, qui reviennent principalement à limiter et encadrer les pouvoirs des autorités publiques (même si chaque citoyen dont la liberté est ainsi reconnue a le devoir de respecter celle d'autrui) ;

– les droits-créances, qui créent des obligations pour la société. Or cette deuxième catégorie de droits, qui a tendance à s'étendre (droit au travail, à la santé, à la protection sociale...), implique, plus clairement encore que la première, des devoirs pour les citoyens.

Dans ces conditions, une Charte rédigée uniquement en termes de droits ne délivrerait pas un message approprié aux citoyens et notamment aux jeunes, qui doivent savoir que les droits sont inséparables des responsabilités.

2. La Charte doit tenir compte de la spécificité politique de l'Union européenne. Les diverses déclarations des droits dans les pays européens ont rarement mentionné les responsabilités des citoyens, parce qu'il s'agissait de conquérir des droits sur des régimes autoritaires, ou d'empêcher le retour de régimes autoritaires. L'Union européenne est dans une situation très différente. Elle n'est pas un empire. Elle repose sur une volonté commune de dépasser les affrontements et les haines entre les peuples européens ; elle est fondée sur la recherche d'une union toujours plus étroite entre les peuples, et non pas sur la volonté de limiter l'arbitraire d'un pouvoir préexistant ; elle est donc une construction, un véritable « contrat social » auquel participent des peuples d'une grande diversité, dont l'association doit être sans cesse consolidée et cimentée. Il paraît donc particulièrement justifié, dans le cas de la Charte européenne, d'insister sur la solidarité et la réciprocité, donc sur les devoirs et les responsabilités.

B - Le contenu

Une déclaration des responsabilités des citoyens pourrait retenir les thèmes suivants :

– les devoirs civiques : voter, participer à la vie politique, s'informer, participer équitablement à l'impôt ;

– les devoirs économiques : travailler, participer à la création de richesses (ces devoirs sont une contrepartie nécessaire des droits sociaux) ;

– les devoirs socioculturels : participer à la vie associative et culturelle notamment dans l'optique de la dimension européenne ;

– les devoirs vis-à-vis de l'environnement (devoirs vis-à-vis des générations futures) ;

– les devoirs envers autrui (tolérance, entraide, respect de l'égalité des sexes, responsabilités envers les enfants et les personnes âgées).

Un article final préciserait qu'aucun des devoirs ainsi énoncés ne peut être interprété comme une remise en cause d'un des droits fondamentaux reconnus par la Charte.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 4. April 2000**CHARTE 4201/00****CONTRIB 82****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsanträge zu Dokument CHARTE 4170/00
CONVENT 17, vorgelegt von Herrn Ingo Friedrich, Mitglied des Europaparlaments. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Dr. Ingo Friedrich, MdEP
 Vizepräsident des Europäischen Parlaments
 Mitglied im EU-Grundrechtskonvent

Änderungsanträge zu Dokument CONVENT 17
 Vorschläge für die Artikel über die Bürgerrechte (Artikel A bis J)

Änderungsantrag 1:

Artikel A. Grundsatz der Demokratie

1. Alle öffentliche Gewalt geht (zwei Wörter streichen) von den Völkern der in der EU vereinigten Staaten aus.
2. Die Union (drei Wörter streichen) beruht auf den Grundsätzen der Freiheit, der Demokratie, der Achtung der Menschenrechte und der Rechtsstaatlichkeit; diese Grundsätze sind allen Mitgliedstaaten gemeinsam.
3. Die Abgeordneten der Völker der in der Union (ein Wort streichen) zusammengeschlossenen (1 Wort streichen) Staaten im Europäischen Parlament werden in allgemeiner, unmittelbarer, freier, gleicher und geheimer Wahl von den Völkern der in der EU vereinigten Staaten gewählt.

In Absatz 1 "vom Volk" ersetzen durch "von den Völkern der in der EU vereinigten Staaten" .

In Absatz 2 "und ihre Organe" streichen.

In Absatz 3 "Gemeinschaft" ersetzen durch "Union" und "vereinigt" durch "zusammengeschlossenen"; "gleicher" einfügen.

Änderungsantrag 2:

Artikel B. Politische Parteien

Alle Unionsbürger und -bürgerinnen haben das Recht, mit anderen politische Parteien auf der Ebene der EU zu gründen und diesen beizutreten. Die politischen Parteien auf der Ebene der Europäischen Union tragen dazu bei, ein europäisches Bewußtsein herauszubilden und den politischen Willen der Bürger und Bürgerinnen der Union zum Ausdruck zu bringen. Dieses Recht gilt nicht für Parteien, die nach ihren Zielen oder dem Verhalten ihrer Anhänger nicht die Grundsätze der Freiheit, der Demokratie, der Achtung der Menschenrechte und der Rechtsstaatlichkeit achten.

*In Satz 1 "auf der Ebene der EU" einfügen nach "politische Parteien". Neuer Satz angefügt*Änderungsantrag 3:

Artikel C. Recht auf Teilnahme an den Wahlen zum Europäischen Parlament

Alle Unionsbürger und -bürgerinnen mit Wohnsitz in einem Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen, besitzen in dem Mitgliedstaat, in dem sie ihren Wohnsitz haben, das aktive und passive Wahlrecht bei den Wahlen zum Europäischen Parlament, wobei für sie dieselben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaats, sofern dem nicht besondere Probleme dieses Mitgliedstaates entgegenstehen. Dieses Recht wird nach den im Vertrag zur Gründung der Europäischen Gemeinschaft vorgesehenen Einzelheiten ausgeübt.

In Satz 1 "sofern dem nicht besondere Probleme dieses Mitgliedstaates entgegenstehen" nach "Mitgliedstaats".

Änderungsantrag 4:

Artikel D. Recht auf Teilnahme an den Kommunalwahlen

Alle Unionsbürger und -bürgerinnen mit Wohnsitz in einem Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen, haben in dem Mitgliedstaat, in dem sie ihren Wohnsitz haben, das aktive und passive Wahlrecht bei Kommunalwahlen, wobei für sie die selben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaates, sofern dem nicht besondere Probleme dieses Mitgliedstaates entgegen stehen. Dieses Recht wird nach den im Vertrag zur Gründung der Europäischen Gemeinschaft vorgesehenen Einzelheiten ausgeübt.

In Satz 1 einfügen: "sofern dem nicht besondere Probleme dieses Mitgliedstaaten entgegen stehen" einfügen nach "Mitgliedstaats".

Änderungsantrag 5:

Artikel E. Recht auf eine ordnungsgemäße Verwaltung [Beziehungen zur Verwaltung]

- 1. Alle Personen mit Wohnsitz in einem Mitgliedstaat haben ein Recht darauf, daß ihre Angelegenheiten von den Organen und Einrichtungen der Union ordnungsgemäß, unparteiisch, gerecht und innerhalb einer angemessenen Frist behandelt werden.**

Absatz 2 a.F. streichen.

- 2. Alle Bürger und Bürgerinnen können sich in einer der Amtssprachen der Union an die Organe und Einrichtungen der Union wenden und müssen eine Antwort in dieser Sprache erhalten.**

Nr. 2 streichen.

In Absatz "zur Wahrung ihrer Rechte" einfügen nach "Argumente"

Änderungsantrag 6:

Artikel F streichen

Änderungsantrag 7:

Artikel H. Petitionsrecht

Alle Unionsbürger und -bürgerinnen sowie alle Personen mit Wohnsitz im Hoheitsgebiet eines Mitgliedstaates besitzen das Petitionsrecht beim Europäischen Parlament in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die ihn oder sie unmittelbar betreffen und den im Vertrag zur Gründung der Europäischen Gemeinschaft festgelegten Bedingungen.

Nach den Worten beim Europäischen Parlament die Worte "in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die ihn oder sie unmittelbar betreffen" einfügen.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 avril 2000**CHARTE 4202/00****CONTRIB 83****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de M. Alvaro Rodriguez Bereijo, Représentant du
President du gouvernement espagnol relative aux articles 1 a 16 du document CHARTE 4159/00
CONVENT 13.¹

¹ Ce texte a été soumis en langues française et espagnole.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 12 April 2000 (18.04)
(OR. en,nl)****CHARTE 4225/00****CONTRIB 100****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mrs Johanna Maij-Weggen, member of the European Parliament, on the document CHARTE 4192/00 CONVENT 18. ¹

¹ This text exists in Dutch and English.

Mrs Maij-Weggen's amendments to the proposed articles on social rights

Article I should read as follows:

Equality between men and women must be ensured with regard to employment, pay, education and vocational training, social protection and taxation.

Article IV should read as follows:

1. Employers and workers have the right to associate freely, to negotiate collective agreements and, in cases of conflicts of interest, to take action and/or strike, even at European level.
2. Every citizen has the right, on an individual basis, to reach agreements concerning his/her employment contract, in compliance with national and European legislation.

Article V should read as follows:

Every worker has the right to fair remuneration.

Article VII should read as follows:

Every worker has the right to safe and healthy working conditions. [no change to English].

Article VIII, second paragraph, should read as follows:

Young people under eighteen years of age must have working conditions which suit their age and be protected against any work likely to harm their health and development.

Une autre solution consisterait dans l'inclusion de cette disposition au préambule ou d'en faire un article à part".

Ces observations importantes posent les problèmes suivants:

L'un d'eux fait référence au cadre des compétences, étant donné que l'on y spécifie l'application de la Charte aux institutions et organismes de l'Union et aux Etats membres lorsqu'ils appliquent le Droit communautaire, sans tenir compte que beaucoup des droits que l'on voudrait inclure dans la Charte, par leur propre nature et contenu, ne seront jamais appliqués, ni par la Communauté et ses Institutions, ni par les Etats membres, en exécution du Droit communautaire. Si l'on maintient le champ d'application prévu à la clause que nous examinons, nous nous trouverions devant le fait que la Charte contient des droits dont l'application est impossible. Pour cela, il serait préférable de les supprimer ou bien d'élargir leur champ d'application, entendu que ces droits s'appliquent aux Etats membres dans le cadre de ses compétences. Les droits mentionnés devront avoir les Etats membres en tant que destinataires exclusifs, étant donné qu'actuellement la Communauté manque de compétences sur eux. C'est le cas, par exemple avec le droit à la vie, la peine de mort, le procès pénal, l'éducation, etc. Ces droits, dans la mesure où ils sont contenus dans la Convention Européenne des Droits Humains (CEDH) et font partie du patrimoine des droits fondamentaux européens, doivent se refléter dans la Charte, mais ils sont uniquement exigibles aux Etats. Puisque la Communauté et ses institutions, spécialement le Tribunal de Justice, manquent de compétences pour leur sauvegarde et control, il faudrait s'en remettre à ce qui est prévu dans la législation interne de chaque Etat, sans préjudice des renvois que les législations internes mentionnées puissent faire à d'autres textes ou instances non communautaires. N'est pas recevable un renvoi spécifique à une autre source qui ne soit pas celle interne de chaque Etat, puisque, dans le cas contraire, l'interprétation du droit communautaire serait attribuée à une instance supranationale différente de la Communauté.

Troisièmement, il est très important de laisser bien clair que la référence à la reconnaissance et à la protection des droits fondamentaux ne peut être interprétée en aucun cas comme l'élargissement, dans ces matières, des compétences non incluses actuellement dans le cadre de la Communauté Européenne d'après le texte de ses Traités. Le contraire supposerait une modification indirecte du Droit Communautaire qui dépasserait le cadre du mandat reçu par la Convention. Cette inquiétude est reflétée dans le projet et l'on propose, comme rédaction alternative, suite aux observations antérieures, ce qui suit:

"Les dispositions de la présente Charte seront applicables à la Communauté et ses institutions et aux Etats membres dans la limite de leurs compétences respectives.

Les dispositions de la Charte n'impliquent aucune attribution de nouvelles compétences en faveur de la Communauté ou ses institutions, ni aucun élargissement des compétences existentes ou des objectifs qui ont été attribués à la Communauté et ses institutions".

Cette double clause, relative au champ d'application de la Charte et à la non-modification du champ de compétence de la Communauté et ses Institutions, devrait se compléter avec une autre clause relative au control juridictionnel des droits reconnus dans la Charte en cohérence avec ce qui a été exposé précédemment. Un contenu possible de cette clause serait différencier trois types de suppositions (ou hypothèses):

* le respect, par la Communauté et ses Institutions, des droits reconnus dans la Charte y qui affecten son champ de compétence, correspondrait au Tribunal de Justice des Communautés Européennes;

* le respect, par les Etats Membres, des droits reconnus dans la Charte lorsqu'ils agissent en exécution du Droit communautaire, correspondrait au Tribunal de Justice des Communautés Européennes et aux organismes juridictionnels internes en tant qu'applicateurs du Droit Communautaire;

* le respect, par les Etats Membres, des droits reconnus par la Charte dans les matières qui sont de sa seule compétence, serait garanti conformément au système de contrôle juridictionnel prévu dans les législations internes de chacun des Etats Membres.

En accord avec la terminologie utilisée par le TCE, on propose de remplacer le terme "missions" par "objectifs".

Article 2. Le Droit à la vie

1. Toute personne a droit à la vie.

2. Personne ne pourra être condamné à la peine de mort, ni exécuté.

Rédaction alternative

Article 2. Le Droit à la vie.

1. Tous ont droit à la vie.

2. Personne ne pourra être condamné à la peine de mort, ni exécuté, sauf ce qui est prévu dans les lois pénales par temps de guerre.

Motivation:

On propose l'expression "tous" au lieu de "toute personne", afin d'éviter le conflit de la détermination juridique, différente dans les différents Etats, du concept de la personne.

En ce qui concerne la peine de mort, le CEDH dans son protocole n° 6 a prévu l'exemption à l'abolition de la peine de mort, son maintien en temps de guerre, et la Convention a été ratifiée dans ces termes. L'Espagne a aboli, depuis la Loi Organique 11/1995, du 27 novembre, la peine de mort y compris dans ce cas et a ratifié sans réserves le second protocole facultatif du Pacte International des Droits Civils et Politiques destiné à abolir la peine de mort (New York 15.12.1989). Cependant, l'article 15 de la Constitution espagnole prévoit la possible application de la peine de mort en cas de guerre, et ce d'après ce que le législateur puisse ordonner, à tout moment, et l'abolition absolue est en contradiction avec le précepte mentionné.

L'exposition des motifs du projet reprend cette circonstance, mais comprend que celle-ci est sauvée par le renvoi que l'article 6 du TUE fait au CEDH. Ainsi, et comme on pourra l'observer plus loin, dans divers articles de la proposition qui a été remise, on a supprimé toute référence à des limites, exceptions ou définitions contenues dans le CEDH (par exemple, l'article 5.2, définitions du travail forcé ou obligatoire; ou l'article 8, limites à la publicité du procès, libertés de pensée, d'expression, etc.), entendu qu'ils sont d'application en vertu de l'article 6 UE.

Nous ne partageons pas cette opinion étant donné que cet article établi, à son alinéa 2° que *"l'Union Européenne respectera les droits fondamentaux, tels qu'ils sont garantis dans la Convention Européenne pour la Protection des Droits Humains y des Libertés Fondamentales, signé à Rome le 4 novembre 1950, et tel que prévu dans les traditions constitutionnelles communes aux Etats Membres, en tant que principes généraux du Droit Communautaire"*. Comme on peut apprécier, ce précepte oblige l'Union à respecter les droits fondamentaux en tant que principes généraux du Droit communautaire, en spécifiant que les droits en question seront ceux établis dans le CEDH et dans les traditions constitutionnelles des Etats Membres. Telle est la situation actuelle, à laquelle on devrait ajouter le contrôle juridictionnel que le Tribunal de Justice effectue pour le respect de cet article, en vertu de l'article 46 UE.

Cependant, par l'adoption d'une Charte des Droits Fondamentaux de l'Union Européenne et, si cela était le cas, l'incorporation aux Traités, il est évident que cet article 6 devra, soit être modifié, soit disparaître. Cela n'a aucun sens de dire que les droits fondamentaux doivent être respectés par l'Union en tant que principes généraux du Droit Communautaire et en accord avec le CEDH et les traditions constitutionnelles des Etats Membres, et en même temps avoir une énumération de droits qui lient les Institutions et les Etats Membres en exécution du Droit communautaire.

D'autre part, s'il s'avérait qu'aucune spécification de limites ou d'exceptions n'était nécessaire, étant donné que, en vertu de l'art 6 UE, c'est le CEDH qui est appliqué, c'est alors l'inutilité de l'exercice effectué qui est mise en évidence. Il n'est donc pas nécessaire de rédiger une Charte, puisque nous disposons de l'art. 6 UE qui fait que le CEDH s'applique à l'Union.

En ce qui concerne la peine de mort, on ne peut omettre, en outre, que cette interdiction est dirigée unique et exclusivement aux Etats, et non aux Institutions Européennes.

Article 3. Le Droit au respect de l'intégrité

1. Toute personne a le droit au respect de son intégrité physique et psychique.

2. Dans le cadre de la médecine et de la biologie, on doit spécialement respecter les principes suivants:

- interdiction des pratiques eugéniques
- respect du consentement libre et informé du patient
- interdiction du fait que le corps humains et ses produits se convertissent en objet de profit (ou lucre)
- interdiction de la clonation d'êtres humains

Observations.

1) On propose de modifier, ne fut-ce que la traduction espagnole de l'alinéa premier de l'article, en remplaçant "psychique" par "morale". En effet, le terme "moral" se rattache plus à la tradition juridique espagnole et, en outre, apporte une dimension plus ample que "psychique" -qui est plutôt un terme scientifique- et qui, plus est, se réfère plus à l'intégrité physique.

2) L'alinéa relatif à la médecine et à la biologie a été extrait, comme expliqué dans l'exposition des motifs, de la "Convention pour la Protection des Droits Humains et la dignité de l'être humain en respect avec les applications de la biologie et de la médecine" élaborée dans le cadre du Conseil Européen et que l'Espagne n'a pas ratifié.

Les mentions réalisées à cet alinéa n'apportent aucune valeur ajoutée à la reconnaissance du droit à la vie et à l'intégrité physique et moral, et son ambiguïté est susceptible de présenter, au contraire, des problèmes d'interprétation. En accord avec le proverbe allemand "dans le détail se trouve le diable", il se peut qu'en concrétisant les interdictions à celles prévues dans cet article, des faits également contraires aux Droits Humains non repris dans l'article proposé puissent y être admis. On peut invoquer le fait que le Droit doit s'adapter à l'évolution technologique, mais cette même raison conseille précisément, lorsque l'on dispose de prévisions qui peuvent parfaitement s'adapter aux changements technologiques, ne pas tomber dans des classifications qui emprisonnent l'évolution propre à laquelle on prétend s'adapter. D'autre part, l'analyse de la Convention à laquelle on fait référence révèle que les préceptes qui y sont contenus doivent se comprendre dans son entièreté, en satisfaisant par exemple les limites et exceptions prévues dans les articles 7, 8, 9 et 26 sur la protection des personnes qui souffrent de troubles mentaux, les situations d'urgence, les désirs exprimés auparavant et les restrictions dans l'exercice des droits.

Article 4. Interdiction de torture et des traitements inhumains.

Personne ne pourra être soumise à la torture ni à des peines ou traitements inhumains ou dégradants.

Aucune observation à formuler.

Article 5. Interdiction de l'esclavage et du travail forcé.

- 1. Personne ne pourra être soumise à l'esclavage ou à la servitude.**
- 2. Personne ne pourra être contrainte de réaliser un travail forcé ou obligatoire.**

Rédaction alternative:

Ajouter à l'alinéa second ce qui suit: "**N'auront pas ce caractère les prestations personnelles qui sont établies par loi et sont exigées aux citoyens pour des raisons civiques, dans les cas d'urgence, de calamité, la prestation du service militaire ou la prestation sociale qui le remplace, ni le travail exigé normalement à une personne privée de liberté.**"

Motivation:

En accord avec l'article 4.3, lettres a, b, c et d du CEDH, n'ont pas de caractère forcé les prestations personnelles exigées aux citoyens pour des raisons civiques, dans les cas d'urgence, de calamité, ni la prestation du service militaire ou prestation sociale de remplacement, ni le travail exigé normalement à une personne privée de liberté. Même si dans l'exposition de motifs on affirme que le renvoi du TUE à son article 6 est suffisant pour sauver ces exceptions, on réitère que, sans préjudice aucun du caractère qu'il faudra donner à cette Charte dans l'Ordre Juridique Européen, un précepte de ce genre dirigé aux Etats-Unis doit contenir en soi la définition adéquate du droit qui exclut la considération de travaux forcés de ceux énoncés.

Article 6. Le Droit à la liberté et à la sécurité

Toute personne a le droit à la liberté et à la sécurité. Personne ne peut être privé de sa liberté, sauf dans des cas spécifiques et en accord avec les voies légales.

Rédaction alternative:

Toute personne a le droit à la liberté et à la sécurité. Personne ne peut être privé de sa liberté, sauf dans les cas et dans la forme prévus par la loi.

Motivation:

Il n'existe pas d'inconvénient à accepter la synthèse qui, en relation avec le brouillon précédant et avec le texte du CEDH, se fait du droit à la liberté et à la sécurité, en élargissant en plus son contenu à la "privation de la liberté" qu'elle qu'en soit la cause et non uniquement à la détention ou prison pour des causes pénales (pour maladies psychiques, par exemple). En outre, dans la mesure où le précepte peut uniquement être dirigé aux Etats-Unis, celui-ci est suffisant avec la proclamation du droit.

La proposition qui est réalisée prétend à une plus grande perfection linguistique, à la fois qu'à son accomodation au langage technique juridique: les cas "spécifiques" sont seulement ceux déterminés par la loi, et les "voies légales" sont les formes ou procédures également déterminées par loi.

Article 7. Le Droit au recours effectif

Toute personne dont les droits et libertés ont été violés a le droit au recours effectif devant un tribunal.

Note: Les articles 7 et 8 devraient se scinder en deux alinéas d'un même précepte en tant que manifestation des procédures auxquelles font expressément référence les conclusions du Conseil de l'Europe; ceci peut être utile afin de favoriser une meilleure visibilité de la Charte; c'est en effet le cas à l'article 6 du CEDH.

Rédaction alternative:

Le Droit à la tutelle judiciaire effective.

Toute personne, dont les droits et libertés, reconnus dans cette Charte, ont été violés, a le droit d'accès à la tutelle judiciaire effective en accord avec le Droit Communautaire et avec la loi de chaque Etat.

Motivation:

1. Il faut mentionner expressément que les droits et libertés protégés son ceux reconnus dans la Charte et non d'autres.

2. Afin de moderniser la formulation de ce droit et le doter d'un caractère omnicompréhensif, c'est-à-dire, dans tous les domaines juridictionnels (civils, pénaux, contentieux administratifs, c-à-d les autorités judiciaires qui, dans certains Etats contrôlent l'Administration, et Social), internes et communautaires, il paraît opportun de modifier sa dénomination en utilisant l'expression "droit d'accès à la tutelle judiciaire effective". En outre, en espagnol le mot "recours" s'identifie à la révision par une instance soit administrative ou judiciaires d'un cas auparavant prononcé par une instance inférieure.

3. En tous cas, l'accès à la tutelle judiciaire effective est un droit conféré par la Loi, c'est pourquoi l'on propose une mention expresse à celle-ci pour son développement par les Etats ou aux Traités pour ce qui est des Institutions Européennes. Ce seront donc la Loi et le Droit Communautaire qui, tout en respectant l'accès à la tutelle judiciaire, établiront les ordres juridictionnels et leurs respectives compétences, les procédures afin de rendre effectif ce droit, en y incluant les règles de légitimation active et passive, etc...

Note. L'Espagne n'a pas ratifié le protocole n° 7 concernant la double instance pénale; il ne semble pas que dans ce texte cette réserve soit compromise.

Article 8. Le Droit à un tribunal impartial.

Toute personne a le droit à ce que sa cause soit entendue équitablement et publiquement, dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi. Une assistance juridique gratuite sera prestée à ceux qui ne disposent pas de moyens suffisants, si toutefois celle-ci est indispensable afin de garantir l'efficacité de l'accès à la justice.

Aucune observation n'est formulée. La rédaction pourrait s'améliorer, du moins en espagnol, en modifiant les expressions suivantes:

- "autorité judiciaire" (qui comprend les organes juridictionnels unipersonnels et associés, et qui en Espagne sont appelés Tribunaux).
- "prédéterminé para la loi" au lieu de "establí"

Article 9. Les Droits à la défense.

Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement déclarée et a droit au respect des droits à la défense.

Note: Les articles 9, 10 et 11 devraient être groupés en un seul, puisqu'ils établissent tous trois des garanties au procès pénal.

Rédaction alternative

Article 9. Les Droits à la défense

Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement déclarée et a droit au respect des droits à la défense et à l'égalité des armes.

Observations:

On ne peut passer sous silence que l'Espagne a formulé, en son temps, une réserve en ce qui concerne l'application des articles 5 et 6 du CEDH en relation avec le régime disciplinaire des Forces Armées, actuellement régi par la Loi Organique 8/1998, du 2 décembre, du Régime Disciplinaire des Forces Armées, et la Loi Organique 11/1991 qui établit le régime disciplinaire de la Garde Civile, qui, en accord avec l'article 25.3 CE prévoit l'imposition, par les autorités militaires non judiciaires, de peines privant de la liberté dans ce domaine. La moindre concrétion des préceptes de ce dernier brouillon par rapport au précédent paraît éviter toute collision entre l'ordre interne et ce que l'on y exprime, tant que sa rédaction s'en tient aux termes actuels.

Article 10. Il n'y a pas de peine sans loi.

Personne ne pourra être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constitue pas une infraction prévue par le Droit national, le Droit de l'Union ou le Droit international. De même, aucune peine plus grave que celle d'application au moment où l'infraction a été commise ne pourra être imposée. Si, postérieurement à l'accomplissement de l'infraction, la loi ordonne l'imposition d'une peine plus légère, celle-ci devra être appliquée.

Le présent article n'empêchera pas le jugement ni le châtement d'une personne coupable d'une action ou d'une omission qui, au moment de son accomplissement, constituerait un délit selon les principes généraux des Droits reconnus par les nations démocratiques.

Rédaction alternative:**Article 10. Principe de légalité pénale**

- "Personne ne pourra être condamné **pénalement** pour une action ou une omission qui, au moment où elle a été commise, ne constitue pas **une infraction pénale prévue par la loi**. De même, aucune peine plus grave que celle d'application au moment où l'infraction a été commise ne pourra être imposée. Si, postérieurement à l'accomplissement de l'infraction, la loi ordonne l'imposition d'une peine plus légère, celle-ci devra être appliquée".

- Suppression du second paragraphe.

Motivation:

1) L'inclusion de l'expression "pénale" permet de délimiter le cadre de ce Droit à la légalité. De ce fait, en principe, est exclue son application dans le domaine de ce qui peut être sanctionné administrativement. Cela n'empêcherait pas à ce que dans un précepte à part, on fasse une mention à l'application du principe de légalité dans le domaine des sanctions administratives, avec un renvoi à la "legislation" qui permette la prévision des infractions et des sanctions dans les normes communautaires (Règlements et Directives), la collaboration des règlements émanant de l'Administration dans la description des types des infractions et dans la détermination des sanctions, de même que son grand jeu dans le domaine des relations spéciales de soumission. Il est très difficile que l'article s'applique aux Institutions de la Communauté, tandis que l'utilisation par la Communauté Européenne de la faculté sanctionnatrice et quotidienne.

2) Au contraire, on inclut la mention à l'expression "loi" au lieu de Droit national ou droit international, parce que cet instrument de norme permet de renforcer les garanties des citoyens en réservant à l'expression de la volonté populaire dans les organismes qui comprennent le pouvoir législatif, la compétence pour prévoir des infractions pénales. Il ne paraît pas opportun dans l'état actuel du droit européen de maintenir les renvois vagues au Droit international ou le seconde paragraph relatif aux "principes généraux du Droit", étant donné qu'il existent des instruments juridiques précis nationaux et internationaux sous forme des lois et traités qui garantissent aussi bien la punition de coupable de ce gens de délits que ses droits à la défense. Ce qu'établi précisément aussi bien le droit international que les principes constitutionnels au sujet de ces matières, c'est la réserve stricte à la Loi pour la configuration des délits et des peines.

3. On propose l'élimination de la référence au Droit de l'Union, parce qu'actuellement elle manque absolument de compétences en matière de typification de formes délictueuses.

Article 11. Le droit de ne pas être jugé ou puni deux fois

Personne ne pourra être sous procès ou puni pénalement à cause d'une infraction pour laquelle il a déjà été absous ou condamné par une sentence définitive conformément à la loi.

Rédaction alternative:

Le droit à ne pas être jugé ou **condamné pénalement** deux fois **pour le même fait**.

Personne ne pourra être inculpé ou condamné pénalement en raison des faits pour lesquels il a été déjà absous ou condamné pénalement par sentence ferme.

Motivation:

Le caractère pénal du champ d'application de cet article 7 devrait être renforcé, de ce fait la possibilité de la double sanction pénale et disciplinaire pour le même fait serait sauvée, raison pour laquelle l'Espagne n'a pas ratifié le protocole n° 7 du CEDH. En effet, le problème que suscite ce principe et son extension au domaine disciplinaire en interdisant la double sanction pénale et administrative pour des mêmes faits dans le domaine des nommées "relations spéciales de soumission", qui s'applique, par exemple, aux fonctionnaires, ou aux personnes liées à l'Administration avec une intensité spéciale (par exemple, une peine privative de liberté pour un délit d'assassinat pourrait être imposée par un juge pénal à un agent de l'autorité et, postérieurement, l'expulsion de l'Administration comme conséquence de la sentence pénale par une autorité administrative dans une procédure disciplinaire). D'autre part, dans ce cas la rédaction du brouillon précédent est préférable, puisqu'elle délimite avec plus de précision le champ du ne bis in idem à la double sanction pénale pour les mêmes **faits**, mieux qu'infractions.

Une chose différente serait que l'on admette la suggestion formulée en relation avec la prévision des principes spécifiques dans le domaine de la procédure administrative en général et des sanctions administratives en particulier, imposées par les Etats lorsqu'ils appliquent le Droit Communautaire ou par les Institutions Communautaires, en prévoyant un précepte interdisant, dans le domaine des sanctions administratives, la double sanction pour le même fait.

Les réserves exposées par l'Espagne sont partagées par d'autres Etats de l'Union.

L'affirmation réalisée dans l'exposition des motifs doit se nuancer dans le sens que "le principe non bis in idem" s'applique au Droit Communautaire (entre autres parmi d'autres exemples d'une jurisprudence importante, la sentence du 5 mai 1966, Gutmann contre Commission, affaires 18/65 et 35/65. Rec. 1966 p.150, et, dans une affaire récente la sentence du Tribunal de Justice, du 20 avril 99 les affaires conjointes T-305/94 et autres, Limburgse Vinyl Maatschappij NV contre Commission, non encore publiées). Ce qui est repris, au moins dans la première sentence que l'on a pu consulter, c'est l'interdiction de la double sanction disciplinaire non pénale (Dans ce cas, la sanction était imposée par la Commission à un fonctionnaire communautaire), pour des mêmes faits, question différente à celle posée ici. En tout cas, la proposition insisterait sur la convenance de prévoir des dispositions relatives à l'exercice du droit administratif sanctionneur par les Institutions de la Communauté.

Article 12. Respect de la vie privée.

Toute personne a le droit au respect de sa vie privée, de son honneur, de son domicile et du secret de ses communications.

Rédaction alternative

Intimité personnelle et familiale.

Sont garantis les droits à l'intimité personnelle et familiale, et à l'honneur; de même que les droits à l'inviolabilité du domicile, au secret des communications indépendamment du support utilisé et à la protection des données à caractère personnel. L'exercice de ces droits pourra être limité par Loi et, si cela était le cas, par autorisation judiciaire préalable.

Motivation:

1. Il serait opportun de supprimer la mention à l'identité par rapport au brouillon précédent, qui n'apparaît ni dans le CEDH ni dans le Droit Interne espagnol et son inclusion peut poser de grands problèmes d'interprétation, en commençant par sa propre définition et sa titularité.
2. D'autre part, il paraît plus adéquat de faire référence, en espagnol, au droit à l'honneur au lieu de la réputation (tel que repris dans le nouveau texte), et à l'intimité plutôt qu'à la vie privée et familiale. On propose de conserver ici la mention à la vie familiale, parce qu'on comprend que ce qui est protégé est plutôt l'intimité ou la privacité familiale que l'institution familiale, conclusion à laquelle on arrive en changeant de place cette inclusion à l'article 13.1.
3. D'autre part, il semblerait que ce soit l'endroit opportun pour inclure la protection des données et la limitation de l'usage de l'informatique, étant donné qu'elles ont une relation directe avec l'intimité, plutôt que de leur dédier un précepte propre et surtout séparé de celui-ci.
4. Dans la rédaction alternative, une mention aux limites de ce droit y a été incluse. On réitère ainsi la disconformité, exprimée dans les observations à l'article 2.2 en relation avec l'interprétation de l'article 6 TUE. A ce qu'on y dit, il faut ajouter la conviction du fait que les limites des droits sont une part consubstantielle de leur contenu et leur propre définition. Dans certains cas, comme on verra plus loin

avec la liberté d'expression, la limite s'établit précisément en défense des autres droits, tels que le droit à l'honneur ou à l'intimité. Il faut accepter l'idée, dans ces droits qui s'appliquent également aux relations entre particuliers, que l'expression des limites prive de force expresse le droit, alors que ce qu'il fait est précisément l'inverse, le garantir. Les destinataires des limitations ne sont pas seulement les Etats mais aussi les autres citoyens. Dans ce cas, l'existence des limites à ces droits doit être mentionnée (Cfr article 8 CEDH), même en exigeant son établissement par loi, de même que sa garantie, en exigeant que la limitation se fasse par intervention judiciaire.

Article 13. Vie familiale.

- 1. Toute personne a le droit au respect de sa vie familiale.**
- 2. Toute personne a le droit de se marier et de fonder une famille d'après les lois des Etats membres relatives à l'exercice de ce droit.**
- 3. La protection de la famille sur le plan juridique, économique et social serait garantie.**

Observations:

En concordance avec ce qui a déjà été exprimé antérieurement, étant donné qu'il ne s'agit pas de protéger la famille en tant qu'Institution juridique, sinon son intimité, on propose de ramener son contenu à l'alinéa précédant.

En ce qui concerne l'alinéa second, la nouvelle formulation, avec renvoi à la Loi de chaque Etat pour l'établissement des conditions requises et des limites de ce droit, paraît opportune.

L'alinéa 3, bien qu'ayant changé sa rédaction par rapport à la version précédente, établit un principe de politique sociale qui ne fait pas partie de l'actuelle compétence de l'Union Européenne ni de la Communauté, c'est pourquoi sa formulation risque d'être interprétée dans le sens d'extralimenter le mandat reçu par la Convention, dans les termes exprimés auparavant. On propose sa suppression.

Article 14. Liberté de pensée, de conscience et de religion.

Toute personne a le droit à la liberté de pensée, de conscience et de religion.

Rédaction alternative: Ajout d'un nouvel alinéa:

- 2. Ces droits ne pourront faire l'objet de plus de restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires et proportionnelles pour la protection de l'ordre, la santé ou la morale publiques ou des droits et libertés reconnus dans cette Charte.**

Observations:

Le précepte reproduit littéralement l'alinéa 1 de l'article 9 du CEDH et, comme tel, ne suscite aucune question. Non obstant, les limitations à ce droit, tel que prévue à l'alinéa second, sont omises et,

d'après notre critère, celles-ci doivent figurer littéralement à l'article ou ne fût-ce que de façon abrégée. On pourrait compléter le précepte avec l'inclusion d'une mention relative au fait que "personne ne pourra être obligé à déclarer d'après son idéologie, sa religion ou ses croyances".

Article 15. La liberté d'expression.

1. Toute personne a le droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de ne pas recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir une ingérence quelconque de la part des autorités publiques et sans considération des frontières.

2. L'art, la science et l'investigation sont libres.

Observations.

La rédaction du précepte reprend partiellement l'article 10 du CEDH. La mention au fait que "l'art, la science et l'investigation sont libres" se trouve maintenant correctement incluse, en ce qui concerne les manifestations des droits à la liberté de pensée, d'expression et d'information.

Dans ce cas-ci, sans doute avec plus de clarté que dans d'autres, on apprécie le besoin de mentionner expressément les limites de ces droits, c'est pourquoi on réitère les observations précédentes à ce sujet. De ce fait, on propose l'ajout d'un alinéa supplémentaire avec le contenu suivant:

3. Ces droits ont leur limite au respect des droits reconnus dans cette Charte, qui sont ceux établis par les lois qui les développent, ceux qui dérivent de la sécurité publique, et, spécialement, le droit à l'honneur, à l'intimité et à la protection de l'enfance et de la jeunesse.

Article 16. Le Droit à l'éducation.

1. Le droit à l'instruction ne peut être refusé à personne, ce qui inclut, en particulier, la possibilité de suivre gratuitement l'enseignement obligatoire.

2. La création de centres d'enseignements est libre.

3. On respectera le droit des parents à assurer l'éducation et l'enseignement de leurs enfants selon leurs convictions religieuses et philosophiques.

Rédaction alternative:

1. Tout le monde a le droit à l'instruction. La gratuité de l'enseignement de base obligatoire sera garantie.

2. On garantira la liberté de création de centres décents tout en respectant les principes démocratiques.

3. On respectera le droit des parents à assurer l'éducation et l'enseignement de leurs enfants, conformément à leurs convictions religieuses et philosophiques.

Motivation:

1. On propose la rédaction positive du premier alinéa avec l'intention de donner une plus grande emphase au caractère subjectif de ces droits.

2. Au sujet de l'alinéa 2, il faut dire que la liberté de création est un principe admis par tous les Etats Membres mais dont l'exercice est soumis au développement légal, où sont établis des conditions qui le limitent (à titre d'exemple on peut citer la régularisation des conditions des centres d'enseignement, en ce qui concerne leur qualité d'enseignement ou l'homologation des titres), outre la limite concernant les autres droits et principes démocratiques.

17 mars 2000.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 4. April 2000**CHARTE 4203/00****CONTRIB 84****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Anmerkungen der Arbeitsgruppe der deutschen Länder, vorgelegt von Herrn Jürgen Gnauck, Vertreter des deutschen Bundestags, zu Dokument CHARTE 4137/00 CONVENT 8 und CHARTE 4170/00 CONVENT 17.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Sekretariat des Konvents

Fax: 0032-2-285 7837
e-mail: Jean-Paul.Jacqué@consilium.eu.int

Geschäftszeichen:	Ihr Zeichen, Ihre Nachricht vom	Telefon	Datum
33/KI-03145			

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Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums CHARTE 4137/00 CONVENT 8 und CHARTE 4170/00 CONVENT 17

Sehr geehrter Herr Vorsitzender,

das Präsidium hat für die informelle Plenartagung des Konvents am 27./28. März 2000 Vorschläge für die Artikel 10 bis 19 (Dokument CONVENT 8) und für die Bürgerrechte (Dokument CONVENT 17) vorgelegt. Die deutschen Länder haben sich im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild verschafft. Ich erlaube mir, Ihnen diese Einschätzung zu übermitteln und möchte Sie herzlich bitten, unsere Anregungen im Verlaufe der Diskussion im Konvent zu berücksichtigen.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Regierungsstraße 73 • 99084 Erfurt • Telefon: (0361) 37 92831 • Telefax: (0361) 37 92832

Thüringer Staatskanzlei

Erfurt, den 27.08.2000

Referat 33/Bo, Fie

**Entwurf der Charta der Grundrechte der Europäischen Union
Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums
Charte 4170/00 CONVENT 17 und Charte 4137/00 CONVENT 8**

Zum Dokument CONVENT 17:

1. Zur Einleitung

Unter der Rubrik oder dem Oberbegriff "Bürgerrechte" schlägt der Vorspann eine Dreiteilung zwischen Bürgerrechten im eigentlichen Sinne, Einwohnerrechten und Menschenrechten vor. In der verfassungsrechtlichen Terminologie stellt jedoch der Begriff "Bürgerrechte" den Gegenbegriff zu "Menschenrechten" dar. Daher wäre hier wohl der Oberbegriff der "politischen Rechte" zutreffender.

Die in Erwägung gezogene allgemeine Bestimmung, wonach den Unionsbürgern vorbehaltene Rechte auf Staatsangehörige dritter Länder ausgedehnt werden können, lehnen die deutschen Länder ab. Für eine derartige Ausweitung besteht in der Charta kein Bedürfnis. Im Übrigen versteht es sich von selbst, dass eine Ausdehnung jederzeit erfolgen kann.

2. Zu Artikel A. Grundsatz der Demokratie

Absatz 1 spricht allgemein vom "Volk". Ein europäisches Staatsvolk hat sich jedoch nicht gebildet. Bezugspunkt der Charta müssen daher die Völker der Unionsstaaten bleiben, wie es die Absätze 2 und 3 auch zutreffend voraussetzen. Daher wird vorgeschlagen, anstelle der Aussage "vom Volk" die Wörter "von den Völkern der in der Europäischen Union vereinigten (oder: zusammengeschlossenen) Staaten" einzufügen.

Die Vorschrift des Absatzes 2 geht insoweit über den ihr zu Grunde liegenden Artikel 6 Abs. 1 EUV hinaus, als nach dem Wort "Union" die Wörter "und ihre Organe" eingefügt werden. Ist damit etwa eine weitergehende "Demokratisierung" der Organe bezweckt? Auf der anderen Seite übernimmt Absatz 2 die Formulierung des Artikels 6 Abs. 1 EUV nicht vollständig, sondern spart den Grundsatz der Achtung der Grundfreiheiten aus. Eine Begründung hierfür fehlt. Genügt auch insoweit der an erster Stelle genannte Grundsatz der Freiheit?

Insgesamt gesehen sollte der Eindruck vermieden werden, dass es sich bei der Charta um den Kern einer EU-Gesamtverfassung handelt.

Absatz 3 sollte zunächst um den Grundsatz der Gleichheit der Wahl ergänzt werden. So ist sichergestellt, dass jede Stimme bei der Umsetzung der Stimmen in die Zuteilung von Parlamentssitzen mit gleichem Erfolgswert berücksichtigt wird. Die Formulierung würde damit lauten: "Die Abgeordneten der Völker der in der Gemeinschaft (Union) vereinigten Staaten im Europäischen Parlament werden in allgemeiner, unmittelbarer, freier, gleicher und geheimer Wahl gewählt."

Weiter sollte anstelle des Wortes "Gemeinschaft" das Wort "Union" verwendet werden. Nach Art. 49 EUV ist nämlich nur noch ein Beitritt zur und somit eine Mitgliedschaft in der Union möglich. Ausgeschlossen ist ein Beitritt nur zu einer der Europäischen Gemeinschaften oder zur zweiten oder dritten "Säule".

3. Zu Artikel B. Politische Parteien

In Satz 1 sollten nach den Worten "mit anderen politischen Parteien" die Worte "auf der Ebene der Europäischen Union" eingefügt werden. Die Charta kann nämlich aus Kompetenzgründen nicht das Recht gewähren, politische Parteien für Wahlen allein in den Mitgliedstaaten zu gründen.

Darüber hinaus empfiehlt sich eine Straffung des Satzes 1. Die genannte Gründungsfreiheit impliziert die Freiheit des Beitritts zu einer gegründeten politischen Partei und des Verbleibs darin. Daher erscheint es unnötig, das Recht auf Beitritt zu einer politischen Partei ausdrücklich festzuschreiben. Im Übrigen könnte die bisherige Formulierung dazu führen, dass weitere Teilgarantien (etwa die interne Betätigungsfreiheit oder das Recht auf autonome Gestaltung der Organisation der Parteien) als vom Schutz des Artikels B ausgeschlossen betrachtet würden, weil sie - anders als die Beitrittsfreiheit - nicht genannt sind.

Satz 2 hat den Charakter einer allgemeinpolitischen Aussage oder eines bloßen Programmsatzes. Daher erscheint die Aufnahme in eine Grundrechtecharta äußerst fraglich.

Schließlich ist zu erwägen, ob – etwa in einem Absatz 2 – eine Ausnahme für solche Parteien vorzusehen ist, die nach ihren Zielen oder nach dem Verhalten ihrer Anhänger nicht die Grundsätze der Freiheit, der Demokratie, der Achtung der Menschenrechte und der Rechtsstaatlichkeit beachten.

Es sollte ferner sorgfältig geprüft werden, ob politische Parteien aus Artikel B einen Anspruch auf eine allgemeine Parteienfinanzierung durch die Europäische Union herleiten könnten.

4. Zu Artikel C. Recht auf Teilnahme an den Wahlen zum Europäischen Parlament

Die in Artikel C und D aufgeführten Wahlrechte der Unionsbürger für Wahlen zum Europäischen Parlament und zu den Kommunalvertretungen könnten – im Interesse der Straffung – in einem Artikel zusammengeführt werden. Dies entspräche Artikel 19 EGV, der das Wahlrecht bei Wahlen zum Europäischen Parlament und bei Kommunalwahlen ebenfalls zusammenfasst.

Es erscheint sinnvoll, am Ende des Satzes 1 eine Öffnungsklausel vorzusehen, die lauten könnte: "sofern dem nicht besondere Belange dieses Mitgliedstaates entgegen stehen".

Die deutsche Fassung des Satzes 2 könnte noch sprachlich wie folgt verbessert werden: "Dieses Recht besteht nach Maßgabe des Vertrages zur Gründung der Europäischen Gemeinschaft".

5. Zu Artikel D. Recht auf Teilnahme an den Kommunalwahlen

Es wird vorgeschlagen, Artikel D als Absatz 2 des Artikels C auszugestalten. Hier empfiehlt sich im Übrigen die gleiche sprachliche Verbesserung wie in Artikel C ("nach Maßgabe").

Darüber hinaus sollte Satz 2 entsprechend dem bisherigen Artikel 19 Absatz 1 und Absatz 2 EGV dahingehend ergänzt werden, dass Ausnahmeregelungen vorgesehen werden, wenn dies aufgrund besonderer Probleme eines Mitgliedstaates gerechtfertigt ist. Zumindest ist klarzustellen, dass sich durch Artikel D an dem bisherigen Umfang des Wahlrechts, wie es im EGV und in den hierzu ergangenen Rechtsakten festgelegt ist, nichts ändert. Dies ist insbesondere von Bedeutung hinsichtlich der in der Kommunalwahl-Richtlinie 94/80/EG des Rates vom 19. Dezember 1994 (Amtsblatt der Europäischen Gemeinschaft Nr. L 368/38 vom 31.12.1994) enthaltenen Ausnahmeregelung des Artikels 5 Absatz 3. Dort ist bestimmt, dass die Mitgliedstaaten die Ämter des Leiters des Exekutivorgans sowie seiner Vertretung eigenen Staatsangehörigen vorbehalten können.

6. Zu Artikel E. Recht auf eine ordnungsgemäße Verwaltung (Beziehungen zur Verwaltung)

Die Notwendigkeit dieses Artikels insgesamt wird stark bezweifelt. Nach hier vertretener Auffassung ergibt sich das Recht auf eine ordnungsgemäße Verwaltung bereits aus den Verpflichtungen der Union und ihrer Organe aus dem Grundsatz der Rechtsstaatlichkeit (Artikel A). Mit anderen Worten dürfte das in Artikel E verankerte Recht bereits Ausfluss des Rechtsstaatsprinzips sein. Im Übrigen könnte das Recht als Anreiz für verstärkte Rügen missverstanden werden.

Sollte der Artikel in die Charta aufgenommen werden, empfiehlt sich jedenfalls eine Straffung, insbesondere eine Streichung des Absatzes 2. Die dort in den Spiegelstrichen 1 bis 3 normierten Teilgarantien (rechtliches Gehör auch im Verwaltungsverfahren; Recht auf Akteneinsicht im Verwaltungsverfahren; Begründungszwang der Verwaltung) ergeben sich durchweg aus den Anforderungen, die der Grundsatz der Rechtsstaatlichkeit an die Rechtsanwendung durch die Verwaltung stellt. Rechtsstaatliches Entscheiden verlangt schließlich eine Messbarkeit und Vorhersehbarkeit des Verwaltungshandelns. Eine Aufzählung lediglich einiger Beispielfälle würde ggf. dazu führen, dass andere Ausprägungen der Rechtsstaatlichkeit im Bereich der Verwaltung (wie etwa die Forderungen nach rationaler Verwaltungsorganisation oder nach Befangenheits- und Unvereinbarkeitsregeln) als von Artikel E nicht umfasst angesehen werden.

Absatz 1 des Artikels stellt darauf ab, dass Personen ihren Wohnsitz in einem Mitgliedstaat haben. Im Umkehrschluss wäre daraus zu schließen, dass Personen ohne Wohnsitz in einem Mitgliedstaat damit rechnen müssten, dass ihre Angelegenheiten von den Organen und Einrichtungen der Union nicht ordnungsgemäß, d.h. nicht unparteiisch, gerecht und innerhalb einer angemessenen Frist behandelt werden müssen. Dies kann nicht gemeint sein. Auf der anderen Seite ist fraglich, ob man sämtliche in Artikel E niedergelegten Rechte ohne Rücksicht auf die Staatsangehörigkeit gewähren will.

Sollte Absatz 2 beibehalten werden, ist jedenfalls auf Ausnahmeregelungen zu achten. Schließlich kann nach allgemeinen Grundsätzen des Verwaltungsverfahrensrechts aus übergeordneten Erwägungen heraus (z. B. Gefahr im Verzug; Sach- und Rechtslage bekannt) auf eine Anhörung und Begründung im Einzelfall verzichtet werden. Ferner sollte das Akteneinsichtsrecht nicht auf die Geltendmachung der Argumente, sondern auf die Wahrnehmung eigener Rechte bezogen werden.

7. Zu Artikel F. Recht auf Zugang zu den Dokumenten

Die Aufnahme eines derartigen Rechts erscheint aus rechtssystematischen Gründen mehr als fraglich. Dieses Recht ist schließlich von seinem Rang und Gehalt her nicht mit klassischen Grundrechten zu vergleichen und käme allenfalls für Verfahrensbeteiligte in Betracht. Artikel F könnte daher ganz entfallen; eine Regelung auf sekundärrechtlicher Ebene ist wohl ausreichend. Allenfalls empfiehlt sich die Aufnahme oder Integration in Artikel E.

8. Zu Artikel G. Befassung des Bürgerbeauftragten

Hier empfiehlt sich einmal eine Grundsatzdiskussion darüber, wie die Einrichtung diverser Beauftragter im staatlichen und staatsnahen Bereich unter dem Gesichtspunkt der Gewaltenteilung zu beurteilen ist. Dann ist zweifelhaft, ob das Recht ohne Rücksicht auf die Staatsangehörigkeit gewährt werden soll. Gerade im Bereich des Ausländer- und Asylrechts könnte eine Flut von Beschwerden eingehen.

9. Zu Artikel H. Petitionsrecht

Hier sollte zunächst entsprechend Artikel 194 EGV deutlich gemacht werden, dass das Petitionsrecht nur im Tätigkeitsbereich der Organe der Europäischen Union gilt. Diese Einschränkung der Behandlungskompetenz könnte dadurch erreicht werden, dass nach der Erwähnung des Europäischen Parlaments folgender Passus eingefügt wird: "in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die sie unmittelbar betreffen,".

Darüber hinaus ist fraglich, ob Personen, die von petitionsfähigen Entscheidungen betroffen sind, sich aber in Drittstaaten befinden, vom Schutzbereich des Artikels H ausgeschlossen sein sollen. Dies gilt etwa für Ausländer, die über die Grenzen des Unionsgebietes hinaus abgeschoben werden.

Schließlich sollte der Konvent das Verhältnis des Artikels H zu Artikel G klären. Die durch das Petitionsrecht eröffnete Möglichkeit, sich zu artikulieren, zu informieren und im Wege der Petition auch mittelbar auf die politische Willensbildung Einfluss zu nehmen, wird bereits durch die Befassung des Bürgerbeauftragten eröffnet.

10. Zu Artikel I. Freizügigkeit

Dem Textvorschlag wird uneingeschränkt zugestimmt. Seinem Regelungsgehalt nach enthält Artikel I allerdings ein Freiheitsrecht. Es stellt sich mithin die Frage, ob es an dieser Stelle systematisch richtig eingeordnet ist. In seiner Bedeutung rangiert es sicherlich vor den Artikeln E, F, G und H. Aus Sicht des Unionsbürgers dürfte Artikel I (und auch Artikel J) einen größeren Stellenwert besitzen als die Rechte auf politische Teilhabe (Artikel C und D) und deren Annexrechte (Artikel B und H). Das in Artikel I geregelte Recht, sich im Hoheitsgebiet eines Mitgliedstaates aufzuhalten, ist schließlich die Grundvoraussetzung der politischen Teilhaberechte, die den Wohnsitz in einem Mitgliedstaat verlangen.

11. Zu Artikel J. Diskriminierungsverbot

Der vorgeschlagenen Fassung wird zugestimmt. Es ist allerdings zu überlegen, ob aus Gründen der besseren Übersicht und Verständlichkeit die Diskriminierungsverbote des Artikels J und des mit Dokument CONVENT 8 vorgeschlagenen Artikels 19 nicht zu einem einheitlichen Diskriminierungsverbot zusammengefasst werden können. Darüber hinaus sollte darauf geachtet werden, dass nicht nur Diskriminierungen, sondern auch Bevorzugungen oder sachlich nicht gerechtfertigte Besserstellungen aus Gründen bestimmter Staatsangehörigkeiten unterbunden werden.

Zum Dokument CONVENT 8

1. Zu Artikel 13. Versammlungs- und Vereinigungsfreiheit

Hier ist zum einen zu erwägen, ob man die Versammlungs- und Vereinigungsfreiheit nicht in gesonderten Bestimmungen aufnehmen sollte. Zum anderen wäre daran zu denken, Versammlungen zu illegalen Zwecken ausdrücklich aus dem Schutzbereich des Grundrechtes auszunehmen.

2. Zu Artikel 14. Recht auf Zugang zu Informationen

Hier gelten die Ausführungen zu dem Vorschlag für Artikel F CONVENT 17.

3. Zu Artikel 15. Datenschutz

Die vorgeschlagene Regelung zum Datenschutz wird gebilligt. Eine darüber hinaus gehende Regelung wird nachdrücklich abgelehnt. Insbesondere erscheint die vorgeschlagene Aufnahme einer Überwachung durch besondere Einrichtungen, etwa durch Kontrollstellen mit Untersuchungs- und wirksamen Einwirkungsbefugnissen, als zu weit gehend. Würde man nämlich die Absicherung der Grundrechte durch eigens eingerichtete, besondere Stellen auch bei den anderen Rechten mit in die Charta aufnehmen (was bei manchen Rechten angesichts ihrer gegenüber dem Datenschutz nicht weniger existenziellen Bedeutung dann zu fordern wäre), würde dies zu einer Überfrachtung der Grundrechtecharta führen. Dies schließt eine Regelung auf sekundärrechtlicher Ebene nicht aus.

Darüber hinaus ist zu beachten, dass aus der Grundrechtecharta keine neuen Handlungskompetenzen für die Union erwachsen dürfen. Im Übrigen erscheint eine über die Vorschriften des Bundesdatenschutzgesetzes bzw. der Datenschutzgesetze der Länder hinaus gehende bzw. daneben bestehende Kontrolle nicht erforderlich.

Die Beschränkung auf natürliche Personen in Art. 15 wirft schließlich die Frage auf, in welcher Weise die Grundrechtecharta das "Persönlichkeitsrecht" der juristischen Personen sowie den Schutz von Betriebsgeheimnissen zu erfassen gedenkt (unter Eigentum, Wirtschaftsfreiheit?).

4. Zu Artikel 16. Eigentumsrecht

Die Vorschrift lässt offen, was konkret unter "Eigentum" zu verstehen ist. Auch stellt sich die Frage, ob nicht eine Aussage zur Sozialbindung des Eigentums aufgenommen werden sollte ("Eigentum verpflichtet"). Das gleiche gilt für das Erbrecht.

5. Zu Artikel 17. Asyl- und Ausweisungsrecht

Gegen diese Regelung bestehen erhebliche Bedenken. Über die Charta darf kein neues EU-Grundrecht auf Asyl begründet werden. Es fällt auch auf, dass Absatz 1 keine Tatbestandsvoraussetzungen formuliert, wie etwa die politische Verfolgung.

Die Ausführungen zu Artikel 63 EGV in dem Kommentar des Entwurfs sind nicht recht verständlich, da diese Bestimmung gerade kein Recht "auf" Asyl gewährt, sondern nur (Verfahrens-)Rechte "im" Asyl. Dies muss klargestellt werden. So begründet auch die Genfer Konvention keinen Anspruch auf Zugang zu einem Asylverfahren, sondern lediglich Rechte im Asyl.

Mit dem Verbot der "Kollektivausweisungen" in Absatz 2 lehnt sich der vorgeschlagene Artikel 17 an die EMRK an. Die EMRK will jedoch lediglich verhindern, dass eine Ausweisung ohne Einzelfallprüfung erfolgt. Um Unsicherheiten bei der Auslegung zu vermeiden, z. B. hinsichtlich der Rückführung von Bürgerkriegsflüchtlingen, sollte Artikel 17 Absatz 2 entsprechend konkret formuliert werden.

6. Zu Artikel 18. Gleichheit

Die vorgeschlagene Regelung begegnet keinen Bedenken.

7. Zu Artikel 19. Nichtdiskriminierung

Bei der vorgeschlagenen Regelung in Absatz 2 ist darauf zu achten, dass daraus keine neuen oder erweiterten Kompetenzen der Europäischen Union hergeleitet werden können. Ggf. empfiehlt es sich, Absatz 2 zu streichen. Im Übrigen ist zu prüfen, ob die Formulierung "Ungleichheiten" das eigentliche Ziel beschreibt, "Ungerechtigkeiten" zu beseitigen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 April 2000**CHARTE 4204/00****CONTRIB 85****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Gunnar Jansson, and Mrs Tuija Brax, Representatives of the Finnish Parliament. ¹

¹ This text has been submitted in English language only.

Mr Gunnar Jansson,
Representative of the Finnish Parliament,
Vice-president of the Representatives
of the National Parliaments

Personal Representative of the Finnish Government
Mrs Tuija Brax, Representative of the Finnish Parliament

PRINCIPLE OF GOOD GOVERNANCE

Mr Gunnar Jansson, Vice-president of the Representatives of the National Parliaments for the Convention, proposed on 17 March 2000 that Article 8 in Convent 13 be amended and extended to cover not only the right to a fair trial but also the right to good governance. First, we would like to note that the former translation into English contained some inaccuracies. The correct proposal by Mr Jansson reads as follows:

Article 8. Right to a fair trial and good governance.

Everyone has the right to have a case pertaining to his or her rights or obligations dealt with appropriately and without undue delay by a competent court of law or other authority, as well as to have a decision in this kind of a case reviewed by a court of law or other independent organ for the administration of justice.

The consideration of a case by a court of law or other independent organ for the administration of justice shall be public, and the right to be heard and to receive a reasoned decision as well as other guarantees of a fair trial and good governance shall be in force before the court of law or other authority.

We should like to support the proposal for following reasons:

European Convention on Human Rights, Article 6 Paragraph 1 contains the basic rules for trial *procedures*. Paragraphs 2 and 3 of this Article supplement the above with regard to criminal processes. The basic rules for governance *procedures* have not been defined in the Convention on Human Rights. This is an essential flaw from today's perspective, as people are more often in contact with administrative bodies than courts of law. For example, the enforcement of EC legislation on a national level is to a large extent the responsibility of administrative bodies.

The limited nature of the European Convention on Human Rights, Article 6 Paragraph 1 is manifest in its scope of application to practice, as the phrase "civil rights and obligations" has been broadly interpreted to cover matters under public law as well. Such continually broadening interpretation provides, in our opinion, in itself sufficient grounds for the mentioning of the principle of good governance in the EU fundamental rights charter in conjunction with the principle of fair trial. Both the principle of good governance and that of fair trial are similar in substance insofar as they are both evolutive in nature and likely to undergo changes in the course of time. In the case of the principle of fair trial, this has become evident in the way its contents are in fact consolidated only with application to practice.

It should be noted that Mr Jansson’s proposal is limited to cover “*civil rights and obligations*” only and its scope does not extend to cover governance at large. The proposal contains firstly a section on the right to have decisions concerning issues falling under this category to be handled in a court of law or other independent organ for the administration of justice. Secondly, the transparency of the process in a court of law and other independent organ for the administration of justice is secured. Thirdly, the proposal includes the following *elements of good governance*:

- (1) the *appropriate* handling of cases
- (2) the handling of cases *without undue delay*
- (3) the *right to be heard* in a case
- (4) the *right to receive a reasoned decision*
- (5) *other guarantees pertaining to good governance*.

It should be clear what is meant by Elements 2–4 in Mr Jansson’s proposal. Element 3 could be further specified to be referring to the right to have access to any document in conjunction with the hearing that may be significant in relation to the ruling of the case (i.e. the publicity principle as regards the parties concerned).

Elements 1 and 5 in Mr Jansson’s proposal are more general in nature and need some further definition. In our opinion *those elements that are not specifically regulated by some other section of the fundamental rights charter* can be left to be clarified in the *explanatory memorandum*. Elements 1 and 5 may in our opinion contain the following meanings:

- the public authority has the obligation to handle a case initiated by an individual pertaining to his or her rights
- the public authority shall handle the case in an objective manner so that all aspects that may be significant to the decision concerning the matter are sufficiently investigated
- the preparation and decision on the case shall only be carried out by competent representatives of the public authority
- the public authority shall treat all parties involved in a case in a friendly and helpful manner
- the individual has the right to appear in a case in person or through, or assisted by, a representative
- the individual has the right to receive legal aid, and without cost, when required
- the individual has the right to receive legal aid in his or her own mother tongue (including sign language), and similarly a public authority shall have any aspect that arises during the hearing of the case interpreted into the mother tongue of the individual if the latter does not have sufficient command of the language used by the authority
- when giving the decision, the public authority must provide the parties concerned with the information on how to appeal on the decision and disseminate the contents of the decision to the individual concerned in an effective manner.

We do, however, feel that whether these points should be included in Element 1 or 5, is entirely a matter of taste.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 April 2000**CHARTE 4205/00****CONTRIB 86****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Paavo Nikula, Personnel Representative of the Finnish government and Mr. Gunnar Jansson and Mrs. Tuija Brax, Representatives of the Finnish Parliament.¹

¹ This text has been submitted in English language only.

Mr Paavo Nikula,

Personal Representative of the Finnish Government

Mr Gunnar Jansson,

Representative of the Finnish Parliament,

Vice-president of the Representatives

of the National Parliaments

Mrs Tuija Brax, Representative of the Finnish Parliament

BASIC RIGHTS CONCERNING THE ENVIRONMENT

Basic rights provisions concerning the environment are relatively new, their roots going back to the 1970s. Worth a mention here is the UN Conference on the Human Environment held in Stockholm in 1972, which approved a declaration of the right to environment. New international developments are represented by the 1992 UN Conference on Environment and Development in Rio de Janeiro. It approved among other things the so-called Rio declaration, which is based on the principle of sustainable development. A recent interesting example from the European point of view is the declaration Water Security in the 21st century, made at the Hague minister conference. At this conference representatives of European states were prepared to include a statement to the effect that access to safe and sufficient water and sanitation should also be considered as a basic right. However, no such statement was included in the final declaration, mainly owing to opposition from the developing countries.

The individual's right to environment is not included in universal or regional human rights conventions. However, a way has emerged through the practical application of the European Human Rights Convention to develop rights concerning environmental protection and a healthy environment on the basis of such existing rights as the right to life, the right to the respect of one's private life, the right to health and the right to property, and also with regard to remedies and to the right to information. (See *Theodor Meron, The Implications of the European Convention on the Development of Public International Law*, Contribution of the *ad hoc* Committee of Legal Advisers on Public International Law (CADHI), 19th meeting, Belin 13–14 March 2000).

International developments have also begun to influence national constitutions. The provisions of these with regard to the environment vary in their content. The appendix contains the applicable sections from the constitutions of Portugal, Spain, Germany, the Netherlands, Sweden and Finland as well as Norway.

According to the decisions of Cologne European Council, the European Union charter has to treat basic rights in the way that they are guaranteed in the European Human Rights Convention and as they appear as general principles of European Community Law, deriving from the common constitutional tradition of the member states. The Treaty of Amsterdam included the principle of sustainable development as one of the central aims of Community actions. It was also acknowledged on the European Union level, and provisions concerning the environment in the articles setting out the objectives of the Treaty on the European Union and the Treaties establishing the European Communities were strengthened. The Treaty of Amsterdam also strengthened the Community's obligation to take into account in all its actions the requirements of environmental protection.

With reference to the facts stated above, we feel that the charter should include basic rights to environmental protection and the right to a healthy environment. These items are indeed mentioned in the document Body 4, after the right to property. For instance, article 20 of the Finnish constitution corresponds to our goals. However, it is appropriate for this question to be brought to the Convention for discussion on the basis of the proposal of the Drafting Committee.

APPENDIX

Portugal

Article 66 - Environment and quality of life

1. Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it.
2. In order to guarantee the right to such an environment, within the context of sustainable development, it is the duty of the State, acting through appropriate bodies and with the involvement and participation of the citizens:
 - a. To prevent and control pollution, and its effects, and harmful forms of erosion;
 - b. To organise and promote national planning with the objectives of establishing proper locations for activities and a balance between economic and social development, while enhancing the landscape;
 - c. To establish and develop nature reserves and parks and recreation areas, and classify and protect the countryside in order to guarantee nature conservation and the preservation of cultural assets of historic or artistic interest;
 - d. To promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability, respecting the principle of solidarity between generations;
 - e. To promote, in conjunction with the local authorities, the environmental quality of populated areas and urban life, specifically with regard to architecture and the protection of historical zones;
 - f. To promote the inclusion of environmental objectives in the various sectors of policy;
 - g. To promote environmental education and respect for environmental values;
 - h. To ensure that tax policy achieves compatibility between development and protection of the environment and quality of life.

Spain

Article 45 [Environment]

- (1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.
- (2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.
- (3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

Germany

Article 20a [Protection of Natural Resources]

The state, also in its responsibility for future generations, protects the natural foundations of life in the framework of the constitutional order, by legislation and, according to law and justice, by executive and judiciary.

Netherlands

Article 21 [Environment]

It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.

Sweden

Article 2 (2)

- (2) The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public administration to secure the right to work, housing and education, and to promote social care and social security and a good living environment.

Finland

Article 20 - Responsibility for the environment

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

Norway

Article 110b [Environment]

- (1) Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.
- (2) In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.
- (3) The State authorities shall issue further provisions for the implementation of these principles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 6 April 2000**CHARTE 4206/00****CONTRIB 87****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mrs. Charlotte Cederschiöld, member of the European Parliament, on articles 10 and 16. ¹

¹ This text has been submitted in English language only.

CONTRIBUTION TO THE CONVENT: ART. 3 AND 10**- By Charlotte Cederschiöld, Member of the European Parliament**Article 10 – Prohibition against retroactive legislation

3. (new) Retroactive legislation or administrative measures affecting individuals directly and negatively shall be prohibited in areas of civil law.

Motivation:

Concerning the principle of non-retroactivity in legislation this principle should relate to the principle of proportionality ("Verhältnismäßigkeit"), which makes up a protection for individuals against qualified acts of authorities going too far. Clearly the prohibition of non-retroactivity in legislation does not only apply in criminal law, but also in civil law (eg the competition rules about old and new agreements in the Council regulation 17/62). The prohibition against retroactive effects must therefor include all forms of qualified acts by authorities that affect individuals negatively. This relates to the principle of legal certainty for individuals and the protection of justified expectations.

Article 16 – the right to ownership

Everyone is entitled to *own and use her/his possessions and to give it away*. No one may be deprived of her/his possessions *or restricted in their use* except in *essential (wesentlich)* public interest and in *such* cases subject to the conditions provided for by law and subject to *full* compensation *for the loss*.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 4 avril 2000**CHARTE 4207/00****CONTRIB 88****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une proposition d'amendements au document CHARTE 4170/00
CONVENT 17, présenté par Mme Claude Du Granrut, membre du Comité des Régions. ¹

¹ Ce texte a été soumis en langue française seulement.

Subject: Projet de Charte des Droits Fondamentaux de l'Union Européenne

Convent 17

Article A - Principe de démocratie

PROPOSITION D'AMENDEMENT DU COMITE DES REGIONS

Exposé des motifs

- La reconnaissance du droit des citoyens à participer à la gestion des affaires publiques implique que ce droit soit exercé au niveau local, c'est à dire au niveau où s'expriment leurs attentes dans la vie quotidienne et où peuvent être élaborées les solutions les plus adaptées.
- La démocratie de proximité constitue un fondement essentiel de l'Union Européenne : cf. article 1er du TUE qui rappelle que dans l'Union " les décisions sont prises le plus près possible des citoyens".
- Enfin dans la perspective, leur adhésion à l'Union, les Pays-candidats sont invités à mettre en place des Collectivités locales et régionales élues et dotées de compétences décentralisées.

Propositions

- Ajout
 1. Toute autorité publique émane du peuple. Ce principe démocratique s'applique aux Collectivités infra-étatiques.
- Rédaction modifiée
 1. Le respect du principe démocratique implique que toute autorité publique émane du peuple et que les citoyens disposent d'organes locaux de décision élus.

Claude Du GRANRUT

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4214/00****CONTRIB 90****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations de M. Guy Braibant, Représentant Personnel du Gouvernement de la France, sur les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19. ¹

¹ Ce texte a été soumis en langue française seulement.



le 3 avril 2000

Guy BRAIBANT
Représentant du Président de la République
et du Premier ministre de France

**PROJET DE CHARTE DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

Droits économiques et sociaux (CONVENT 18 et 19, art. I à XV) : observations et amendements.

Article I - Egalité entre les hommes et les femmes

1. Je propose de distinguer entre le principe général d'égalité des sexes, qui devrait figurer parmi les premiers articles de la Charte, en raison de son importance et son application en matière économique et sociale (emploi, travail, protection sociale).

Le principe général pourrait être ainsi formulé:

"L'égalité entre les hommes et les femmes doit être garantie et appliquée dans tous les domaines"

Pour l'application en matière économique et sociale, la rédaction pourrait être la suivante :

"L'égalité de traitement entre les hommes et les femmes doit être assurée en matière d'emploi, de travail et de protection sociale".

2. La possibilité d'adopter des mesures temporaires de discrimination positive pourrait être prévue dans les commentaires sous la forme suivante :

"Cet article ne fait pas obstacle à la possibilité de mettre en oeuvre, de façon temporaire, de mesures spécifiques pour l'un ou l'autre sexe pour compenser ou éliminer des inégalités de fait".

On pourrait également reproduire la rédaction de l'article 141.4 du traité d'Amsterdam.

Article II - Liberté professionnelle

1. Il ne faut pas paraître limiter cette liberté aux activités "commerciales". Ou bien on supprime ce qualificatif, ou bien on le remplace par "professionnelles", ou bien on supprime purement et simplement "et ses activités commerciales" qui n'ajoute rien et affaiblit la rédaction.

2. La deuxième phrase est inutile et obscure pour le "citoyen non juriste". En français, d'ailleurs, l'expression "sans préjudice" est ambiguë. En tout cas, la rédaction ne révèle pas clairement que, comme le dit le commentaire, "ce droit profite aux titulaires de la libre circulation".

3. Cette liberté n'est jamais absolue, comme le souligne l'arrêt Nold (conditions d'accès, diplômes, discipline professionnelles, règles d'urbanisme et d'environnement, etc.). Il faut soit l'indiquer dans cet article ou dans le commentaire, en reprenant la formule de l'arrêt Nold ("limites justifiées par des objectifs d'intérêt général"), soit y renvoyer dans la clause générale de limitation.

Article III - Droit à l'information et à la consultation des travailleurs

La rédaction met trop l'accent sur les "procédures de licenciement collectif", alors que c'est en amont de ces procédures et souvent pour les éviter que l'information et la consultation sont le plus utiles.

On pourrait reprendre la formule de la charte sociale révisée qui, conformément aux tendances actuelles, prévoit des consultations *"en temps utiles sur les décisions envisagées qui sont susceptibles d'affecter substantiellement les intérêts des travailleurs, notamment sur celles qui auraient des conséquences importantes sur la situation de l'emploi dans l'entreprise, et sur les décisions relatives aux conditions et au milieu de travail"*

Article IV - Droit d'association, de négociation et d'action collective

Il vaut mieux séparer la "liberté syndicale" (alinéa 1) qui figure déjà dans la Convention européenne des droits de l'homme, et les actions syndicales (alinéas 2 et 3) qui ont leur place ici.

Article VII - Sécurité et hygiène dans le travail

La notion d'hygiène est aujourd'hui remplacée par celle, plus large, de santé. La rédaction pourrait être :

"tout travailleur a droit à la protection de sa sécurité et de sa santé dans le travail".

Article VIII - Protection des enfants et des adolescents

Faut-il conserver dans le texte même de la Charte l'indication des âges (15 ans, 18 ans), qui sont évolutifs et qui pourraient figurer dans le commentaire ?

Articles XI : Droit des travailleuses à la protection de la maternité, et XII : Droit au congé parental

Faut-il fixer la durée des congés dans le texte, ou seulement dans le commentaire.

Article XII : Sécurité sociale

La rédaction appelle plusieurs remarques :

- le droit à la sécurité sociale doit être présenté comme un droit de la personne. Les législations de sécurité sociale des quinze Etats membres couvrent l'ensemble des personnes résidant sur leur territoire. Certaines le font à partir de régimes professionnels complétés par des mécanismes sous conditions de résidence (cf. France : régimes d'activité professionnelle et premier étage de la couverture maladie universelle, Allemagne...) d'autres sur la base de régimes ouverts à toute la population résidente (Royaume-Uni, pays nordiques, pour partie des risques couverts, pays de l'Europe du Sud).

Présenter le droit à la sécurité sociale comme un droit des travailleurs et de ses ayants droit, complété par un mécanisme d'assistance sociale :

- constituerait une régression par rapport aux législations de la grande majorité des Etats membres et par rapport au Traité d'Amsterdam ;

- est juridiquement faux, dans la mesure où les dispositifs des Etats membres concernés qui complètent leurs régimes professionnels sont des législations de sécurité sociale et non des dispositifs d'assistance sociale ;

- est politiquement inacceptable : l'inactif ne doit pas apparaître comme un "sous-homme" par rapport au travailleur dans une charte de droits fondamentaux.

Il conviendrait pas conséquent d'affirmer un droit à la sécurité sociale qui repose sur une définition à la fois large et générique comprenant :

- la couverture des soins de santé et de maternité (concept large évitant les références soit aux systèmes d'assurance soit aux systèmes nationaux de santé,
- la compensation des charges familiales,
- le versement de revenus de remplacement particulièrement en cas d'accidents et de maladie professionnelle, d'invalidité et de retraite,
- le versement de revenus de remplacement en cas de perte d'emploi.

Un tel article pourrait dès lors se lire :

Droit à la sécurité sociale :

"dans les conditions définies par les législations internes des Etats membres et coordonnées au niveau communautaire, toute personne doit bénéficier d'une sécurité sociale".

Dans la partie B pourrait être précisé le champ d'application matériel et personnel de cet article.

Article XV : Droit à l'accès aux soins

Le titre est trop restrictif par rapport à la nouvelle rédaction. On pourrait intituler cet article "*droit à la santé*", comme le "droit à l'éducation" et rapprocher les deux articles. En outre, il faudrait dire à la fin de l'article "*aux soins que nécessitent son état*".

Editors' note to CHARTE 4221/00,
**Observations sur CHARTE 4123/00 de M. Guy
Braibant (Représentant personnel du Gouvernement
de la France):**

See also CHARTE 4135/00.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4221/00****CONTRIB 90****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations de M. Guy Braibant, Représentant Personnel du Gouvernement de la France, sur le document CHARTE 4123/00 CONVENT 5. ¹

¹ Ce texte a été soumis en langue française seulement.

**OBSERVATIONS SUR LE PROJET DE REDACTION
DE DROITS FAISANT L’OBJET DU DOCUMENT
« CHARTE 4123/00 »**

I/ Il serait souhaitable d’énoncer parmi les droits fondamentaux de la personne énumérés au début de la Charte :

- l’égalité en droits, ou le principe d’égalité qui figurent dans les traditions constitutionnelles des Etats-membres et dans un certain nombre de documents internationaux; ce principe ne se confond pas avec celui de non-discrimination ; on pourrait reprendre ainsi le début de la déclaration universelle des droits de l’homme : « les hommes sont libres et égaux en dignité et en droits » ;
- le droit à la personnalité juridique, reconnu par l’article 6 de la DUDH et par l’article 16 du Pacte des Nations-Unies sur les droits civils et politiques ;
- le droit de tout individu à une nationalité (art. 15 DUDH).

II/ Articles

Article 1^{er}

a) Il est excellent de commencer par la dignité. La formule retenue est celle de la déclaration de 1989 du Parlement européen. Mais il me paraîtrait préférable de parler de la dignité de la personne humaine et de son respect. Je propose l’une des rédactions suivantes :

- « aucune atteinte ne doit être portée à la dignité de la personne humaine » ;
- « la dignité de la personne humaine doit être respectée en toutes circonstances » ;
- « le droit à la dignité est inhérent à la personne humaine ».

b) Il me semble que le droit à la dignité, qui inspire de nombreux articles du projet, mérite d’apparaître seul dans l’art. 1^{er} ; sinon l’on aurait l’impression qu’il se réduit aux interdictions de la torture et du travail forcé, qui figurent actuellement dans le même article.

c) Si l'on souhaite maintenir l'interdiction du travail forcé, il faut être attentif à la définition négative qui en est donnée dans la CEDH et qui a une grande importance pratique. Je comprend qu'on ne le reproduise pas ici, pour ne pas alourdir le texte. Mais il faudrait du moins affirmer dans un rapport de présentation ou un exposé des motifs que les auteurs de la Charte n'ont pas entendu y renoncer et s'y sont implicitement référés.

d) Je pense qu'il convient d'ajouter une disposition sur l'esclavage et la servitude, qui reste malheureusement d'actualité, même en Europe.

Article 2

a) Paragraphe 2 : Il vaudrait mieux supprimer le mot « génétique » qui n'ajoute rien et prête à confusion.

Je préfère la version courte. Si l'on souhaite toutefois donner quelques précisions se rattachant à la bioéthique, ce qui serait sans doute utile pour donner un caractère plus moderne à la Charte, je proposerai de s'en tenir à trois principes fondamentaux :

- l'interdiction des « pratiques eugéniques » (art. 16 du code civil français, issu d'une loi de 1994) ;
- l'interdiction du clonage des êtres humains ;
- l'affirmation que le corps humain et ses parties ne peuvent être sources de profits (en retirant si possible la formule restrictive « en tant que tels »).

L'alinéa sur la discrimination pourrait être reporté dans l'article général sur la non-discrimination.

b) Paragraphe 3 : On ne peut évidemment pas « abolir » la peine de mort, puisqu'elle l'est déjà. Je propose de ne retenir que la formule alternative : « Nul ne peut être condamné à mort, ni exécuté ».

Il faut observer que le protocole de la CEDH sur cette question comprend un article sur les exceptions en temps de guerre. Je ne propose pas de le reprendre ici, d'autant plus qu'il comporte une référence au secrétaire général du Conseil de l'Europe. Mais il faudrait en faire état dans le rapport de présentation pour ne pas donner l'impression qu'il n'est plus applicable.

Article 3

a) La rédaction du paragraphe 2 « nul ne peut être arrêté ou détenu » est plus restrictive que celle de l'article 5 de la CEDH « nul ne peut être privé de sa liberté » ; cette dernière formule qui couvre aussi, par exemple, la résidence surveillée, est préférable.

b) Les paragraphes 3 à 6 sont des dispositions de caractère pénal, qui pourraient être utilement rapprochées de, ou regroupées avec, le paragraphe 3 de l'article 5. Cela permettrait en outre de mieux mettre en valeur l'article 4, qui a un caractère général et qui pourrait être rapproché du paragraphe 2 de l'article 5. Celui-ci pourrait être rédigé ainsi, afin d'éviter la répétition du mot « effectif » : « l'accès à la justice doit être facilité par ».

Articles 6 et 7

a) Je crois qu'il faut éviter les expressions latines dans un document destiné à accroître la lisibilité des droits.

b) A l'article 6, la formule « infraction prévue par la loi » est plus restrictive que celle de l'article 7 de la CEDH « infraction d'après le droit national ou international » ; cette rédaction restrictive est contradictoire avec le développement des juridictions pénales internationales et des incriminations sur la base du droit international.

Article 8

Il me semble qu'aujourd'hui, les concepts de vie privée et de vie familiale sont distincts. Je propose de retirer l'expression de « vie familiale » de l'article 8 et de lui réserver l'article 9, ce qui éviterait une redondance.

Article 9

1. Je crois utile, comme il est indiqué dans le commentaire, de renvoyer au droit local, comme l'article 12 de la CEDH.

2 et 3. Ces dispositions ne sont guère normatives et ont en outre l'inconvénient de paraître créer des compétences nouvelles de l'Union. Je propose de remplacer le 2 par une formule symétrique de l'article 8.2 (« Le respect de la vie familiale est garanti ») et, pour les enfants, de reprendre un ou deux articles essentiels de la Convention des Nations-Unies, notamment l'article 3.1 qui se réfère à la notion « d'intérêt supérieur de l'enfant » et un article sur la protection du développement de l'enfant.

III/ Articles horizontaux

Bien qu'elles ne soient pas en discussion, il me paraît préférable d'indiquer dès maintenant les observations que ces dispositions m'inspirent.

1. Préambule ou article 1^{er}

Cette disposition est utile, mais anticipe sur l'insertion des droits dans le traité, qui n'est pas du ressort de la Convention. Elle trouverait mieux sa place dans un rapport de présentation de la Charte.

2. Article X

Cette disposition est inopportune et ne manquera pas de susciter des critiques contre la Charte réservé aux « riches privilégiés » qui ont la chance d’être citoyens de l’Union européenne. Et pour l’essentiel elle est inexacte car beaucoup de droits sont universels ou étendus aux résidents étrangers en situation régulière. Il faudrait prévoir le champ d’application de la Charte dans les articles ou les chapitres.

3. Article Y

Je comprend l’intention des auteurs de ce texte. Mais il faudrait trouver une rédaction plus claire, qui évite notamment les concepts de « règle de droit » et de « règle d’exécution » ; en outre, une restriction générale se substituant aux restrictions particulières de la Convention pourrait donner l’impression que la Charte est moins protectrice que la Convention.

4. Article Z

Si cet article est considéré comme indispensable, il faudrait mieux supprimer la référence à l’article 6 TUE. qui n’ajoute rien.

Guy BRAIBANT
Représentant du Président de la République et du Premier ministre
à la Convention chargée d’élaborer la Charte des droits
fondamentaux de l’Union européenne

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 10 avril 2000**CHARTE 4221/00 COR 1****CONTRIB 96****CORRIGENDUM A LA NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

La souscote correcte du document 4221/00 est **CONTRIB 96**.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 12 April 2000**CHARTE 4222/00****CONTRIB 97****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments by Mr. George Papadimitriou, Personnel Representative of the Greek government, on documents CHARTE 4192/00 CONVENT 18 and CHARTE 4193/00 CONVENT 19.¹

¹ This text has been submitted in English language only.

PROF. DR. GEORGIOS PAPADIMITRIOU

RECHTSANWALT

SINA - STR. 30, 106 72 ATHEN

TEL: (301) 3617443, 3635137

FAX: (301) 36293534

Comments on the proposed Social Rights (Convents 18 - 19)

Article I Equality between men and women

Equality is guaranteed in article 13 of the Treaties along with its protective function in order to avoid and abolish inequalities. Thus it would be preferable to include in Article I a provision to guarantee the equality of opportunities between men and women in the field of employment and work. With this solution we create the conditions for the emancipated function of the equality of opportunities. This solution seems also to be more compatible with the provision of article 3, para. 2 in combination with the provision of article 3 para. 1i, as well as with that of article 141 para. 3 of the Treaties.

A special provision for the equality between men and women in the field of social protection should also be included in order to better bring out and develop its protective function.

Article II Right to choose an occupation

The wording of the article should also include free movement of capital and services because, as it stands, it states the obvious by including only free movement of persons. Thus, it should be further defined. The possibility of abrogating the term “business” should also be examined.

Article III Workers’ right to information and consultation

The wording should be reverted in order to include first the “...decisions relating to conditions of work and to the working environment...” and afterwards the “...context of collective redundancy procedures”.

In order not to widen the normative function of article 138 of the Treaties, the comment accompanying article III should explicitly mention that the provision is interpreted and applied in the light of the wording of the aforementioned article of the Treaties.

Article IV Freedom of association, rights of collective bargaining and collective action

Where the wording of the article mentions “employers and workers” it should be reverted in order to include first the “...workers...” and afterwards the “...employers....”.

In order not to widen the normative function of article 139 of the Treaties, the comment accompanying article IV should explicitly mention that the provision is interpreted and applied in the light of the wording of the aforementioned article of the Treaties.

Article VII Safe and healthy working conditions

The right provided for in this article should be interpreted and applied in the light of the wording of articles 137, para.1, per.1 and 140 per. 5-6 of the Treaties.

Article IX Right to protection in cases of termination of employment

The wording of the article should end at “....in case of dismissal.” because the present wording gives rise to contradictions.

Article X Right to vocational training and guidance

There is a strong need to expressly include a right to access to vocational training in the provision of this article and abrogate the term “..., without discrimination, ...”.

Article XII Right to parental leave

Fostering should be included as a third case for parental leave and the wording should change as follows “... following the birth, the fostering and the adoption...”.

Article XIV Right to social assistance

The wording of the provision should explicitly mention that any person has a right to receive appropriate social assistance. The article should not include the sentence in brackets [and who is other sources].

Article XV

The wording of the provision should explicitly mention that everyone has a right to benefit from measures to safeguard their health and a right to have access to health care.

Inclusion of additional rights in the catalogue of social rights

1. The right of every person to work should be expressly included in the appropriate place in the catalogue.

2. The inclusion of a provision for social assistance for the homeless people should be also examined.

3. An additional provision should be drafted for the protection of, and assistance to disabled people.

Dis.Charta/ComConv18-19.doc/5.4.2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 12 April 2000 (18.04)
(OR. en,nl)****CHARTE 4225/00****CONTRIB 100****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mrs Johanna Maij-Weggen, member of the European Parliament, on the document CHARTE 4192/00 CONVENT 18. ¹

¹ This text exists in Dutch and English.

Mrs Maij-Weggen's amendments to the proposed articles on social rights

Article I should read as follows:

Equality between men and women must be ensured with regard to employment, pay, education and vocational training, social protection and taxation.

Article IV should read as follows:

1. Employers and workers have the right to associate freely, to negotiate collective agreements and, in cases of conflicts of interest, to take action and/or strike, even at European level.
2. Every citizen has the right, on an individual basis, to reach agreements concerning his/her employment contract, in compliance with national and European legislation.

Article V should read as follows:

Every worker has the right to fair remuneration.

Article VII should read as follows:

Every worker has the right to safe and healthy working conditions. [no change to English].

Article VIII, second paragraph, should read as follows:

Young people under eighteen years of age must have working conditions which suit their age and be protected against any work likely to harm their health and development.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 17 April 2000 (19.04)
(OR. fr)****CHARTE 4227/00****CONVENT 26****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposals for social rights III

Article XVI. The right of elderly persons to social protection

- 1. Every worker must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.**
- 2. Any person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence must be entitled to sufficient resources and to medical and social assistance specifically suited to his/her needs.**

Reasons

Community Charter (points 24 & 25); revised Social Charter, Article 23:

"Article 2 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- *to enable elderly persons to remain full members of society for as long as possible, by means of:*
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;*
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*
- *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;*
 - b the health care and the services necessitated by their state;*
- *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution."*

Paragraph 2 of the proposed Article could appear in Article XIV on the right to social assistance.

Article XVII. The right of disabled persons to social and professional integration

All disabled persons, whatever the origin and nature of their disability, are entitled to additional specific measures aimed at improving their social and professional integration.

Reasons

Article 13 of the Treaty establishing the European Community authorises the adoption of positive measures to prevent discrimination on grounds of disability. The fourth indent of Article 137(1) establishes Community competence with a view to integrating persons excluded from the labour market. The aim of the provision is to legitimise positive action. Consideration should be given to whether this text should not appear in the section dealing with equality and non-discrimination.

Point 24 of the Community Social Charter; Article 15 of the European Social Charter:

"Article 15 - The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

- 1 to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;*
- 2 to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment."*

Article XVIII. The right of migrant workers to equal treatment

Third country workers residing lawfully in the territory of Member States are entitled to a treatment not less favourable than that of European Union workers in respect of working conditions.

Reasons

Community competence in this area is established by the third indent of Article 137(3). The rule laid down here is simply that of non-discrimination in respect of working conditions.

"Article 19 of the Social Charter:

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

- 1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;*
- 2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;*
- 3. to promote cooperation, as appropriate, between social services, public and private, in emigration and immigration countries;*

4. *to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:*
 - a *remuneration and other employment and working conditions;*
 - b *membership of trade unions and enjoyment of the benefits of collective bargaining;*
 - c *accommodation;*
5. *to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;*
6. *to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;*
7. *to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;*
8. *to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;*
9. *to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;*
10. *to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply."*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 18 April 2000 (19.04)
(OR. fr)****CHARTE 4235/00****CONVENT 27****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights in the European Union
 – Horizontal clauses

As agreed, members of the Convention will find below a number of draft horizontal clauses aimed at resolving such questions as the scope of the Convention, the limits that can be placed on the rights guaranteed and the relationship with other instruments for the protection of fundamental rights.

Article H.1 Scope

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and also to the Member States exclusively within the framework of implementing Community law.**
- 2. They shall not establish any competence or any new task for the Community or the Union.**

Statement of reasons

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies to the institutions of the Union, within the framework of the Union's powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. It follows from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Wachauf, Case 5/88, ECR p. 2609, in particular paragraph 19).

Article H.2 Limitation of guaranteed rights

- 1. The rights and freedoms recognised in Articles ... of this Charter may not be the subject of any limitation.**
- 2. Any limitation to the rights and freedoms guaranteed by this Charter must be provided for by the legislator. It must respect the essential content of the rights and freedoms in question and, subject to the principle of proportionality, remain within the limits necessary for the protection of legitimate interests in a democratic society. The limitations provided for by the European Convention on Human Rights shall apply to those rights and freedoms contained in this Charter that are also guaranteed by the said Convention.**

Statement of reasons

This provision, which sets out the principles relating to the limitations on guaranteed rights, has the effect of identifying certain rights which may not be limited in any way and of incorporating, by law, all the limitations laid down by the European Convention on Human Rights where these afford more protection than any measures that might be taken on the basis of the general limitation

clause. According to the case law of the Court of Justice of the Communities, fundamental rights may be restricted "provided that the restrictions in fact correspond to objectives of general interest pursued by the Community and that they do not constitute, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed" (judgment of 8 April 1992, Commission v. FRG, Case C-62/90, ECR I-2575, paragraph 23; see also judgment of 12 July 1989, Schraeder, Case 265/87, ECR p. 2237, paragraph 15).

Article H.3

The rights guaranteed by Articles ... shall be exercised under the conditions and within the limits laid down by the Treaty establishing the European Community.

Statement of reasons

This Article has the effect of referring back to the Treaty where the rights in question are defined by the Treaty itself. The same applies to certain rights such as the freedom of movement, the right to participate in European and municipal elections, the right to refer to the Ombudsman, the right to petition, etc.

Article H.4 Level of protection

No provision of this Charter may be interpreted as restricting the scope of the rights guaranteed by Union law, the law of the Member States, international law and international conventions ratified by the Member States, including the European Convention on Human Rights as interpreted by the case law of the European Court of Human Rights.

Statement of reasons

The object of the provision is clear. It is to maintain the level of protection currently afforded by Union law, the law of the Member States and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes in all cases a minimum standard.

Article H.5 Prohibition of abuse of rights

Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Statement of reasons

This Article reproduces Article 17 of the European Convention on Human Rights:

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

Editors' note to CHARTE 4238/00 ADD 1,
**Amendments to CHARTE 4193/00 and 4192/00 of
Mrs Pervenche Berès, Mrs Elena Paciotti and Mrs
Ieke van den Burg (MEPs):**

The INIT FR version of this document was dated 18 April 2000.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 23 May 2000**CHARTE 4238/00 ADD 1****CONTRIB 111****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the German, English and Spanish translation of the contribution regarding the documents CHARTE 4193/00 CONVENT 19 and CHARTE 4192/00 CONVENT 18, submitted by Mrs. Pervenche Berès, Mrs. Elena Paciotti and Mrs. Ieke van den Burg, members of the European Parliament. ¹

¹ This text exists in French, English, Spanish and German languages.

Mrs Pervenche BERÈS, MEP

Vice-chairman of the European Parliament Delegation to the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Elena PACIOTTI, MEP

Full member of the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Ieke van den BURG, MEP

Substitute member of the Convention responsible for drafting the Charter of Fundamental Rights

Amendments to document CONVENT 19**Proposals for social rights****Amendment 1**

Replace Articles XIII and XV:

Everyone has the right to access to appropriate health care, effective social protection and high-quality social services.

Amendment 2

Add the following article:

Elderly persons

All elderly persons have the right to lead an independent and decent life. They should be able to play an active part in political, social and cultural life. Every worker and his dependants have the right to a pension guaranteeing a decent and independent standard of living.

Comment

See Article 23 of the revised European Social Charter

Article 23 - The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- *to enable elderly persons to remain full members of society for as long as possible, by means of:*
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;*
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*
- *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;*
 - b the health care and the services necessitated by their state;*
- *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*

Amendment 3

Replace Article XIV with:

Minimum income

Any person who is without adequate resources, especially if he is unable to gain access to paid employment, has the right to a minimum income enabling him to live in dignity.

Comment

This right has already been recognised in the Council recommendation of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems (92/441/EEC). The European Parliament has adopted a number of resolutions calling for the establishment of a minimum income in all Member States as a means of combating social exclusion (OJ C 262, 10.10.1988, p. 194).

See also Article 30 of the revised European Social Charter on the right to protection against poverty and social exclusion.

Mrs Pervenche BERÈS, MEP

Vice-chairman of the European Parliament Delegation to the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Elena PACIOTTI, MEP

Full member of the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Ieke van den BURG, MEP

Substitute member of the Convention responsible for drafting the Charter of Fundamental Rights

Amendments to document CONVENT 18**Proposals for social rights**

Add the following rights:

Right to housing

Everyone has the right to decent and appropriate housing.

Comment

See Article 31 of the revised European Social Charter:

Article 31 - The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources.*

This right is also recognised in the Belgian, Greek, Spanish, Italian, Dutch, Portuguese, Finnish and Swedish constitutions.

Right to a healthy environment

Everyone has the right to live in a clean and healthy environment and the duty to protect the quality of the environment for present and future generations.

Comment

This right is recognised in the Belgian, Portuguese, Spanish, German, Italian, Dutch, Swedish, Finnish and Norwegian constitutions. See contribution 86 by Mr Paavo Nikula, Mr Gunnar Jansson and Mrs Tuija Brax.

Right to work

Everyone has the right to gain his living by work which he freely chooses or accepts.

Comment

This article should be supplemented by Article 20 – occupational freedom – in the contribution (CHARTE 4102/00 – CONTRIB 2) by Professor Jürgen Meyer, Bundestag representative in the Convention.

See Article 1 of the revised European Social Charter:

Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;*
- 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;*
- 3. to establish or maintain free employment services for all workers;*
- 4. to provide or promote appropriate vocational guidance, training and rehabilitation.*

Access to services of general interest

Everyone has the right to high-quality services of general interest in all areas which contribute to the quality of life, sustainable development and, more generally, the protection of fundamental rights. Services of general interest shall be based on the principles of equal access, universality, continuity, democratic scrutiny and transparency.

Comment

This right has already been recognised in Article 16 of the Treaty of Amsterdam: ‘Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.’

This right is also set out in Declaration No 37 on public credit institutions in Germany which is annexed to the final act of the Treaty of Amsterdam.

Integration of disabled persons

All disabled persons, whatever the nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Comment

This article is identical to Article 26 of the Community Charter of Basic Social Rights. This right is recognised in the constitutions of several Member States, in particular the Greek, Spanish and Portuguese constitutions. Declaration No 22, annexed to the final act of the Treaty of Amsterdam, regarding persons with a disability, calls on the Community institutions to take account of their specific rights.

Work and family responsibilities

Every person with family responsibilities has the right to remain in or apply for employment without being discriminated against and to carry out his family responsibilities without prejudice to his job or career.

Every worker shall be entitled to parental leave.

Comment

Article 27 - The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. *to take appropriate measures:*
 - a) *to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;*
 - b) *to take account of their needs in terms of conditions of employment and social security;*
 - c) *to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;*
2. *to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;*
3. *to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4261/00****CONTRIB 134****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments on the documents CHARTE 4170/00 CONVENT 17 and CHARTE 4137/00 CONVENT 8, submitted by Mr. Jens-Peter Bonde, member of the European Parliament. ¹

¹ This text has been submitted in English language only.

Comments on CHARTE 4170/00 Convent 17 and CHARTE 4137/00 Convent 8**Rights of the citizens****Article E in Convent 17 paragraph 2 (part 2) regarding the right to good administration**

In Convent 17 the paragraph has the following wording:

- the right of every person to have access to his file, if this access is necessary for him to state his arguments, while respecting the legitimate interests of confidentiality and of business secrecy;

The paragraph should be altered from as follows:

- ”- the right of every person to have access to his file in accordance with the existing rules for access to information.”

Art. F in Convent 17 and article 14 in Convent 8 regarding right of access to documents

Should be altered as follows:

”Every citizen of the Union and anyone residing in the Union shall have the right of access to the documents and the informations of the institutions of the European Union. Everything is open unless there is a decision allowing a derogation from the general principle of openness in public law and administration. Derivations should be followed by a concrete reason which can be appealed to the European Ombudsman. Exceptions from the general rule and implementation of the rules of access to information can be adopted according to Article 255 of the Treaty establishing the European Community.”

Motivation:

The basic rule should be that the individual has access to all files. Exceptions from this rule should be limited and wellfounded. Exceptions should be followed by a concrete reason and it should be possible to complain about a rejection.

Editors' note to CHARTE 4269/00,
**Commentaires sur CHARTE 4192/00 et 4193/00
des Lands allemands soumis par M. Jürgen Gnauck
(Bundsrat) (datés le 08/05/00):**

The dating on the attached document appears erroneous. The original German version is dated 26 September 2013.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 5 mai 2000 (12.05)
(OR. en)****CHARTE 4269/00****CONTRIB 142****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint les observations des Länder allemands relatives aux propositions du Présidium figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19, transmises par M. Jürgen Gnauck, membre du Bundesrat. ¹

¹ Ce document n'existe qu'en langues allemande et française.

Jürgen Gnauck
Ministre des affaires fédérales et européennes
Chef de la Chancellerie
Chancellerie du Land de Thuringe
B.P. 997
D-99021 Erfurt

À l'attention de
M. Roman Herzog
Ancien Président de la République fédérale d'Allemagne
Président de la Convention pour
l'élaboration du projet de Charte des
droits fondamentaux de l'Union européenne
Prinzregentenstrasse 89

D-81675 Munich

Transmission préalable par fax (089-470 27 168)

À l'attention du Secrétariat de la Convention
Rue de la Loi 175
B-1048 Bruxelles

Transmission préalable par fax (0032-2-285 78 37)

Par E-mail (fundamental_rights@consilium.eu.int)

Observations du groupe de travail des Länder allemands relatives aux propositions du Présidium figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19

Monsieur le Président,

Ainsi qu'il ressort de l'ordre du jour de la réunion informelle de la Convention des 27 et 28 avril 2000, la Convention va poursuivre ses travaux sur les premières propositions du Présidium relatives aux articles ayant trait aux droits sociaux. Dans le cadre de leurs réunions de coordination, les Länder allemands ont dégagé un premier avis sur les propositions figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4139/00 CONVENT 19. J'ai l'honneur de vous transmettre ci-joint les résultats de cette évaluation et je vous saurais gré de prendre en compte nos observations dans le cadre des travaux de la Convention.

(formule de politesse)

Jürgen Gnauck
Ministre

Chancellerie du Land de Thuringe
Bureau 33/Bo,Ri

Erfurt, le 8 mai 2000

Projet de Charte des droits fondamentaux de l'Union européenne

Observations du groupe de travail des Länder allemands relatives aux propositions du Présidium figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19

Les Länder allemands adhèrent au principe de l'État social, sur lequel est fondé leur rôle de garants, en Allemagne, d'un niveau de protection sociale élevé. Ils accordent en même temps une grande importance à la dimension sociale de l'Union européenne et défendent l'idée d'un ordre social européen.

Toutefois, l'opportunité d'insérer les droits sociaux proposés dans une Charte des droits fondamentaux de l'Union européenne relève d'un autre débat. Les Länder allemands ont établi à cet égard les critères suivants :

Le projet de Charte des droits fondamentaux doit respecter strictement le mandat du Conseil européen de Cologne, qui prévoit simplement qu'il faudra "prendre en considération" des droits économiques et sociaux et ce uniquement dans la mesure où ils ne justifient pas uniquement des objectifs pour l'action de l'UE. Il s'agit d'établir une liste de "droits" qui rende visible pour les citoyens de l'Union européenne l'attachement de cette dernière aux valeurs juridiques fondamentales auxquelles adhèrent ses États membres. Il ne s'agit pas d'élaborer un programme politique de l'Union. Cela exclut donc la définition d'objectifs politiques.

En outre, la Charte ne peut pas, à elle seule, élargir les compétences de l'Union européenne. Par conséquent, l'insertion de règles détaillées sur des sujets qui ne relèvent pas de la compétence de l'Union réduirait l'impact que l'on souhaite donner à la Charte, l'Union n'étant pas en mesure d'assurer elle-même le respect des droits dans ces domaines.

Il ne faut par ailleurs pas perdre de vue que les droits sociaux peuvent être invoqués en justice. Indépendamment de ce qui précède, une Charte surchargée perdrait de sa valeur. Les acquis sociaux qui distinguent les États européens n'ont pas tous vocation à devenir des droits inaliénables, dont l'existence est indépendante notamment - et précisément - de la capacité économique d'un État. La section traitant des droits sociaux apparaît beaucoup trop chargée. Il en résulte un déséquilibre en défaveur des droits de base énoncés dans les sections précédentes, et la signification véritable des différents droits perd de sa netteté.

Enfin, la Charte devrait être formulée de manière concise, lisible et accessible à tous ; il faut donc se limiter à des règles générales moins détaillées. C'est d'ailleurs l'approche adoptée par la Convention pour les droits de base. Il conviendrait de s'en tenir à cette approche rationnelle également pour les droits sociaux. Il faudrait donc vérifier si des règles de nature simplement législative ne seraient pas suffisantes.

Conformément au mandat du Conseil européen, la Charte doit énoncer des règles contraignantes auxquelles est soumise l'action des institutions de l'Union. Il s'agit donc d'obligations incombant à la puissance publique. Cela exclut par conséquent que les droits fondamentaux comportent des effets directs à l'égard de tiers, c'est-à-dire des obligations imposées également à des citoyens et citoyennes ou à des entreprises. Les Länder s'opposent par principe à une telle extension. Dans cette optique, il serait opportun d'également faire preuve de beaucoup plus de retenue pour certaines dispositions afin de ne pas faire naître chez les citoyens de l'Union, par le biais d'un instrument juridique, des attentes auxquelles il serait impossible de répondre.

Dans ces conditions, les Länder allemands estiment que bon nombre des droits sociaux proposés pourraient disparaître de la Charte. En ne les y faisant pas figurer, on contribuerait d'ailleurs certainement à faciliter l'acceptation de celle-ci.

En espérant que la Convention fera siennes les considérations ci-dessus et prendra la responsabilité de renoncer à formuler des souhaits politiques au profit de dispositions juridiquement viables, les Länder allemands adoptent, sur les propositions soumises par le Présidium en ce qui concerne les droits économiques et sociaux, la position ci-après.

Concernant le document CONVENT 18:

1. Article I. Egalité entre les hommes et les femmes

Vu l'article 19 figurant dans le document CONVENT 8 ("Non-discrimination"), cette garantie supplémentaire semble superflue. Sur le fond, cette disposition ne suscite aucune objection. Il conviendrait toutefois de remplacer le terme "égalité" par "égalité de traitement".

2. Article II. Liberté professionnelle

Les Länder allemands estiment qu'il est indispensable de limiter ce droit fondamental aux citoyennes et citoyens de l'Union, ce qui permettrait aussi de supprimer le dernier membre de phrase, qui prête de toute façon à confusion. Dans la perspective de l'élaboration de dispositions transversales ou horizontales, il faudrait en outre examiner de près si une clause générale de limitation serait suffisante dans ce cas ou s'il ne faut pas prévoir des limitations différenciées.

3. Article III. Droit à l'information et à la consultation des travailleurs

Il faut se demander si une disposition de cette nature a vraiment sa place dans une Charte des droits fondamentaux. Il semble que des règles de droit dérivé suffiraient amplement et que, de surcroît, de telles règles offrirait de surcroît plus de souplesse qu'un droit fondamental et permettraient une évolution dynamique. Cela vaut par exemple pour la fixation de seuils (quelle est, pour une entreprise, la taille minimale à partir de laquelle existe un droit à l'information et à la consultation?).

Il faut en tout état de cause exclure toute contrainte et toute obligation juridiques directes de l'employeur.

Sur le plan rédactionnel, cet article devrait être épuré. Ainsi, le terme "effective" et le membre de phrase commençant par "notamment" sont superflus. En outre, il conviendrait de suivre le texte de l'article 21 de la Charte sociale révisée et de dire "les travailleurs ou leurs représentants".

4. Article IV. Droit d'association, de négociation et d'action collective

Il serait souhaitable de condenser le texte de cet article. Les Länder allemands sont d'avis que les dispositions du paragraphe 1, deuxième phrase, et du paragraphe 2 découlent du droit énoncé au paragraphe 1, première phrase, et peuvent donc être supprimées.

Il conviendrait en outre de supprimer le paragraphe 3 (droit de grève) afin d'éviter de donner une orientation unilatérale au texte. Il faut en tout cas préciser que les conflits d'intérêts visés doivent être liés au travail, ce qui exclut par exemple la "grève politique".

5. Article V. Droit à une rémunération égale pour un travail égal

L'objet principal de cette disposition est déjà couvert par la disposition générale énonçant le principe d'égalité. Par conséquent, les Länder allemands sont favorables à la suppression pure et simple de l'article 5, d'autant que l'article 4 de la Charte sociale révisée, mentionné dans le commentaire, a un contenu différent.

6. Article VI. Droit au repos et au congé annuel

Cette disposition semble à la fois trop détaillée et trop peu ouverte et dynamique pour pouvoir répondre aux besoins futurs. Des dispositions de droit dérivé devraient suffire pour assurer la protection de ce droit. Il conviendrait de supprimer cet article afin de ne pas surcharger la Charte.

7. Article VII. Sécurité et hygiène dans le travail

Sur le fond, cette disposition ne suscite aucune objection. Il faut toutefois se demander, ici aussi, s'il est indispensable d'insérer cette disposition dans la Charte des droits fondamentaux, qui énonce déjà le droit au respect de l'intégrité physique. Cette disposition ne doit en aucun cas avoir d'effet direct envers des tiers.

8. Article VIII. Protection des enfants et des adolescents

Les Länder allemands sont favorables à une protection étendue des enfants et des adolescents, mais estiment qu'il serait souhaitable d'avoir un article moins détaillé. Les limites d'âge fixées de manière rigide, en particulier, suscitent des réserves. Il semblerait plus opportun d'insérer dans la Charte une clause de protection générale des enfants et des adolescents.

9. Article IX. Droit à la protection en cas de licenciement

Compte tenu de la grande complexité de la question, la formulation choisie ne semble pas adéquate. Vu la multiplicité des intérêts qui doivent être pris en compte et mis en balance en cas de licenciement, il conviendrait de renoncer à faire figurer le droit à la protection en cas de licenciement parmi les droits fondamentaux. Les Länder pourraient tout au plus accepter une formulation concise. Dans ce cas, des dérogations devraient être autorisées pour les petites entreprises, les contrats de travail à durée déterminée et les périodes d'essai.

10. Article X. Droit à la formation et à l'orientation professionnelle

L'accès sans discrimination à une formation professionnelle adéquate est déjà couvert par l'interdiction générale de la discrimination et la liberté professionnelle. Il semblerait par conséquent que l'on puisse se passer d'une disposition spécifique. Par ailleurs, l'insertion d'un droit à l'orientation professionnelle aurait pour effet de surcharger la Charte.

Cette disposition ne devrait en aucun cas donner naissance à un droit à participer à des actions de formation ou à bénéficier de certains services.

11. Article XI. Droit des travailleuses à la protection de la maternité

Là aussi il faudrait se demander s'il ne serait pas préférable de renoncer à une disposition particulière. Le droit à un congé de maternité d'au moins quatorze semaines semble trop spécifique et détaillé. Il semblerait plus opportun de regrouper la protection des mères et celle des enfants et adolescents. Les Länder allemands sont favorables à une disposition générale relative à la protection de la maternité analogue à celle figurant à l'article 6, paragraphe 4, de la Loi fondamentale allemande, qui prévoit ce qui suit : "Toute mère jouit du droit à la protection et à l'assistance de la communauté."

12. Article XII. Droit au congé parental

Le texte proposé apparaît ambigu; il est en outre trop détaillé et trop "prescriptif". Il ne semble donc pas opportun de faire figurer ce droit parmi les droits fondamentaux.

Concernant le document CONVENT 19 :

1. Article XIII. Sécurité sociale

Il semble très douteux que cette disposition puisse être invoquée en justice. Il y a en outre lieu d'éviter ici aussi tout effet à l'égard de tiers. Enfin, il semble s'agir d'un objectif purement politique.

Par conséquent, les Länder allemands plaident en faveur d'une suppression de cette disposition.

En tout état de cause, sur le plan rédactionnel, le terme "ayants droits" devrait être remplacé par "créanciers alimentaires". En outre, le membre de phrase "selon les modalités propres à chaque État" n'est pas pertinent : il convient de se référer à la situation de droit propre à chaque Etat.

2. Article XIV. Droit à l'aide sociale

Les Länder allemands ne s'opposent pas à l'insertion d'une disposition de cette nature. Le critère à appliquer pour déterminer l'importance de l'aide sociale devrait être la dignité humaine. Il convient de noter, pour éviter toute équivoque, que le droit à l'aide sociale ne saurait faire obstacle à des mesures mettant fin au séjour de ressortissants de pays tiers.

3. Article XV. Droit à l'accès aux soins de santé

Cette disposition apparaît superflue, car elle découle déjà de l'article relatif à la dignité humaine et à l'aide sociale. Les Länder s'opposent à une garantie institutionnelle de ce droit.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4270/00****CONTRIB 143****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver les observations de M. Guy Braibant, représentant du gouvernement français, sur les droits économiques et sociaux (documents CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19 et CHARTE 4227/00 CONVENT 26).¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 13 avril 2000

COMPLEMENT A MES OBSERVATIONS DU 3 AVRIL SUR LES ARTICLES I A XV

(Droits économiques et sociaux : documents Convent 18, Convent 19 et SN/2432/00)

* ARTICLE III

Le droit à l'information et à la consultation des travailleurs au sein de l'entreprise est, je crois, au nombre des plus fondamentaux parmi les droits de cette troisième corbeille.

Consacré aussi bien par les deux chartes auxquelles nous renvoie notre mandat (articles 17 et 18 de la Charte communautaire de 1989 et articles 21 et 29 de la Charte sociale du Conseil de l'Europe) que par une directive des Communautés européennes (directive 94/45 relative au comité d'entreprise européen), ce droit ne doit pas être limité à l'hypothèse des procédures de licenciement collectif. Il paraît en effet plus moderne et surtout plus conforme aux textes de référence de l'élargir à l'anticipation des situations de crise.

La rédaction de cet article devrait ainsi s'inspirer de celle des dispositions de la Charte sociale révisée et prévoir que : *«Les travailleurs ont le droit d'être informés et consultés en temps utile sur les décisions envisagées qui sont susceptibles d'affecter substantiellement les intérêts des travailleurs, et notamment sur celles qui auraient des conséquences importantes sur la situation de l'emploi dans l'entreprise, ainsi que sur les décisions relatives aux conditions et au milieu de travail»*.

* ARTICLE IV

1. La liberté syndicale, posée par le 1er alinéa, devrait faire l'objet d'un article distinct. Il s'agit d'un droit dont le caractère fondamental n'est pas contestable, reconnu explicitement à l'article 11 de la CEDH ainsi que par la Charte communautaire de 1989 (article 11), la Charte sociale révisée (article 5), de nombreuses conventions de l'OIT (n° 87 et 98 en particulier) et la déclaration universelle des droits de l'homme (article 23-4).

2. Au second alinéa, il convient de préciser que le droit de négocier et de conclure des conventions collectives s'exerce dans les conditions prévues par les législations nationales *et communautaires*.

3. Il serait préférable, pour le 3ème alinéa, de revenir à la version de cet article initialement proposée (doc. SN/2158/1/00 REV), qui prévoyait que *«Les travailleurs peuvent recourir à des actions collectives en cas de conflits d'intérêts, y compris le droit de grève, dans le cadre des obligations résultant des législations nationales et communautaires»*. La rédaction alternative proposée par le secrétariat paraît en effet inclure un droit de lock-out, ce qui n'est pas satisfaisant.

L'article 13 de la Charte communautaire de 1989 offre une formule ramassée qui me paraît bonne : **«Le droit de recourir en cas de conflits d'intérêts à des actions collectives inclut le droit de grève, sous réserve des obligations résultant des réglementations nationales [et communautaires] et des conventions collectives».**

* ARTICLE VI

L'expression *«période annuelle de congés payés»* risque de prêter à confusion. Il serait préférable de parler de **«congés payés annuels»**.

* ARTICLE VII

Le droit à la sécurité et à la santé - terme désormais utilisé de préférence à celui d'hygiène par la législation communautaire - appartient au socle commun des droits en vigueur dans tous les Etats membres. Il est en effet consacré par la directive 89/391 ainsi que par toute une série de directives spécifiques, et l'article 137 du traité CE donne compétence à l'Union en cette matière.

* ARTICLE IX

La rédaction proposée n'est pas satisfaisante. Elle pose en effet en principe d'application générale un droit négatif. En outre, la formule *«sans motif valable»* n'est pas suffisamment précise : d'une part, elle ne couvre pas les différentes hypothèses prévues en droit du travail pour cette rupture du contrat (motif économique, faute simple, grave ou lourde...); d'autre part, elle est peu protectrice puisqu'elle n'indique pas que le travailleur doit être informé du motif de son licenciement.

Cet article pourrait dès lors être rédigé ainsi : **«Aucun travailleur ne peut faire l'objet d'un licenciement sans avoir été informé de son motif. Ce motif doit pouvoir être soumis à l'appréciation d'un juge, qui peut condamner l'employeur à une réparation appropriée».**

* ARTICLE XI

La protection de la maternité ne saurait être ramenée au droit des femmes enceintes à un congé payé - congé dont la durée pourrait n'être fixée que dans le commentaire de notre Charte.

Conformément à la directive 92/85 et à l'article 8 de la Charte sociale du Conseil de l'Europe, cet article devrait être complété pour prévoir que la protection de la maternité comprend une protection contre le licenciement, contre les travaux pénibles et dangereux, le droit au remplacement à un poste adapté et, le cas échéant, une réglementation d travail de nuit.

Les services de la Commission ont proposé de compléter notre Charte par quatre articles.

* Je suis très favorable à ce que des articles soient consacrés au droit des personnes âgées à une protection sociale et au droit des personnes handicapées à l'intégration professionnelle et à la protection sociale.

* Le droit au logement me paraît tout aussi fondamental. Il est également l'un de ceux qui nourrissent le plus d'attentes chez les citoyens et les différentes ONG.

Or ce droit bénéficie d'ores et déjà d'une reconnaissance internationale certaine. Il est consacré par des textes déjà anciens et largement ratifiés, la déclaration universelle des droits de l'homme (article 25) et le Pacte international sur les droits économiques et sociaux (article 11). Plus récemment, le «*droit à un logement convenable*» a fait l'objet du Plan mondial d'action adopté par l'ONU en juin 1997, grâce notamment à la prise de position commune des Etats membres de l'Union européenne. Ce droit est également inscrit à l'article 31 de la Charte sociale européenne à laquelle le mandat donné par le Conseil européen nous renvoie. Enfin, plusieurs conventions de l'OIT posent le droit au logement pour des catégories spécifiques : les travailleurs (1962), les travailleurs âgés (1980), les réfugiés (1981), les travailleurs immigrés (1990).

Si la rédaction de l'article consacré au droit au logement doit bien entendu respecter le principe de subsidiarité, il me semblerait difficile que notre Charte l'omette.

La rédaction pourrait être la suivante : «*L'Union contribue par ses politiques à la réalisation du droit au logement*», ce qui serait en harmonie avec la formulation de l'article suivant, consacré à l'emploi, qui reprend les termes de l'article 2 du traité CE.

Deux autres droits fondamentaux méritent de figurer dans la Charte.

* **Le droit des représentants des travailleurs à la protection dans l'entreprise**, acquis social fondamental qui se présente incontestablement comme un droit dur dont la sanction peut être assurée. Ce droit est garanti par la Charte communautaire de 1989 (article 28) ainsi que par la convention n°135 de l'OIT.

* **Le droit d'égal accès au service public.**

Guy BRAIBANT

Représentant du Président de la République et du Premier ministre à la Convention chargée d'élaborer la Charte des droits fondamentaux de l'Union européenne

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 May 2000**CHARTE 4271/00****CONTRIB 144****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a proposed amendment on the structure of social rights by Mr. Jürgen Meyer, member of the German parliament. ¹

¹ This text has been submitted in German, French and English languages.

Prof. Dr. Jürgen Meyer, MdB

Stv. Vorsitzender des Ausschusses für die Angelegenheiten
der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin Unter den Linden 50 2122/2124

Proposed amendment
on the structure of social rights

In accordance with the procedure proposed by the Praesidium (see Convent 15 of 9 March 2000), in my capacity as a delegate to the Convention and the representative of the German Bundestag, I submit the following proposed amendment on the structure of the Charter of Fundamental Rights, which pertains to economic and social basic rights.

I. Introduction

Since - as expected - there have been fundamental differences of opinion in the Convention's debate on economic and social basic rights, I submit the following motion for an amendment as a mediation proposal which takes account of the arguments put forward by the proponents of social basic rights and the sceptics alike.

Under this proposal, economic and social basic rights should be incorporated into the Charter of Fundamental Rights on the basis of three pillars:

1. As the first pillar, the principle of solidarity is introduced, either in the Preamble or in a separate Article. In this way, alongside liberty, democracy, respect for human rights and the rule of law, a further principle is added which is common to the Member States.
2. As the second pillar, a list is drawn up of the economic and social rights which are uncontested and which must therefore be incorporated into the Charter.
3. As the third pillar, a horizontal article is proposed, containing the provision that the level of protection afforded by the Charter must not fall below national and international laws, treaties and conventions, and that existing instruments are referred to in the interpretation of rights contained in the Charter.

II. Proposed wording

1. First pillar:

For the Preamble or a separate Article, the following wording is proposed:

The Union and its institutions are founded on the principles of liberty, democracy, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.

2. Second pillar:

Here, the Praesidium has proposed a series of Articles in Convent 18, 19 and 26, which are not contested. I also refer to Articles 8, 13, 14, 15, 20, 21 and 22 of my discussion draft, in which I have suggested appropriate wording for social rights (CHARTE 4102/00).

3. Third pillar:

The following wording is proposed as a horizontal clause:

Art. H 4 Level of protection

- 1. No provision of this Charter may be interpreted as restricting the scope of the protection guaranteed by European and national law and by international conventions and treaties. This applies especially to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the case law of the European Court of Human Rights.**
- 2. In interpreting the fundamental rights contained in this Charter, especially economic and social rights, the international conventions and treaties concluded by Member States of the European Union must be taken into account.**

III Statement of reasons

1. First pillar:

The wording of the Article takes over the Praesidium's proposed phrasing (Article A paragraph 2, Convent 17), adding the term "solidarity".

The principle of solidarity is a constituent element of every - also non-state - community. In Germany, it is implicitly contained in the social state principle laid down in the Basic Law², in France in the historical constitutional link between the terms "solidarité" and "fraternité", in the Spanish Constitution (Article 2), and the Polish Constitution (Preamble). For the EC/EU, the European Court of Justice refers to the "duty of solidarity assumed by the Member States through their accession to the Community" (ECJ Judgment, Case 39/73, Rep. 1973, 101 [102]), and reiterates this in many other judgments and opinions (ECJ Opinion, Rep. 1977, 741 ff, Opinion 1/76; ECJ Judgment, Rep. 1980, 907 ff: Case 136/82; Case 263/82; Case 64/84; Case 250/84; Case 276/80; Case 203/86).

² Jarass, Hans/Pieroth, Bodo: *Grundgesetz für die Bundesrepublik Deutschland. Kommentar*. Munich: Beck, 2000, Art. 20 para 105, p. 503 (5th edition)

2. Second pillar:

As the second pillar, and in accordance with the commitment undertaken by the heads of state and government at the Cologne European Council, the Charter should include Articles derived from the constitutional traditions common to the Member States, as well as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. Failure to take account of these rights would violate the Cologne commitment and would not deliver citizens' desired identification with the Charter of Fundamental Rights.

Since the third pillar (see below) proposes that the Charter be interpreted with reference to international standards, these Articles do not need to contain detailed provisions and can be limited to basic norms. This approach has repeatedly been demanded in the Convention's discussions as well.

3. Third pillar:

Paragraph 1 is based on the Praesidium's proposals in Convent 27 (Article H.4).

Criticism has rightly been voiced in the Convention that the provisions on social rights must not be too detailed, as a dynamic element is preferable to a static element when framing minimum standards too. I therefore propose to resolve this problem with a horizontal clause (third pillar).

Over and above the Praesidium's proposal, an Article 2 is therefore added which contains a provision on the interpretation of the rights contained in the Charter. International protection of fundamental and human rights must be seen as a unified regime which has gained in clarity and binding force over the last fifty years. Through the development of the European Convention on Human Rights, Europe has played a leading role in this context, which has greatly influenced the development of other regional human rights conventions (American Convention on Human Rights, Banjul Charter) as well. At the same time, the European states have participated actively in the

development of universal conventions, resulting in standards which are binding on all EU Member States. A reference to these standards in the Charter would reaffirm the interdependence of the regime, as reflected in the decisions of national courts and international proceedings too.

1. A reference to internationally recognized standards enables clear and comprehensible wording to be used without forfeiting the necessary legal clarity.
2. The dynamic element required for the interpretation of all fundamental rights, but demanded primarily for social rights during the Convention's discussions, is also safeguarded through reference to the international regime.
3. With this reference, the European Union demonstrates that it sees itself as part of the international human rights regime. This would ensure a high status for the Charter of Fundamental Rights at international level.
4. This approach is consistent with the principle contained in many Member States' constitutions that interpretation must be in line with international law.

The fact that reference is made to the international conventions recognized and/or concluded by Member States means that there is no "risk" for any state that subsequent interpretations would contravene what has already been recognized at international and perhaps at national level. Thus the interpretation of the Charter of Fundamental Rights also takes account of those restrictions submitted by individual states in the form of reservations, provided that they do not contravene the Vienna Convention on the Law of Treaties.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4272/00****CONTRIB 145****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions de dispositions horizontales soumises par MM. Fischbach et Krüger, observateurs du Conseil de l'Europe. ¹

¹ Ce texte a été soumis en langue française uniquement.

17.4.2000

**PROPOSITIONS DE DISPOSITIONS HORIZONTALES
SOUMISES PAR MM. FISCHBACH ET KRÜGER,
OBSERVATEURS DU CONSEIL DE L'EUROPE
(Doc. de référence: CHARTE 4149/00 CONVENT 13)**

Article X: clause de limitation générale

[Les droits reconnus aux articles ... ne peuvent faire l'objet d'aucune limitation.] Sous réserve de dispositions plus protectrices [de la présente Charte ou]¹ de la Convention européenne des droits de l'homme, toute limitation au respect des autres droits et libertés reconnus dans la présente Charte doit être:

- prévue par la loi²,
- poursuivre un but légitime³ et
- être nécessaire dans une société démocratique⁴, [dans le respect du principe de proportionnalité et de la substance même du droit ou de la liberté en question.]⁵

Notes

1. Les dispositions de la Charte sont dépourvues de limitations jusqu'à présent.
2. Communautaire et/ou nationale ?
3. Le terme "but légitime" est utilisé par la CEDH et la jurisprudence. En outre, le terme "intérêts" peut inclure aussi des intérêts particuliers ou corporatistes, ce qui est moins le cas du terme "but". Du point de vue de la sécurité juridique et de l'effet protecteur, ces buts ou intérêts gagneraient à être limitativement énumérés, comme dans la CEDH, sauf à estimer qu'une telle énumération n'est pas nécessaire, compte tenu du membre de phrase "Sous réserve de dispositions plus protectrices de la CEDH" et de l'effet de l'article Y. Il reste cependant que l'interprétation conjointe de la Charte et de la CEDH sur ce point pourrait être source d'hésitations et d'incertitudes.
4. Cette formulation semble plus forte et donc plus protectrice que celle utilisée dans le Convent 13. En effet, la Cour de Strasbourg a déduit de la condition de "nécessité" de l'ingérence que celle-ci doit répondre à un "besoin social impérieux". Dans le texte du Convent 13, ce sont les "limites" à la "limitation" qui doivent être nécessaires, pas la limitation elle-même. Il en résulte donc, au moins en théorie, une plus grande marge de manoeuvre pour les Etats.

5. Cette précision n'est pas vraiment nécessaire, car elle résulte de la jurisprudence sur la "nécessité dans une société démocratique". Le terme "substance même" est préférable au terme "contenu essentiel", car utilisé dans la jurisprudence de la Cour de Strasbourg et de la Cour de justice. Il s'agit en effet d'éviter des confusions inutiles sur des termes qui désignent la même réalité.

Article Y: niveau de protection

Aucune des dispositions de la présente Charte ne sera interprétée comme limitant ou portant atteinte à la protection offerte par la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, telle qu'interprétée par la Cour européenne des droits de l'homme, [et la Charte sociale européenne (révisée), telle qu'interprétée par le Comité d'experts indépendants.]

Note

Il convient d'assurer que la Charte ne soit interprétée ni comme se situant en-dessous du niveau de protection de la Convention européenne des droits de l'homme et de la Charte sociale (révisée), ni comme restreignant celui-ci, par voie de conséquence. Le texte soumis est considéré comme couvrant ces deux éventualités.

Interdiction de l'abus de droit

Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant pour un Etat, [l'Union ou un de ses organes,] un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ou à des limitations plus amples de ces droits et libertés que celles prévues à ladite Charte.

Ce libellé est tiré de l'article 17 de la Convention européenne des droits de l'homme.

Préambule

Considérant que la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, la Charte sociale européenne (révisée) et les autres instruments de protection des droits fondamentaux du Conseil de l'Europe servent de base commune à la sauvegarde des droits fondamentaux dans toute l'Europe, et que leur contenu, ainsi que la jurisprudence de la Cour européenne des droits de l'homme et les conclusions du Comité d'experts indépendants sont à prendre en compte lors de l'interprétation de la présente Charte;

Article Y: niveau de protection

Aucune des dispositions de la présente Charte ne sera interprétée comme limitant ou portant atteinte à la protection offerte par la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales et la Charte sociale européenne (révisée).

Note

Il convient d'assurer que la Charte ne soit interprétée ni comme se situant en-dessous du niveau de protection de la Convention européenne des droits de l'homme et de la Charte sociale (révisée), ni comme restreignant celui-ci, par voie de conséquence. Le texte soumis est considéré comme couvrant ces deux éventualités.

1.

Interdiction de l'abus de droit

Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant pour un Etat, [l'Union ou un de ses organes,] un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ou à des limitations plus amples de ces droits et libertés que celles prévues à ladite Charte.

Ce libellé est tiré de l'article 17 de la Convention européenne des droits de l'homme.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4280/00****CONTRIB 153****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver une contribution de M. Guy Braibant, représentant du gouvernement français, sur les droits sociaux. ¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 2 mai 2000

CONTRIBUTION SUR LES DROITS SOCIAUX

Au moment où la Convention aborde la phase finale de ses travaux, il me paraît utile de présenter quelques observations.

La rédaction des trente premiers articles, correspondant à peu près aux deux premières “ corbeilles ” du mandat de Cologne, n’appelle de ma part, à ce stade, que des remarques de forme.

1/ L’importance des droits économiques et sociaux, dont la Convention n’a pas terminé l’examen, est évidente. Elle est triple :

- Ils se sont développés au cours du dernier demi-siècle, particulièrement en Europe ; ils constituent un élément essentiel du “ modèle social européen ” ;
- Ils correspondent aux attentes de la “ société civile ” et ils concernent la vie quotidienne de la population ;
- Ils forment la principale valeur ajoutée par la Charte aux instruments existants, notamment la Convention européenne de sauvegarde des droits de l’homme et des libertés fondamentales.

Naturellement, tous les droits n’ont pas la même signification. Les uns sont absolus (dignité, vie, égalité des sexes) ; les autres peuvent être limités pour des motifs d’intérêt général, d’ordre public, etc. ; enfin, certains droits économiques et sociaux, décrits parfois comme des “ droits de créance ” ou des “ droits à ” (et non des “ droits de ”) sont subordonnés à des mesures collectives de mise en œuvre. De même que la proclamation d’un “ droit à la santé ” ne signifie pas que chacun a le droit d’être en bonne santé à tout moment, le “ droit au logement ” ne permet pas à chacun d’aller en justice pour exiger l’attribution d’un logement. Il n’en a pas moins une signification juridique d’orientation et d’incitation à prendre des mesures permettant à chacun d’accéder à un logement décent, compte tenu de ses ressources et de sa situation familiale.

C’est ce que le Conseil constitutionnel français appelle un “ objectif de valeur constitutionnelle ” et il a fait précisément application de cette notion au droit au logement, en le déduisant de la sauvegarde de la dignité humaine (décision du 19 janvier 1995) : “ La possibilité pour toute personne de disposer d’un logement décent est un objectif de valeur constitutionnelle ; il incombe tant au législateur qu’au gouvernement de déterminer, conformément à leurs compétences respectives, les modalités de mise en œuvre de cet objectif ”. C’est moins qu’un droit classique mais c’est plus qu’un simple objectif politique. La Convention a donc le droit de le retenir. Le même raisonnement peut s’appliquer à d’autres notions.

Il appartient naturellement à la Convention de décider lesquelles de ces notions ont un caractère “fondamental” et constitutif de notre communauté de valeurs.

2/ Compte tenu des développements précédents, il me semble que la Charte devrait comprendre notamment les droits suivants, qui figuraient presque tous dans la première liste soumise à la Convention au début de ses travaux (body 4) :

- le droit à l’information des travailleurs, notamment en cas de licenciement collectif ;
- le droit de négociation collective ;
- le droit au repos (repos hebdomadaire et congés payés) ;
- le droit de grève ;
- le droit au logement ;
- les droits liés à la protection de l’environnement et à la protection des consommateurs (une première rédaction a été soumise à la Convention, mais elle n’a pas été jugée satisfaisante, notamment pour une raison de forme : la réunion des deux aspects en un seul article) ;
- le droit d’accès aux services économiques d’intérêt général.

Ces droits seront, comme les autres, soumis à la clause générale de limitation qui figurera dans la Charte. En outre, une clause horizontale spécifique pourrait permettre de tenir compte de leur nature particulière en renvoyant au législateur le soin de les mettre en œuvre.

Bien entendu, on pourrait laisser à la jurisprudence le soin de dégager de tels droits à partir des principes communs aux juges européens et de certains droits généraux comme la dignité de la personne humaine. Mais ce serait un processus long et qui ne serait pas conforme aux objectifs de visibilité et de lisibilité des droits fondamentaux qui sont à l’origine de la rédaction de la Charte et figuraient au premier rang du mandat de la Convention.

Guy BRAIBANT

Représentant du Président de la République et du Premier ministre

à la Convention chargée d’élaborer la Charte des droits fondamentaux de l’Union européenne

Editors' note to CHARTE 4284/00,
**Note du Présidium: Proposition pour les articles 1
à 30 (Droits civils et politiques et droits du citoyen (fr)
+ COR 1 (es) + COR 2 (dk) + REV 1 (fr):**

REV1 aligns French version (Art 20-23; Principe de démocratie; Numbering after Article 23) with English version.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 mai 2000**CHARTE 4284/00****CONVENT 28****NOTE DU PRESIDIUM**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

- Nouvelle proposition pour les articles 1 à 30 (Droits civils et politiques et droits du citoyen)
-

Les membres de la Convention trouveront ci-après la nouvelle rédaction des articles 1 à 30, établie en tenant compte des modifications proposées et des observations formulées. Chaque article est suivi d'un exposé des motifs. La place des différents articles est provisoire.

Projets d'articles

Article 1. Dignité de la personne humaine

- 1. La dignité de la personne humaine doit être respectée et protégée.**
- 2. Toutes les personnes sont égales en droit.**

Exposé des motifs

Cet article figure comme premier article de la Charte, car la dignité de la personne humaine constitue le fondement même des droits fondamentaux. La déclaration universelle des droits de l'homme établit ce principe dans son préambule:

«considérant que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde».

Le respect de la dignité de la personne humaine constitue une limite inhérente à tous les autres droits qui ne peuvent être utilisés pour porter atteinte à cette dignité.

Le paragraphe 2 retrace un principe que la Cour a jugé être un principe fondamental communautaire (arrêt du 13.11.1984, Racke, Aff. 283/83, Rec. p. 3791).

Article 2. Droit à la vie

- 1. Toute personne a droit à la vie**
- 2. Nul ne peut être condamné à la peine de mort, ni exécuté.**

Exposé des motifs

Le paragraphe 1 reproduit l'article 2 de la convention européenne des droits de l'homme qui se lit ainsi:

"1. Le droit de toute personne à la vie est protégée par la loi. La mort ne peut être infligée à quiconque intentionnellement, sauf en exécution d'une sentence capitale prononcée par un tribunal au cas où le délit serait puni de cette peine par la loi.

2. La mort n'est pas considérée comme infligée en violation de cet article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

- a. pour assurer la défense de toute personne contre la violence illégale ;*
- b. pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;*
- c. pour réprimer, conformément à la loi, une émeute ou une insurrection.».*

Les exceptions visées au paragraphe 2 de l'article 2 de la convention s'appliquent dans le cadre de la présente charte conformément à la clause générale au projet d'article H 2 figurant au doc. charte 4235/00 CONVENT 27.

Le paragraphe 2 reproduit la deuxième phrase de l'article 1 du protocole n° 6 à la Convention européenne des droits de l'homme. L'article 2 du protocole est rédigé ainsi :

«Un Etat peut prévoir dans sa législation la peine de mort pour des actes commis en temps de guerre ou de danger imminent de guerre; une telle peine ne sera appliquée que dans les cas prévus par cette législation et conformément à ses dispositions... ».

Le problème des limitations sera résolu par la clause horizontale relative à la convention européenne.

Article 3. Droit au respect de l'intégrité de la personne humaine

1. **Toute personne a droit au respect de son intégrité physique et mentale.**
2. **Dans le cadre de la médecine et de la biologie, les principes suivants doivent notamment être respectés :**
 - **interdiction des pratiques eugéniques;**
 - **respect du consentement éclairé du patient;**
 - **interdiction de faire du corps humain et de ses produits une source de profit;**
 - **interdiction du clonage reproductif des êtres humains.**

Exposé des motifs

Ces principes figurent dans la Convention sur les droits de l'homme et la biomédecine. La présente charte ne vise à pas déroger à ces dispositions. L'énumération n'est pas exhaustive, ce qui permet une évolution pour tenir compte des progrès éventuels en la matière.

Article 4. Interdiction de la torture et des traitements inhumains

Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants. Nul ne peut être expulsé ni extradé vers un Etat où il serait menacé d'être soumis à la peine de mort, à la torture ou à d'autres traitements inhumains.

Exposé des motifs

Cet article reproduit l'article 3 de la Convention européenne des droits de l'homme : Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants. La seconde phrase de cet article incorpore la jurisprudence de la Cour européenne sur l'article 3.

Article 5. Interdiction de l'esclavage et du travail forcé

1. Nul ne peut être tenu en esclavage ni en servitude.
2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.

Exposé des motifs

Cet article reprend l'article 4 de la convention européenne des droits de l'homme :

«1 Nul ne peut être tenu en esclavage ni en servitude.

2 Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.

3 N'est pas considéré comme «travail forcé ou obligatoire» au sens du présent article :

a tout travail requis normalement d'une personne soumise à la détention dans les conditions prévues par l'article 5 de la présente Convention, ou durant sa mise en liberté conditionnelle;

b tout service de caractère militaire ou, dans le cas d'objecteurs de conscience dans les pays où l'objection de conscience est reconnue comme légitime, à un autre service à la place du service militaire obligatoire;

c tout service requis dans le cas de crises ou de calamités qui menacent la vie ou le bien-être de la communauté;

d tout travail ou service formant partie des obligations civiques normales. »

Le troisième alinéa de cet article qui indique dans quel cas un travail n'est pas considéré comme forcé ou obligatoire n'a pas été reprise. Cette disposition sera intégrée par la clause horizontale relative à la Convention européenne des droits de l'homme. Il va de soi que ne relèvent notamment pas de la notion de travail forcée les prestations personnelles établies par la loi et qui sont exigées des citoyens pour des raisons civiques ou dans des cas d'urgence ou de calamité, l'accomplissement des obligations militaires ou le service de remplacement, ni le travail exigé normalement d'une personne privée de liberté.

Article 6. Droit à la liberté et à la sûreté

Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans des cas et selon les formes prévus par la loi.

Exposé des motifs

L'article 5 de la convention européenne des droits de l'homme défini ainsi les cas dans lesquels une personne peut être privée de sa liberté:

"1 Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :

a s'il est détenu régulièrement après condamnation par un tribunal compétent;

b s'il a fait l'objet d'une arrestation ou d'une détention régulières pour insoumission à une ordonnance rendue, conformément à la loi, par un tribunal ou en vue de garantir l'exécution d'une obligation prescrite par la loi;

c s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente, lorsqu'il y a des raisons plausibles de soupçonner qu'il a commis une infraction ou qu'il y a des motifs raisonnables de croire à la nécessité de l'empêcher de commettre une infraction ou de s'enfuir après l'accomplissement de celle-ci;

d s'il s'agit de la détention régulière d'un mineur, décidée pour son éducation surveillée ou de sa détention régulière, afin de le traduire devant l'autorité compétente;

e s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond;

f s'il s'agit de l'arrestation ou de la détention régulières d'une personne pour l'empêcher de pénétrer irrégulièrement dans le territoire, ou contre laquelle une procédure d'expulsion ou d'extradition est en cours.

2 Toute personne arrêtée doit être informée, dans le plus court délai et dans une langue qu'elle comprend, des raisons de son arrestation et de toute accusation portée contre elle.

3 Toute personne arrêtée ou détenue, dans les conditions prévues au paragraphe 1.c du présent article, doit être aussitôt traduite devant un juge ou un autre magistrat habilité par la loi à exercer des fonctions judiciaires et a le droit d'être jugée dans un délai raisonnable, ou libérée pendant la procédure. La mise en liberté peut être subordonnée à une garantie assurant la comparution de l'intéressé à l'audience.

4 Toute personne privée de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal, afin qu'il statue à bref délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale.

5 Toute personne victime d'une arrestation ou d'une détention dans des conditions contraires aux dispositions de cet article a droit à réparation."

L'article 6 de la charte n'entend permettre aucun autre cas de privation de liberté que ceux qui sont autorisés par la Convention européenne des droits de l'homme, lesquels s'appliquent en vertu du projet d'article H 2 (2) relatif aux limitations des droits garantis, figurant au document CHARTE 4235/00 CONVENT 27. Dans la mesure où la charte s'applique dans le cadre de l'Union, ces droits devront notamment être respectés lorsque, conformément au titre VI du traité sur l'Union européenne, l'Union adopte des décisions-cadres pour l'harmonisation en matière pénale.

Article 7. Droit à un recours effectif

Toute personne dont les droits et libertés ont été violés a droit à un recours effectif devant un tribunal.

Exposé des motifs

Cet article reprend l'article 13 de la convention européenne des droits de l'homme:

"Toute personne dont les droits et libertés reconnus dans la présente Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles".

La Cour de justice a consacré le principe en droit communautaire dans son arrêt du 15 mai 1986 (Johnston, aff. 222/84, Rec. p.1651). Selon la Cour, ce principe s'applique également aux Etats membres lorsqu'ils appliquent le droit communautaire. L'inscription de cette jurisprudence dans la charte n'a pas pour objet de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité. Ce principe est mis en œuvre selon les voies procédurales prévues dans les traités : recours en annulation lorsque les conditions de recevabilité sont remplies ou recours préjudiciel en appréciation de recevabilité lorsque la question est posée devant un juge national. La rédaction de l'article a été adaptée pour tenir compte des spécificités de l'Union. Ainsi, on a supprimé la référence à une instance nationale puisque la Charte s'applique qu'aux

institutions et organes de l'Union et que, dans ce cadre, le recours peut être exercé soit devant le juge communautaire, soit devant le juge national qui est le juge de droit commun en matière d'application du droit communautaire. De même, la notion d'instance nationale a été remplacée par celle de tribunal puisque la jurisprudence de la Cour vise la protection juridictionnelle.

Article 8. Droit à un tribunal impartial

- 1. Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi.**
- 2. Une aide juridictionnelle est accordée à ceux qui ne disposent pas de ressources suffisantes dans la mesure où cette aide serait indispensable pour assurer l'effectivité de l'accès à la justice.**

Exposé des motifs

Cet article se fonde sur l'article 5 § 1 de la Convention européenne des droits de l'homme qui se lit ainsi :

«Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. Le jugement doit être rendu publiquement, mais l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice.»

En droit communautaire, le droit à un tribunal s'applique à tous les contentieux. Elle est l'une des conséquences du fait que la Communauté est une communauté de droit comme l'a Cour l'a constaté dans l'affaire 194/83, Les Verts contre Parlement européen (arrêt du 23 avril 1986, rec. p.1339), ce qui entraîne comme conséquence un droit à un recours effectif devant un juge (parmi une jurisprudence abondante, Johnston, aff. 222/84, arrêt du 15 mai 1986 rec. p.1682).

Les limitations n'ont pas été reproduites, mais elles s'appliquent dans le cadre de la clause générale de limitation qui devrait figurer dans la charte.

En ce qui concerne le paragraphe 2, il convient de noter que d'après la jurisprudence de la Cour européenne des droits de l'homme, une aide judiciaire doit être accordée lorsque l'absence d'une telle aide rendrait inefficace la garantie d'un recours effectif (Arrêt CEDH du 9.10.1979, Airey, Série A, Volume.32, 11). Il existe également un système d'assistance judiciaire devant la Cour de justice des Communautés européennes. Dans ces conditions, il a été jugé important de consacrer le principe dans la charte.

Article 9. Présomption d'innocence et droits de la défense dans un procès pénal

- 1. Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie.**
- 2. Le respect des droits de la défense est garanti à tout accusé .**

Exposé des motifs

Cet article se fonde l'article 5 § 2 et 3 de la Convention européenne des droits de l'homme qui se lit ainsi :

"2 Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.

- 3 Tout accusé a droit notamment à :*

- a être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui;*
- b disposer du temps et des facilités nécessaires à la préparation de sa défense;*
- c se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent;*
- d interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge;*
- e se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience."*

Compte tenu du parti pris de brièveté dans la rédaction qui a été retenu, il n'a pas été jugé utile de reproduire cet article dans son intégralité, mais conformément à l'article 6 du traité sur l'Union européenne ces dispositions qui explicitent les principes retenus dans l'article de la charte, s'appliquent dans le droit de l'Union.

Article 10. Pas de peine sans loi

- 1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise. Si, postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.**
- 2. Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux du droit international.**

Exposé des motifs

Cet article reprend le principe classique de la non-rétroactivité des lois et des peines en matière pénale. Il a été ajouté le principe de la rétroactivité de la loi pénale plus douce qui existe dans de nombreux Etats membres et qui figure à l'article 15 du Pacte sur les droits civils et politiques. L'article 7 de la convention européenne des droits de l'homme est rédigé comme suit:

- "1 Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.*
- 2 Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées."*

On a simplement remplacé au paragraphe 2 le terme « civilisées » par le terme plus moderne de principe généraux du droit international ce qui n'implique aucun changement dans le sens de ce paragraphe qui vise notamment les crimes contre l'humanité.

Article 11. Droit à ne pas être jugé ou puni deux fois

Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi.

Exposé des motifs

L'article 4 du protocole n° 7 à la convention européenne des droits de l'homme se lit ainsi:

- "1 Nul ne peut être poursuivi ou puni pénalement par les juridictions du même Etat en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet Etat.
- 2 Les dispositions du paragraphe précédent n'empêchent pas la réouverture du procès, conformément à la loi et à la procédure pénale de l'Etat concerné, si des faits nouveaux ou nouvellement révélés ou un vice fondamental dans la procédure précédente sont de nature à affecter le jugement intervenu.
- 3 Aucune dérogation n'est autorisée au présent article au titre de l'article 15 de la Convention."

Le paragraphe 2 de l'article du protocole n°7 s'appliquera en vertu de la clause horizontale relative à la Convention. Le principe «non bis in idem» s'applique en droit communautaire (voir parmi une importance jurisprudence, arrêt du 5 mai 1966, Gutmann c/Commission, aff. 18/65 et 35/65, Rec 1966, p.150 et pour une affaire récente arrêt du Tribunal du 20 avril 1999, aff. jointes T-305/94 et autres, Limburgse Vinyl Maatschappij NV c/Commission, non encore publié).

Article 12 . Respect de la vie privée

Toute personne a droit au respect de sa vie privée, de son honneur et de sa réputation, de son domicile et du secret de sa correspondance et de ses communications.

Exposé des motifs

Cet article se fonde l'article 8 de la convention européenne des droits de l'homme qui se lit ainsi:

"1 Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.

2 Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui."

Par rapport au texte de la convention, la mention de l'honneur a été ajoutée. Elle est reprise de nombreuses constitutions nationales. Le terme de «communication» a été substitué à celui de «correspondance» pour tenir compte de l'évolution des moyens de communication. Le respect de la vie familiale fait l'objet d'un article distinct. Le paragraphe 2 sur les limitations n'ait pas été repris, mais il s'applique dans le cadre du droit de l'Union en vertu de la clause horizontale relative à la Convention.

Article 13. Vie familiale

- 1. Toute personne a droit au respect de sa vie familiale.**
- 2. Toute personne a le droit de se marier et de fonder une famille selon les lois nationales régissant l'exercice de ce droit.**
- 3. La protection de la famille sur le plan juridique, économique et social est assurée.**

Exposé des motifs

Cet article est inspiré dans son premier paragraphe de l'article 8 de la convention européenne des droits de l'homme et dans son paragraphe 2 de l'article 12 de ladite convention qui se lit ainsi:

" A partir de l'âge nubile, l'homme et la femme ont le droit de se marier et de fonder une famille selon les lois nationales régissant l'exercice de ce droit."

Le renvoi à la législation nationale au paragraphe 2 est conforme à la subsidiarité et à la diversité des situations nationales. Le paragraphe 3 impose à l'Union lorsqu'elle adopte des mesures dans le cadre de ses compétences de tenir compte des exigences de protection de la famille. Sa place exacte dans la Charte sera déterminée lorsque la structure d'ensemble sera examinée.

Article 14. Liberté de pensée, de conscience et de religion

Toute personne a droit à la liberté de pensée, de conscience et de religion.

Exposé des motifs

Cette formule reproduit de l'article 9 de la convention européenne des droits de l'homme qui se lit ainsi:

"1 Toute personne a droit à la liberté de pensée, de conscience et de religion ; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

2 La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui."

Le fait que la charte ne reprenne pas les limitations énoncées au paragraphe 2 ne prive celles-ci d'effets dans le cadre du droit de l'Union en vertu de la clause horizontale relative à la Convention. La Cour de justice des Communautés a consacré la liberté religieuse dans l'affaire Prais (Arrêt du 27 octobre 1976, aff. 130/75, Rec. p.1589). Compte tenu du parti pris de brièveté retenu pour la rédaction de la charte, les implications de la liberté religieuse n'ont pas été reproduites, mais cela ne vise pas à priver ses dispositions d'effet puisqu'elles ne sont que des implications du principe général.

Article 15. Liberté d'expression

Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir d'ingérence d'autorités publiques et sans considération de frontière.

Exposé des motifs

Cet article reprend les principes de l'article 10 de la convention européenne des droits de l'homme qui se lit ainsi:

"1 Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.

2 L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire."

Le paragraphe 2 n'a pas été repris, mais il est applicable dans le droit de l'Union en vertu de la clause horizontale relative à la Convention. La Cour de justice a consacré à plusieurs reprises le principe de la liberté d'expression et, en premier lieu, dans l'arrêt ERT (Arrêt du 18 juin 1991, aff. C-260/89, Rec. p. I-5485).

Article 16 . Droit à l'éducation

- 1. Toute personne a droit à l'éducation ainsi qu'à l'accès à la formation professionnelle et continue. Ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire.**
- 2. La création d'établissements d'enseignement est libre.**
- 3. Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants, conformément à leurs convictions religieuses et philosophiques, doit être respecté.**

Exposé des motifs

Cet article est inspiré tant des traditions constitutionnelles communes aux Etats membres que de l'article 2 du protocole additionnel à la convention européenne des droits de l'homme qui se lit ainsi :

"Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques."

Il a été jugé utile d'ajouter le principe de gratuité de l'enseignement obligatoire. Tel qu'il est formulé, il implique seulement que pour l'enseignement obligatoire, chaque enfant ait la possibilité d'accéder à un établissement qui pratique la gratuité. Il n'impose pas que tous les établissements, notamment privés, qui dispensent cet enseignement soient gratuits. Dans la mesure où la Charte s'applique à l'Union, ceci signifie que dans le cadre de ses politiques de formation, l'Union doit

respecter la gratuité de l'enseignement obligatoire, mais cela ne crée pas bien entendu de nouvelles compétences. Le principe de la liberté académique n'est pas repris, mais il constitue tant un principe structurel de l'organisation universitaire que la garantie de la liberté d'expression dans ce domaine. La charte ne porte en rien atteinte à ce principe.

Article 17. Liberté de réunion et d'association

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats ou des partis politiques et de s'y affilier.

Exposé des motifs

Cet article se fonde sur l'article 11 de la Convention européenne des droits de l'homme:

"1 Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.

2 L'exercice de ces droits ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. Le présent article n'interdit pas que des restrictions légitimes soient imposées à l'exercice de ces droits par les membres des forces armées, de la police ou de l'administration de l'Etat."

La question des limitations sera réglée par la clause horizontale relative à la Convention européenne des droits de l'homme.

Article 18. Droit d'accès aux documents

Tout citoyen de l'Union ou toute personne résidant dans l'Union a un droit d'accès aux documents du Parlement européen, du Conseil et de la Commission.

Exposé des motifs

Cet article reproduit l'article 255 du traité CE dans sa première phrase. Les conditions et limites mentionnées dans la suite de l'article relèvent de la clause horizontale qui règle d'une manière générale la question.

Article 19. Protection des données

Toute personne a le droit de décider elle-même de la divulgation et de l'utilisation de ses données personnelles.

Exposé des motifs

L'article 286 du traité CE rend applicable aux institutions et organes les directives communautaires relatives à la protection des données. Ces directives sont fondées sur la convention du Conseil de l'Europe sur la protection des données personnelles. Il semble préférable d'énoncer une règle générale plutôt que de reprendre une liste détaillée de principes qui seront soumis à évolution en raison du progrès technique. En tout état de cause, la protection des données est un élément du respect de la vie privée.

Article 20. Droit de propriété

Toute personne a le droit de posséder des biens acquis légalement, de les utiliser et d'en disposer. L'usage de ces biens doit contribuer à l'intérêt général. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les cas et conditions prévus par une loi et moyennant l'assurance préalable d'une juste indemnité.

Exposé des motifs

Cet article se fonde sur l'article 1er du protocole additionnel à la convention européenne des droits de l'homme :

"Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.

Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes."

Il s'agit d'un principe fondamental commun à toutes les constitutions nationales. Il a été consacré à des maintes reprises par la jurisprudence de la Cour de justice et en premier lieu dans l'arrêt Hauer (13 décembre 1979, Rec. p. 3727). Un certain nombre de membres ont souhaité moderniser la rédaction de la Convention.

Article 21. Droit d'asile et expulsion

1. Les ressortissants des pays tiers qui craignent avec raison d'être persécutés du fait de leur race, de leur religion, de leur appartenance à un certain groupe social ou de leurs opinions politiques ont un droit d'asile dans l'Union européenne conformément aux règles de la Convention de Genève du 28 juillet 1951 et au protocole du 31 janvier 1967 relatifs au statut des réfugiés.
2. Les expulsions collectives d'étrangers sont interdites.

Exposé des motifs

Le paragraphe 2 de cet article est inspiré de l'article 4 du protocole n° 4 à la convention européenne des droits de l'homme en ce qui concerne les expulsions collectives. Il vise à garantir que chaque décision fasse l'objet d'un examen spécifique et que l'on ne puisse décider par une mesure unique d'expulser toutes les personnes présentant des caractéristiques déterminées. Le texte du paragraphe 1 est inspiré de l'article 63 CE qui incorpore en droit communautaire la convention sur les réfugiés. Les dispositions de l'article 1 du protocole n° 7 à la convention européenne des droits de l'homme relatives aux garanties procédurales en cas d'expulsion n'ont pas été reprises, car la plupart des Etats membres n'ont pas signé ou ratifié ce protocole. De toute façon, la convention de Genève contient des garanties en ce domaine.

Article 22. Egalité et non-discrimination

1. Est interdite toute discrimination fondée sur le sexe, la race, la couleur ou l'origine ethnique ou sociale, la langue, la religion ou les convictions, les opinions politiques, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine d'application du Traité instituant la Communauté européenne et du Traité sur l'Union européenne, toute discrimination fondée sur la nationalité est interdite.
3. L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes. L'égalité des sexes est notamment assurée dans la fixation des rémunérations et des autres conditions de travail .

Exposé des motifs

Le paragraphe 1 reprend la convention européenne des droits de l'homme. Celle-ci limite l'application du principe aux droits garantis, mais le droit communautaire va plus loin après l'adoption du traité d'Amsterdam. La liste combine la liste de l'article 13 du traité communautaire et la liste de l'article 14 de la Convention européenne des droits de l'homme. Le principe de non-discrimination formulé au paragraphe 2 est consacré à l'article 12 du Traité CE.

Article 12 CE : "Dans le domaine d'application du présent traité, et sans préjudice des dispositions particulières qu'il prévoit, est interdite toute discrimination exercée en raison de la nationalité.

Le Conseil, statuant conformément à la procédure visée à l'article 251, peut prendre toute réglementation en vue de l'interdiction de ces discriminations."

La formule du paragraphe 3 vise à permettre les actions positives qui sont prévues par le traité.

Article 23. Droit des enfants

Les enfants doivent être traités comme des personnes à part entière et doivent pouvoir influencer sur les questions les concernant personnellement dans une mesure correspondant à leur niveau de maturité.

Exposé des motifs

Cet article répond à diverses demandes et s'inspire de la Convention sur les droits de l'enfant.

Principe de démocratie

Article supprimé.

Exposé des motifs

A la suite des travaux de la Convention, il a été décidé que figureront au préambule, les mentions suivantes:

- 1. Toute autorité publique émane du peuple.**
- 2. L'Union et ses institutions se fondent sur les principes de la liberté, de la démocratie, du respect des droits de l'homme ainsi que de l'Etat de droit, principes qui sont communs aux Etats membres.**

Le paragraphe 3 reproduisait l'article 190 § 1 CE qui a été jugé préférable à l'article 3 du protocole additionnel CEDH : "Les Hautes Parties contractantes s'engagent à organiser, à des intervalles raisonnables, des élections libres au scrutin secret, dans les conditions qui assurent la

libre expression de l'opinion du peuple sur le choix du corps législatif." En effet, cet article prend la forme d'un engagement international alors que le traité prévoit déjà l'élection dans l'article 190 § 1 traité CE : "Les représentants, au Parlement européen, des peuples des Etats réunis dans la Communauté sont élus au suffrage universel direct". Ce paragraphe a été déplacé à l'article relatif aux élections européennes.

Article 23. Partis politiques

Tout citoyen a le droit de fonder avec d'autres un parti politique au niveau de l'Union et toute personne a le droit de s'y affilier. Ces partis politiques doivent respecter les droits et libertés garantis par la présente charte.

Exposé des motifs

Le droit de fonder un parti politique est garanti à tout citoyen de l'Union, celui de s'y affilier étant ouvert à toute personne résidant dans un Etat membre. La possibilité de limitations à l'exercice de ces droits découlera de l'article horizontal consacré aux limitations.

Article 24. Droit de vote et d'éligibilité au Parlement européen

- 1. Les membres du Parlement européen sont élus au suffrage universel direct, libre et secret.**
- 2. Tout citoyen de l'Union a le droit de vote et d'éligibilité dans l'Etat membre dans lequel il réside dans les mêmes conditions que les ressortissants de cet Etat.**

Exposé des motifs

Ce texte reprend l'article 19 § 2 CE : "2. Sans préjudice des dispositions de l'article 190, paragraphe 4, et des dispositions prises pour son application, tout citoyen de l'Union résidant dans un État membre dont il n'est pas ressortissant a le droit de vote et d'éligibilité aux élections au Parlement européen dans L'Etat membre où il réside, dans les mêmes conditions que les ressortissants de cet État. Ce droit sera exercé sous réserve des modalités, arrêtées par le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen; ces modalités peuvent prévoir des dispositions dérogatoires lorsque des problèmes spécifiques à un État membre le justifient"

Une référence sera faite dans un article horizontal aux conditions prévues par le traité.

Article 25. Droit de vote et d'éligibilité aux élections municipales

Tout citoyen de l'Union a le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre dans lequel il réside dans les mêmes conditions que les ressortissants de cet Etat.

Exposé des motifs

Ce texte reprend l'article 19 § 1 CE: "Tout citoyen de l'Union résidant dans un État membre dont il n'est pas ressortissant a le droit de vote et d'éligibilité aux élections municipales dans l'État membre où il réside, dans les mêmes conditions que les ressortissants de cet État. Ce droit sera exercé sous réserve des modalités arrêtées par le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen; ces modalités peuvent prévoir des dispositions dérogatoires lorsque des problèmes spécifiques à un État membre le justifient." Une référence aux conditions prévues par le traité sera reprise dans une clause horizontale.

Article 26. Relations avec l'administration

1. **Toute personne a le droit de voir ses affaires traitées impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.**
2. **Ce droit comporte notamment:**
 - **le droit de toute personne d'être entendue avant qu'une mesure individuelle qui l'affecterait défavorablement soit prise à son encontre;**
 - **le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret des affaires;**
 - **l'obligation pour l'administration de motiver ses décisions.**
3. **Toute personne peut s'adresser aux institutions de l'Union dans une des langues officielles de l'Union et doit recevoir une réponse dans cette langue.**

Exposé des motifs

Le premier paragraphe répond à une demande exprimée plusieurs fois au cours de la Convention, notamment par le médiateur.

Les principes repris dans le paragraphe 2 qui ne concernent que les décisions individuelles, résultent pour l'essentiel de la jurisprudence de la Cour et, en ce qui concerne l'obligation de motiver, de l'article 253 du traité : "Les règlements, les directives et les décisions adoptés conjointement par le Parlement européen et le Conseil ainsi que lesdits actes adoptés par le Conseil ou la Commission sont motivés et visent les propositions ou avis obligatoirement recueillis en exécution du présent traité." Les principes de procédure administrative non contentieuse sont rappelés notamment dans les arrêts Orkem, aff. 374/87, rec. 1989, 3283, Lisrestal, TPI, aff. T-450/93, Rec. 1994., II-1177, TU München, C-269/90, rec. 1991, I-5469, Nölle, T-167/94, Rec.1995, II-2589. La référence à la confidentialité se réfère à la protection de données personnelles.

Le paragraphe 3 reprend l'article 21 CE: "Tout citoyen de l'Union peut écrire à toute institution ou organe visé au présent article ou à l'article 7 dans l'une des langues visées à l'article 314 et recevoir une réponse rédigée dans la même langue."

Article 27. Médiateur

Tout citoyen ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de saisir le médiateur de l'Union des cas de mauvaise administration des institutions et organes de l'Union, à l'exception de la Cour de Justice et du Tribunal de Première instance dans l'exercice de leurs fonctions juridictionnelles.

Exposé des motifs

Cet article présente les principes qui résultent des articles 21 et 195 du traité CE.

Article 21:

"Tout citoyen de l'Union peut s'adresser au médiateur institué conformément aux dispositions de l'article 195."

Article 195 § 1 " Le Parlement européen nomme un médiateur, habilité à recevoir les plaintes émanant de tout citoyen de l'Union ou de toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre et relatives à des cas de mauvaise administration dans l'action des institutions ou organes communautaires, à l'exclusion de la Cour de justice et du Tribunal de première instance dans l'exercice de leurs fonctions juridictionnelles.

Conformément à sa mission, le médiateur procède aux enquêtes qu'il estime justifiées, soit de sa propre initiative, soit sur la base des plaintes qui lui ont été présentées directement ou par l'intermédiaire d'un membre du Parlement européen, sauf si les faits allégués font ou ont fait l'objet d'une procédure juridictionnelle. Dans les cas où le médiateur a constaté un cas de mauvaise administration, il saisit l'institution concernée, qui dispose d'un délai de trois mois pour lui faire tenir son avis. Le médiateur transmet ensuite un rapport au Parlement européen et à l'institution concernée.

La personne dont émane la plainte est informée du résultat de ces enquêtes. Chaque année, le médiateur présente un rapport au Parlement européen sur les résultats de ses enquêtes.

2. Le médiateur est nommé après chaque élection du Parlement européen pour la durée de la législature. Son mandat est renouvelable.

Le médiateur peut être déclaré démissionnaire par la Cour de justice, à la requête du Parlement européen, s'il ne remplit plus les conditions nécessaires à l'exercice de ses fonctions ou s'il a commis une faute grave.

3. Le médiateur exerce ses fonctions en toute indépendance. Dans l'accomplissement de ses devoirs, il ne sollicite ni n'accepte d'instructions d'aucun organisme. Pendant la durée de ses fonctions, le médiateur ne peut exercer aucune autre activité professionnelle, rémunérée ou non.

4. Le Parlement européen fixe le statut et les conditions générales d'exercice des fonctions du médiateur après avis de la Commission et avec l'approbation du Conseil statuant à la majorité qualifiée."

Une référence au traité sera faite dans une clause horizontale.

Article 28. Droit de pétition

Tout citoyen ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de pétition devant le Parlement européen.

Exposé des motifs

Cet article présente les principes qui résultent des articles 21 et 194 du traité CE

Article 21: "Tout citoyen de l'Union a le droit de pétition devant le Parlement européen conformément aux dispositions de l'article 194."

Article 194 CE: "Tout citoyen de l'Union, ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre, a le droit de présenter, à titre individuel ou en association avec d'autres citoyens ou personnes, une pétition au Parlement européen sur un sujet relevant des domaines d'activité de la Communauté et qui le ou la concerne directement."

Article 29. Liberté de circulation

Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres.

Exposé des motifs

Cet article reprend le principe énoncé à l'article 18 du traité CE.

Article 18 CE:

- "1. Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres, sous réserve des limitations et conditions prévues par le présent traité et par les dispositions prises pour son application.*
- 2. Le Conseil peut arrêter des dispositions visant à faciliter l'exercice des droits visés au paragraphe 1; sauf si le présent traité en dispose autrement, il statue conformément à la procédure visée à l'article 251. Le Conseil statue à l'unanimité tout au long de cette procédure."*

Une référence au traité sera faite dans une clause horizontale.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 5 May 2000 (12.05)
(OR. fr)****CHARTE 4284/00****CONVENT 28****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
- New proposal for Articles 1 to 30 (Civil and political rights and citizens' rights)

Members of the Convention will find below the new wording of Articles 1 to 30, which has been drawn up in the light of suggested amendments and comments. Each Article is followed by a statement of reasons. The order of the Articles is provisional.

Draft Articles

Article 1. Dignity of the human person

- 1. The dignity of the human person must be respected and protected.**
- 2. Everyone is equal before the law.**

Statement of reasons

This Article appears as the first Article of the Charter since dignity of the human person is the very foundation of fundamental rights. The Universal Declaration of Human Rights sets out this principle in its preamble:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Respect for the dignity of the human person constitutes an inherent limitation to all the other rights, which may not be used to infringe that dignity.

Paragraph 2 sets out a principle which the Court has held to be a fundamental Community principle (judgment of 13 November 1984, Racke, Case 283/83, ECR 3791).

Article 2. Right to life

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

Statement of reasons

Paragraph 1 is taken from Article 2 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

The exceptions referred to in Article 2(2) of the Convention apply in the context of this Charter in accordance with the general clause in draft Article H2 in CHARTE 4235/00 CONVENT 27.

Paragraph 2 is taken from the second sentence of Article 1 of Protocol No 6 to the European Convention on Human Rights. Article 2 of the Protocol is worded as follows:

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

The problem of limitations will be resolved by the horizontal clause relating to the European Convention.

Article 3. Right to respect for the integrity of the human person

- 1. Everyone has the right to respect for his physical and mental integrity.**
- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenic practices;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**

Statement of reasons

These principles are set out in the Convention on Human Rights and Biomedicine. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for development to take account of future progress in this area.

Article 4. Prohibition of torture and inhuman treatment

**No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.**

Statement of reasons

*This Article is taken from Article 3 of the European Convention on Human Rights:
No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The second sentence of the Article incorporates the European Court's jurisprudence on Article 3.*

Article 5. Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Statement of reasons

This Article is taken from Article 4 of the European Convention on Human Rights.

- "1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. For the purpose of this Article the term "forced or compulsory labour" shall not include:*
- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objections in countries where they are recognised, service exacted instead of compulsory military service;*
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - (d) any work or service which forms part of normal civic obligations."*

The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. It will be incorporated via the horizontal clause relating to the European Convention on Human Rights. It goes without saying that the concept of forced labour does not cover, inter alia, personal services laid down by law which are exacted of citizens for civic reasons or in case of an emergency or calamity, the fulfilment of military obligations or alternative service, or any work ordinarily exacted of a person deprived of liberty.

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Statement of reasons

Article 5 of the European Convention on Human Rights defines the cases in which a person may be deprived of his liberty as follows:

- "1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The aim of Article 6 of the Charter is not to allow any cases of deprivation of liberty other than those authorised by the European Convention on Human Rights, which apply by virtue of draft Article H2(2) on the limitation of guaranteed rights, set out in CHARTE 4235/00 CONVENT 27. Insofar as the Charter applies within the context of the Union, these rights should in particular be respected when, in accordance with Title VI of the Treaty on European Union, the Union adopts framework decisions for harmonisation in criminal matters.

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Statement of reasons

This Article reproduces Article 13 of the European Convention on Human Rights:

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

The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Johnston, Case 222/84, ECR I 651). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties: an action for annulment when the conditions for admissibility have been fulfilled or a preliminary ruling on admissibility when the case is brought before a national judge. The wording of the Article has been adapted to take account of the specific characteristics of the Union. Thus, reference to a national authority has been deleted, since the Charter applies only to

institutions and organs of the Union and since, in this framework, an action may be brought either before the Community judge or before the national judge who is the ordinary-law judge as regards application of Community law. Accordingly, reference to a national authority has been replaced with reference to a court because the Court precedent refers to judicial protection.

Article 8. Right to a fair trial

- 1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
- 2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.**

Statement of reasons

This Article follows Article 6(1) of the European Convention on Human Rights, which reads as follows:

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

In Community law, the right to a fair hearing applies to all disputes. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, ECR 1339; that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, ECR 1682).

The limitations have not been included, but they apply in the general clause on limitations which will appear in the Charter.

With regard to paragraph 2, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 9. Presumption of innocence and rights of the defence

- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.**
- 2. Everyone who has been charged shall be guaranteed respect for his rights to defence.**

Statement of reasons

This Article is taken from Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*

- (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
- (b) *to have adequate time and facilities for the preparation of his defence;*
- (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Given the decision taken in favour of concise drafting, it was not thought necessary to include this Article in full, but in accordance with Article 6 of the TEU these provisions, which clarify the principles set out in the Article of the Charter, are applicable in Community law.

Article 10. No punishment without law

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

Statement of reasons

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights. Article 7 of the European Convention on Human Rights is worded as follows:

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

In paragraph 2, the reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular.

Article 11. Right not to be tried or punished twice

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

Statement of reasons

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

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

Paragraph 2 of the Article in Protocol No 7 will be applicable by virtue of the horizontal clause relating to the Convention. The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v Commission [1966] ECR 150 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v Commission, not yet published).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour and his reputation, his home and the confidentiality of his correspondence and communications.

Statement of reasons

This Article is based on Article 8 of the European Convention on Human Rights, which reads as follows:

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

The term "honour" has been added to the text of the Convention. It is taken from a number of national constitutions. "Communication" has been added to "correspondence" to take account of developments in means of communication. Respect for family life is covered by a separate Article. Paragraph 2 on limitations has not been included but it is applicable under Union law by virtue of the horizontal clause relating to the Convention.

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.**
- 3. The family shall enjoy legal, economic and social protection.**

Statement of reasons

The first paragraph of this Article is based on Article 8 of the European Convention on Human Rights and paragraph 2 on Article 12 of that Convention, which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right."

The reference to national law in paragraph 2 is consistent with subsidiarity and with the diversity of national situations. Paragraph 3 applies to the Union when it adopts measures within its powers to take account of family protection needs. Its exact position will be determined when the overall structure of the Charter is considered.

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion.

Statement of reasons

This wording reproduces Article 9 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The fact that the Charter does not incorporate the limitations set out in paragraph 2 does not deprive those restrictions of their effects under Union law, by virtue of the horizontal clause relating to the Convention. The Court of Justice of the European Communities endorsed religious freedom in the Prais Case (judgment of 27 October 1976, Case 130/75, ECR 1589). Given the decision in favour of concise drafting for the Charter, the implications of religious freedom have not been included, but this is not intended to deprive these provisions of their effect as they are only the implications of the general principle.

Article 15. Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Statement of reasons

This Article incorporates the principles of Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Paragraph 2 has not been included but it is applicable under Union law by virtue of the horizontal clause relating to the Convention. The Court of Justice has endorsed the principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (judgment of 18 June 1991, Case C-260/89, ECR I-5485).

Article 16. Right to education

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.**
- 2. The founding of educational establishments shall be free of constraint.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.**

Statement of reasons

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

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

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Insofar as the Charter applies to the

Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. The principle of academic freedom is not included, but it constitutes both a structural principle of academic organisation and the guarantee of the freedom of expression in this area. The Charter in no way infringes this principle.

Article 17: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions or political parties.

Statement of reasons

This Article is based on Article 11 of the European Convention on Human Rights:

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

The question of restrictions will be covered by the horizontal clause relating to the European Convention on Human Rights.

Article 18. Right of access to documents

Every citizen of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, of the Council and of the Commission.

Statement of reasons

This Article is taken from the first sentence of Article 255 of the EC Treaty. The conditions and limits described in the remainder of the Article are covered by the horizontal clause which deals with the issue in a general fashion.

Article 19. Data protection

Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.

Statement of reasons

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy.

Article 20. Right to property

Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Statement of reasons

This Article is based on Article 1 of the Additional Protocol to the European Convention on Human Rights:

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

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

This is a fundamental principle common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR 3727). A number of members wished to update the wording of the Convention. The use of possessions must be within the limitations imposed by the general interest.

Article 21. Right to asylum and expulsion

- 1. Nationals of third countries shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.**
- 2. Collective expulsion of aliens is prohibited.**

Statement of reasons

Paragraph 2 of this Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons with particular characteristics. The text of paragraph 1 is based on Article 63 TEC which incorporates the Convention on Refugees into Community law. The provisions of Article 1 of Protocol No 7 to the ECHR concerning procedural safeguards in the event of expulsion have not been incorporated as most Member States have not signed or ratified that Protocol. In any event the Geneva Convention contains guarantees in that respect.

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.**
- 3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.**

Statement of reasons

Paragraph 1 is based on the European Convention on Human Rights. The ECHR limits the application of the principle to guaranteed rights, but Community law goes further following the adoption of the Amsterdam Treaty. The list combines that in Article 13 of the Community Treaty with that in Article 14 of the ECHR. The principle of non-discrimination set out in paragraph 2 is enshrined in Article 12 of the EC Treaty.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

The wording of paragraph 3 is intended to authorise positive action as provided for in the Treaty.

Article 23. Children's rights

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Statement of reasons

This Article is in response to various requests and is based on the Convention on the Rights of the Child.

Principle of democracy

Following the Convention's discussions, it was decided that the following statements would appear in the preamble:

- 1. All public authority stems from the people.**
- 2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights and the rule of law, principles which are common to the Member States.**

Paragraph 3 follows Article 190(1) TEC, which was considered preferable to Article 3 of the Additional Protocol to the ECHR: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the

opinion of the people in the choice of the legislature." This Article takes the form of an international commitment, whereas the Treaty provides for elections in Article 190(1) TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage". This paragraph has been transferred to the Article relating to European elections.

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Statement of reasons

Every Union citizen is guaranteed the right to found a political party, and the right to join such a party is open to anyone living in a Member State. The possibility of limiting the exercise of these rights will derive from the horizontal article concerning limitations.

Article 25. Right to vote and to stand as a candidate for the European Parliament

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

Statement of reasons

This text follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal article.

Article 26. Right to vote and to stand as a candidate in municipal elections

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

Statement of reasons

This text follows Article 19(1) of the TEC: "Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal clause.

Article 27. Relations with the administration

1. **Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.**
2. **This right includes:**
 - **the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;**
 - **the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;**
 - **the obligation of the administration to give reasons for its decisions.**
3. **Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.**

Statement of reasons

The first paragraph is in response to a request made several times during the Convention, particularly by the Ombudsman.

The principles set out in paragraph 2, which only concern individual decisions, basically result from the case law of the Court and, with regard to the obligation to give reasons, from Article 253 of the Treaty: "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty." The principles for non-contentious administrative procedure are set out in the following judgments in particular: Case 374/87 Orkem [1989] ECR 3283, Case T-450/93 Lisrestal, CFI, [1994] ECR II-1177, Case C-269/90 TU München [1991] ECR I-5469, Case T-167/94 Detlef Nölle [1995] ECR II-2589. The reference to confidentiality refers to the protection of personal data.

Paragraph 3 follows Article 21 of the TEC: "Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language."

Article 28. Ombudsman

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

Statement of reasons

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21:

"Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

A reference to the Treaty will be made in a horizontal clause.

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Statement of reasons

This Article presents the principles resulting from Articles 21 and 194 of the TEC.

Article 21: "Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194."

Article 194 of the TEC: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly."

Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

Statement of reasons

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC:

- "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.*
- 2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."*

A reference to the Treaty will be made in a horizontal clause.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 May 2000**CHARTE 4285/00****CONTRIB 157****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments and amendments on the document CHARTE 4192/00
CONVENT 18 submitted by Mr. Jens-Peter Bonde, member of the European Parliament. ¹

¹ This text has been submitted in English language only.

MEP Jens-Peter Bonde
LEO 7H353 Rue Wiertz * B-1047 Bruxelles
Tel.: (32) 2 284 5167 * Fax: (32) 2 284 9167

Bruxelles 16 October 2007

Comments and amendments on the proposed Social Rights (Convent 18).

Article III. Workers' right to information and consultation

After "Workers and their representatives" there is a need to add "in accordance with the minimum regulations of the community and national legislation and/or practice".

It is important that it is possible to specify the right to information and consultation through directives, which can be implemented in each Member State in accordance with the national practices of the Member State.

The labour markets are structured differently in the Member States. Therefore when drafting the Charter, it is necessary to take these differences into consideration. It is important that we stress that the rights in the Charter can be implemented, while respecting the different national practices, traditions and features of the labour markets.

It should also be added that the information shall be given 'in appropriate time' in order to make the right more concrete and effective.

Article IV. Freedom of association, rights of collective bargaining and collective action.

I suggest that we strike out Article IV. The article is in complete contrast to Article 137.6 of the TEC. That says that the content of Article 137 of the TEC doesn't include wage issues, the right to organise, the right to strike and the right to lock out. The proposed article goes further than the Treaty allows. Especially one could ask if it is not going way beyond the powers of the EU to include the right not to join an association.

If we choose to maintain this article under part 3 the passage "under the conditions laid down by national legislation and practice" should be added.

Article V. Right to equal remuneration for work of equal value

I suggest that we keep the wording from Article 141 of the TEC and make a reference in part B to this Article.

Article VI. Right to rest periods and annual leave

Article VI should be amended this way:

Every worker has the right to a weekly and a **daily** rest period and to an annual period of paid leave.

Article VIII. Protection of children and young people

After the first sentence, it should be added, "unless there are specific exceptions adopted in accordance with the Treaty".

Directive 94/33 already contains specific exceptions for children doing artistic work and carrying out smaller jobs, as for example delivering newspapers. It is necessary to add that specific exceptions can be allowed if they are adopted in accordance with the Treaty.

The way that the article is formulated now, it is actually establishing new rights. We should limit ourselves to only reinforcing already existing standards. The article is therefore not acceptable as it is formulated now.

Article X

The proposed article should be deleted.

This is not an individual right that we can guarantee the citizens. It is more a political aim than an individual right, and is an issue that should be regulated by the Member States.

Article XII

The proposed wording of the article make it sounds like the parental leave needs to be effectuated when the child is born or adopted. In Directive 96/34 the parents have the freedom to take the parental leave until the child becomes eight years old. If we choose to maintain this right in the charter this should be included.

Following articles should furthermore be included in the Charter:

The principle of subsidiarity in the sphere of fundamental social rights

The EU-institutions and the Member States shall take account of the diverse forms of national practices, in particular in the field of contractual relations, when implementing measures concerning fundamental social rights.

Comment:

”The proposed article stems from Article 136 of the TEC. It reinforces that the principle of subsidiarity also applies in the field of the labour market. The principle of subsidiarity is fundamental, especially in the light of the fundamental differences that exist among the Member States in the field of labour markets and in the regulation thereof. The Charter should respect the different ways the labour markets are constructed in the different Member States. The aim of the Charter is not to eliminate those differences, but to ensure fundamental rights, while respecting the different national traditions. It is therefore important that this article is included in the charter.”

The right to implement fundamental social rights

1. In Member States where the matter of implementing fundamental social rights is normally left to agreements between employers or employers' organisations and workers' organisations, or are normally carried out otherwise than by law, the undertakings of these matters may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.
2. In Member States where these matters are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

Comment:

The right to implement fundamental social rights stems from Article 137.4 of the TEC, Article 33 of the Social Charter, Preamble and Article 27 of the Community Charter of Rights. The proposed articles only reinforce already existing rights.

It is important that the right to implement fundamental social rights by collective agreements is included in the Charter. It is a fundamental feature for those Member States, where the labour market mainly is build upon collective bargaining. It is important that the Charter do not interfere with the system in these Member States. The Charter should not give preference to countries where these matters are normally settled by law. It is therefore important that it is stressed in the Charter that fundamental social rights can be implemented by law or by collective agreements.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 mai 2000**CHARTE 4295/00****CONTRIB 167****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une proposition d'amendements relatifs aux documents CHARTE 4149/00 CONVENT 13, CHARTE 4137/00 CONVENT 8 et CHARTE 4170 CONVENT 17, présentée par M. Jean-Luc DEHAENE, représentant personnel du Gouvernement belge.¹

¹ Ce texte a été soumis en langues française et néerlandaise.

DROITS CIVILS ET POLITIQUES

Propositions d'amendement :

Article 6 (numérotation de CONVENT 13). Droit à la liberté et à la sûreté.

« Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas prévus par la loi et dans le respect des voies légales ».

A l'article 5 de la CEDH, les cas où il peut être dérogé à cette règle ont été énumérés de manière exhaustive. Il va de soi que dans la Charte, le nombre de cas où il peut être dérogé à ce droit fondamental a également été soumis à certaines restrictions. Le texte ici proposé garantit que la restriction de liberté ne pourra être imposée par n'importe qui. C'est une attribution du législateur. On respecte de la sorte l'esprit de la CEDH ; celle-ci imposait en effet une restriction similaire en matière de procédure (« selon les voies légales »).

Article 7. Droit à un recours effectif

« Toute personne dont les droits et libertés ont été violés a droit à un recours effectif devant un tribunal ».

Article 8. Droit à un tribunal impartial

« Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial établi par la loi. Afin d'assurer un accès effectif au droit, une aide juridique gratuite sera octroyée à ceux qui ne disposent pas de ressources suffisantes.

On a voulu, dans le texte proposé, consacrer le principe de l'aide juridique gratuite en faveur des nécessiteux. Afin d'élargir l'accès au droit, la précision que cette aide doit être « indispensable pour assurer l'effectivité de l'accès à la justice » n'a pas été maintenue. L'omission de cette condition supplémentaire se situe dans la ligne de la jurisprudence de la Cour européenne des droits de l'homme (voir exposé des motifs de cet article dans CONVENT 13).

Article 10. Pas de peine sans loi

Paragraphe 2 : « Le présent article ne porte pas atteinte à la poursuite en jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux du droit.

L'ajout « reconnus par les nations démocratiques » se trouvant dans la version actuelle est pléonastique dans le contexte des principes généraux du droit et introduit en outre une note désuète.

Article 11. « Non bis in idem »

« Nul ne peut être poursuivi ou encourir une peine pénale dans un état membre de l'Union européenne en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans un état membre de l'Union européenne par un jugement définitif et conformément à la loi.

La version actuelle implique que les juridictions de tout ature état au monde doivent être reconnues. Aux termes de l'article 4 du protocole n° 7 à la CEDH cette reconnaissance est limitée aux juridictions d'un même état. Le texte ici proposé constitue une position intermédiaire en ce qu'il étend la reconnaissance des décisions judiciaires aux Etats membres de l'Union européenne. Le principe non bis in idem s'applique dès lors dans ce nouvel espace judiciaire.

Article 16. Droit à l'éducation**Suppression du paragraphe deux**

Afin de rapprocher autant que possible le texte de la Charte de celui de l'article 2 du premier protocole additionnel à la CEDH, il y a lieu de supprimer ce deuxième paragraphe.

Article 14 (numérotation de CONVENT 8). Droit d'accès à l'information.

Tout citoyen de l'Union ou toute personne physique ou morale ayant sa résidence ou son siège statutaire dans un état membre de l'Union européenne a un droit d'accès aux documents des institutions de l'Union européenne.

Aux termes de l'article 255 du traité CE, le droit d'accès à l'information est acquis aux personnes physiques et morales. Il semble donc juste de respecter également ce champ d'application dans la Charte. En effet, la version actuelle exclut les personnes morales. Il était inutile d'ajouter la dernière phrase qui figure dans la version actuelle, étant donné qu'il existe une disposition horizontale réglant les relations entre la Charte et les Traités CE et UE (article 11.3).

Article 15. Protection des données.

La rédaction alternative proposée dans le commentaire est celle qu'il y a lieu de retenir. En effet, la formulation de l'autre texte est trop générale et ne fait pas la part des éventuelles exceptions. La rédaction alternative détermine en quoi consiste le droit concerné et offre par conséquent une protection plus efficace pour les données personnelles.

Article 16. Droit de propriété.

Toute personne a droit au respect des biens qu'il a légalement acquis. Nul ne peut être privé de sa propriété, si ce n'est pour des motifs d'utilité publique, dans les cas et conditions prévus par la loi, et moyennant une juste indemnité fixée au préalable.

L'ajout des termes « qu'il a légalement acquis » a pour objet d'éviter qu'une personne n'invoque cette disposition pour assimiler la détention d'un bien (« éventuellement acquis de manière illégale ») avec l'exercice de la propriété légale sur le dit bien. En ce qui concerne l'indemnité à payer en cas d'expropriation, il est indiqué que celle-ci soit fixée d'avance.

Article 17. Droit d'asile

Paragraphe 1 « Toute personne peut bénéficier, dans tout état membre de l'Union européenne, du droit d'asile aux termes de la Convention de Genève du 28 juillet 1951 et du Protocole du 31 janvier 1967 relatifs au statut des réfugiés. »

Conformément aux obligations liant les Etats membres en vertu de la Convention de Genève du 28 juillet 1951 et du Protocole du 31 janvier 1967 relatifs au statut des réfugiés, chaque demande d'asile, qu'elle émane d'un citoyen de l'Union européenne ou de personnes qui ne sont pas des citoyens de l'Union européenne, devra être traitée individuellement. C'est là le motif de l'extension ratione personae du droit d'asile ici proposée.

A défaut d'un véritable droit d'asile UE, il est techniquement plus correct de désigner ce droit par l'expression « droit d'asile aux termes du droit des états membres de l'UE ».

Article E (numérotation de CONVENT 17). Droit à une bonne administration.

1. « Toute personne ~~résidant dans un état membre~~ a le droit de voir ses affaires traitées convenablement, impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.
2. Ce droit comporte :
 - le droit ~~pour toute personne~~ d'être entendue...
 - le droit ~~pour toute personne~~ d'avoir accès...
 - l'obligation pour l'administration...
3. Quiconque a le droit de s'adresser à tout institution ou organe de l'Union dans l'une des langues visées à l'article 314 CE et de recevoir une réponse dans cette langue. »

Le droit à une bonne administration est un droit qui doit être reconnu à toute personne entrant en contact avec les autorités européennes. Il n'y a nullement lieu d'opérer la distinction entre les citoyens de l'Union ou les personnes qui ne sont pas citoyens de l'Union ou entre ceux qui ont leur résidence sur le territoire d'un état membre de l'Union et ceux qui ne l'ont pas.

Article G. Accès au médiateur

« Tout citoyen de l'Union ou toute personne physique ou morale ayant sa résidence ou son siège statutaire dans un Etat membre de l'Union européenne a le droit de...

Le présent texte est plus conforme aux termes de l'article 195, paragraphe 1, CE. Il stipule clairement que les personnes morales ont elles aussi le droit de saisir le médiateur.

Article H. Droit de pétition.

« Tout citoyen de l'Union ou toute personne physique ou morale ayant sa résidence ou son siège statutaire dans un état membre de l'Union européenne a le droit de....

Le présent texte est plus conforme aux termes de l'article 194 CE. Il stipule clairement que les personnes morales bénéficient elles aussi du droit de pétition.

Article I. liberté de mouvement

« Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des états membres ».

Etant donné l'existence d'une disposition horizontale réglant la corrélation entre le Charte et le traité UE (article H3), il n'est pas nécessaire de maintenir dans la version actuelle la partie de phrase qui suit « sur le territoire des états membres.... ». Si elle était malgré tout maintenue, il y aurait lieu de la compléter comme suit :

«par le Traité instituant la Communauté européenne et les dispositions ayant pour objet sa mise en oeuvre.

Cet ajout inspiré de l'article 18, paragraphe 1, CE, garantit l'application des directives et des règlements relatifs à la liberté de mouvement et au droit de séjour.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 10 May 2000**CHARTE 4297/00****CONTRIB 169****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find submitted a proposal on including minority rights by Mr. Jens-Peter Bonde, member of the European Parliament. ¹

¹ This text has been submitted in English language only.

European Centre for Minority Issues

Informal Advisory Paper

10 May 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:
POSSIBILITY OF INCLUSION OF A PROVISION ON NON-DOMINANT GROUPS

Commissioned by: The Office of Jens Peter Bonde, MEP
Member of the Drafting Body

Authors: Kinga Gal, Marc Weller, ECMI

We are asked to advise on a possible provision on non-dominant groups in the Draft Charter of Fundamental Rights of the European Union. This document seeks to explain some of the options for such a provision. Given the very short period of time available for offering this advice, ECMI emphasizes that it would be more than pleased to offer more detailed suggestions as the drafting progresses, and to offer comments on draft provisions which may emerge from the drafting process.

This document contains:

- I. General Issues Relative to Human and Minority Rights
 - A. Fundamental Rights in the European Union
 - B. Who is addressed by the Provision
 - C. Negative Rights and Claim Rights
 - D. Individual, Group, Minority and People's Rights
- II. Substantive Entitlements
- III. Drafting suggestions
 - A. Incorporation by Reference
 - B. A Mini Catalogue
 - C. A Soft Provision of a General Kind
- IV. Documentary Annex
 - A. Declaration on the Rights of the Principles of International Cultural Co-operation
 - B. International Covenant on Civil and Political Rights
 - C. Document of the Copenhagen Meeting of the Conference on the Human Dimension
 - D. European Charter for Regional or Minority Languages
 - E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities
 - F. Framework Convention for the Protection of National Minorities

I. General Issues Relative to Human and Minority Rights

When considering drafting suggestions, it may be useful to bear a few conceptional issues in mind. These relate to the relationship between fundamental and human (and minority) rights, the different approaches to the establishment of rights, and the distinction between individual, group, minority and peoples' rights.

A. Fundamental Rights in the European Union

In the Conclusions of the European Council of Cologne of 3/4 June 1999, it was determined that there exists a need, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens. Given the gradual development of the Communities/Union over the past half-century, from an economic integration organization to a comprehensive political Union, it is not surprising that the issue of human rights is one which is not free from difficulty and controversy. Human rights were gradually introduced into the legal framework of the Communities/Union, mainly through the jurisprudence of the European Court of Justice. It was felt necessary to disguise this fact somewhat by referring to 'fundamental rights' instead of human rights. In practice, these fundamental rights were often developed and interpreted in accordance with the jurisprudence of the European Court of Human Rights attached to the European Convention for the Protection of Human Rights and Fundamental Freedoms which applies among the wider membership of the Council of Europe.

The consonance of human rights and 'fundamental rights' was formally confirmed in Article 6 (formerly Article F) of the Treaty of the European Union. That article provides, *inter alia*, that 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms' Hence, the Drafting Body is requested by the Council to address both substantive and basic procedural rights, drawing upon the European Convention and also constitutional traditions common to the Member States and general principles of Community law, as well as specialized documents, such as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

B. Who is to be Addressed by the Provision

The mandate of the Body in relation to fundamental rights is not specified in great detail in the Cologne decision. One may distinguish a number of different kinds of substantive fundamental rights:

- Fundamental rights addressed to the organs of the Union, restraining them from adopting measures incompatible with these rights. Given the supranational character of the legal system involved here, the organs of the Union would also be precluded from requiring Member States to adopt measures inconsistent with fundamental rights.
- In addition to the organs of the Union, fundamental rights established in the Charter can also apply to the Member States and their relations with individuals within their area of jurisdiction. According to this conception, the Union and the Member states would be considered one legal space, where all public actors must act according to common standards of fundamental rights.
- Finally, fundamental rights may be conceived of in an even wider sense. Under the human rights and constitutional law doctrine of 'Drittwirkung', both Union and Member State organs are not only required to act themselves in accordance with fundamental rights, but they must also ensure throughout the legal space to which the Charter is to apply that other actors comply with these rights.

Depending on the specific fundamental right involved, it is presumed that the Charter will in principle seek to address all three of the above circumstances. The draft provision on non-dominant groups will therefore need to restrain or guide Union action and the public acts of Member states and it will also flavour relations among private actors in the Union's legal space.

C. Negative Rights and Claim Rights

Traditionally, human rights were conceived in the Western liberal tradition as defenses against the excessive or arbitrary application of state powers. These are so-called ‘negative’ rights, which generally relate to civil and political matters and tend to preclude certain action by organs of the Union or States. The mandate of the Drafting Body goes further, however, also including economic and social rights, emphasizing a positive right of action from the State or the Union (so-called claim rights).

D. Individual, Group, Minority and Peoples’ Rights

Another distinction relates to individual, collective and group rights. Individual rights are easy to distinguish, establishing directly the individual as the beneficiary. Some individual rights are restricted to citizens of the states of the Union and this issue may be of special relevance in the context of certain minorities whose citizenship is questioned by their state of residence, or who are not territorially bound into a particular state.

The identification of collective or groups rights is more difficult, as there exists a subtle conceptual difference which is of particular importance in relation to non-dominant groups. Collective rights describe those entitlements which reside in the individual, even if they can only be realized collectively with others. For example, the right to profess and exercise one’s religion in communion with others is held by every individual, but can only be actualized together with others. The same substantive protection or entitlement can also be achieved, however, by way of a group right. In relation to this particular example, a provision might establish a right for religious groups to organize themselves, establish institutions and to run educational establishments. Again, individuals would benefit from the exercise of this right, but the right resides in the group, rather than the individual.

While this distinction may at first sight seem excessively technical, it is of the greatest importance in practice, and constitutes a veritable battleground in terms of the drafting of legislation or international instruments covering non-dominant groups. The recognition of a separate legal identity of groups is highly contested by some governments. These governments may sometimes perceive such a recognition to be the first step in the dilution of central state power and ultimately of state sovereignty.

Groups rights tend to focus on populations united by a particular feature, such as religious affiliation or language. Minority rights may also address religious or language communities. However, in a slightly different sense, minority rights are also often connected with a more multi-faceted ethnic (or national) identity of which religious affiliation or language may only be one element. The recognition of the existence of a particular minority in this sense is, again, a particularly sensitive issue for some states. The proposal for a legal standard which would recognize such an identity at Union level has therefore already proved to be quite controversial.

A number of international instruments nevertheless address minority issues, although in a somewhat more focused way. These instruments will concern themselves with ‘national’ minorities. National minorities are non-dominant groups in one state which have an external ‘ethnic kin state’ (e.g., the Danish minority in Germany, the Albanians in Kosovo, etc). The external dimension generated by the interest of the kin state in the fate of the minority, and the risk of international tension associated with this external dimension, has made it possible to generate standards on national minorities at the bilateral and regional level, including stability pact initiatives. The widening of the Union will import into its legal space the potential political tensions affiliated with this issue, although it remains controversial whether this problem should be addressed at the level of the European Charter. The emphasis on national minorities in several other documents is of course noteworthy, indicating once again the reluctance of governments, also especially in Western Europe, to address non-dominant groups in a wider sense.

Another issue concerns the question of ‘traditional’ minorities. A number of states only recognize minorities which are long-established on their territory. If there is to be a minority provision in the Charter, it is likely that these states will seek confirmation of this view, which is not free from controversy.

Finally a word on peoples' rights, in particular the right to self-determination. That term has many meanings in many different contexts, from the right to democratic governance to the right to secession. Given the technical legal connotations of the right to self-determination in the latter context, the term is best avoided where the Charter is concerned, at least in connection with minority provisions.

E. Soft Law and Hard Law

It is obvious that even the introduction of any kind of provision on minority rights or non-dominant groups is going to be highly controversial. Recent legislative vigour in Europe in relation to such rights might be somewhat deceiving. Some of the relevant documents may give the appearance of treaties, but were expressly established in the form of soft law. The Framework Convention takes the form of a treaty, but its title is chosen quite deliberately, perhaps providing more of a framework for state action, rather than hard, enforceable obligations. Moreover, in most relevant documents, the substantive provisions are often put in quite general terms, giving them an aspirational character.

II. Substantive Entitlements

A brief survey of minority rights instruments or conventions containing provisions relative to non-dominant groups is appended to this document. More detailed provisions can be found in the bilateral treaties, including instruments adopted in the context of the stability pact initiative, and peace agreements adopted or proposed for regions of ethnic crisis (Dayton, Rambouillet). It would be possible to conduct a more detailed exegesis of all of these instruments and to develop a catalogue of rights on such a basis. In such a way, the minority provision in the Charter would resemble a mini minority convention contained in a single article (drafting option B, see section IV. of this document). However, it may not be realistic to seek to import such a detailed provision into the Charter, given the apprehension of some states in this respect, and the focus of the Council on ‘fundamental rights’. It might also be argued that this might not be desirable, inasmuch as minority rights are rapidly developing. Hence, it might be argued that it would be preferable to refer in the Charter to general, guiding principles, instead of seeking to establish a highly specific catalogue of rights.

In terms of substantive obligations, one might bear the following considerations in mind:

- *Non discrimination*: A general provision providing for non-discrimination will undoubtedly be contained in the Charter. Such a provision applies to all individuals, whether members of a minority or not. Special non discrimination provisions applicable for all, for example in relation to the administration of justice (equality before the law) will also feature in the text. One might consider to add a special provision which precludes non-discrimination expressly on certain grounds connected with a minority identity,
- *Right to determine appurtenance*: It is an essential element of minority protection that minorities are self-constitutive. Their existence does not depend on an act of recognition by a state. Individuals must be able freely to choose their appurtenance to a minority group, without pressure from either the state or the group in question. (See, e.g., Article 2, Framework Convention). This view is, however, disputed by several governments.
- *The protection of national minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation*. As an integral part of the overall protection of human rights minority rights should be covered in full in the European Charter on Fundamental Rights. This principle as quoted at the head of this paragraph is laid down in Article 1 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).
- *The right to the protection and promotion of ethnic, cultural, linguistic and religious identity of national minorities* is one of the basic human rights guaranteed in article 27 of the 1966 International Covenant on Civil and Political Rights. Almost all of the binding or non-binding international documents addressing the protection of minorities refer to their right to identity protection and promotion, such as articles 1 and 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 33 of the OSCE Copenhagen Document (1990), article 5 of the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the spirit enshrined in the preamble of the European Charter for Regional or Minority Languages (1992).
- *The right to enjoy their own culture* is one main element of the protection of the identity of a person belonging to a minority. The right guarantees more than just the protection of a specific identity, it also contribute to its survival and development. The right to enjoy ones own culture may refer to various cultural and educational rights, including the right to access to the media of persons belonging to the respective minority. These kinds of rights are guaranteed in article 27 of the International Covenant on Civil and Political Rights (1966); articles 2 and 4 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 32.2 of the OSCE Copenhagen Document (1990), articles 5 and 6 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).
- *The right to profess and practice their own religion*, is strongly anchored in international law, including article 27 of the International Covenant on Civil and Political Rights (1966); the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion

- or Belief (1981); articles 2 and 4 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraph 32.3 of the OSCE Copenhagen Document (1990), articles 5 and 8 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).
- *The right to use their own language, in private and in public.* Linguistic rights constitute one of the most important rights for persons belonging to national, ethnic or linguistic minorities. As language is one of the basic forms of expression of a minority identity, the right to protection and promotion of identity can be realised only if adequate linguistic rights exist and are promoted. A wide range of linguistic rights are enshrined in article 4 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 34 of the OSCE Copenhagen Document (1990), article 10 of the Council of Europe Framework Convention for the Protection of National Minorities (1995) and in the European Charter for Regional or Minority Languages (1992).
 - *The right to effective participation in cultural, religious, social, economic and public life* seeks to empower minorities to participate fully in civil society. (Article 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraph 35 of the OSCE Copenhagen Document (1990), article 15 of the Council of Europe Framework Convention for the Protection of National Minorities (1995). In order to meet the needs and aspirations of persons belonging to national minorities concerning their identity protection and promotion, as well as to manage ethnic, linguistic, religious and cultural diversity, it is necessary to actively involve national minorities in the decisions taking on all levels in the cultural, social, economic and public life of the society.
 - *Local and regional self-governance.* The principle of subsidiarity is one of the basic principles of the European Union, enshrined in the Maastricht Treaty (1992) and Treaty of Amsterdam (1997), as well as in several Council of Europe documents, such as the European Charter of Local Self-Governments (1985) and the European Charter of Regional Self-Governments (1997). According to this principle, only matters that local and regional levels are not capable of addressing effectively should be decided or administered by superior authorities. Therefore, decisions are taken to the closest possible level to the citizens. This would include an emphasis on local self-governance also in areas where minorities constitute a local or regional majority.

III. Drafting suggestions

All three of the suggestions which follow are quite modest, noting the significant opposition that may exist in relation to the inclusion of any specific minority provision. A more ambitious effort would also cover collective rights of minorities.

The first alternative establishes a general provision for the protection and promotion of minority rights, and then seeks to incorporate more detailed provisions from other documents. These documents have been accepted (although at times in soft-law) by most of the Member States of the Union.

The second alternative instead seeks to establish a mini-catalogue of substantive minority rights. In a more ambitious version, that catalogue would advance upon the provisions of the Framework Convention. In its present form, it is in some aspects more restrictive than the Convention. The third alternative is a general, aspirational provision which may have to be considered if it proves impossible to achieve a more substantive article during the negotiations.

In relation to all three alternatives it has been presumed that there will exist a general non-discrimination clause elsewhere in the Charter which will be applicable to minorities, as well as specific guarantees of equal treatment (fair trial, etc.)

Alternative A

Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity *inter alia* through effective participation in cultural, religious, social, economic and public life within the Union, as set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992) and other relevant standards.

Alternative B

(1) The protection of [national] minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation. No policies and measures shall be adopted which adversely affect the effective development of ethnic, religious, cultural and linguistic diversity and effective steps shall be taken to promote the expression and development of such diverse identities.

(2) To belong to a [national] minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such a choice. [The existence or not of a minority is not dependent on an act of recognition by a government.]

(3) Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity. In particular they have the right to enjoy their own culture, to profess and practice their own religion, to use their own language, in private and in public, to arrange for education and have the right to effective participation in cultural, religious, social, economic and public life, including, where appropriate, through their own institutions and media and according to the principles of local self-governance and subsidiarity.

Alternative C

The Union shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. Paying due regard to the principle of subsidiarity, local self-governance shall be promoted where appropriate.

IV. Documentary Annex

Note: Excerpts have been quoted from: Gudmundur Alfredsson and Göran Melander. *A Compilation of Minority Rights Standards. A Selection of Texts from International and Regional Human Rights Instruments and other Documents*. Lund: Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 1997. Full text documents have been provided by ECMI.

I. Table of Contents (full text documents in caps)

- A. Declaration on the Rights of the Principles of International Cultural Co-operation
- B. International Covenant on Civil and Political Rights
- C. Document of the Copenhagen Meeting of the Conference on the Human Dimension
- D. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES
- E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities
- F. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

- A. Declaration on the Rights of the Principles of International Cultural Co-operation.** (Extract)
Adopted by the UNESCO General Conference (14th Session), 4 November 1966.

Article 1.

1. Each culture has a dignity and a value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

- B. International Covenant on Civil and Political Rights.** (Extract)
Adopted and opened for signature, ratification and accession by the General Assembly of the United Nations, resolution 2200 (XXI), 16 December 1966. Entered into force: 3 January 1976.

Article 27.

In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

C. Document of the Copenhagen Meeting of the Conference on the Human Dimension. (Extract)

Adopted by the Conference on Security and Co-operation in Europe, 29 June 1990.

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

(31) Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

(32) To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all aspects, free of any attempts at assimilation against their will. In particular, they have the right:

(32.1) to use freely their mother tongue in private as well as in public;

(32.2) to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3) to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(32.4) to establish and maintain unimpeded contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

(32.5) to disseminate, have access to and exchange information in their mother tongue;

(32.6) to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue on in their mother tongue, as well as wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

(35) The participating States will respect the right of persons belonging to national minorities to effective participatin in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the pomotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(36) The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without disttinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

(37) None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.

(38) The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other relevant international instruments and consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.

(39) The participating States will co-operate closely in the competent international organizations to which they belong, including the United Nations, and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities.

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They reaffirm their intention to intensify the effort to combat these phenomena in all their forms and therefore will:

(40.1) take effective measures, including the adoption, in conformity with their constitutional systems and international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2) commit themselves to take appropriate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

(40.3) take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

COUNCIL OF EUROPE
European Treaties
ETS No. 148

D. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Strasbourg, 5.XI.1992

Preamble

The member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;

Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the work carried out within the CSCE and in particular to the Helsinki Final Act of 1975 and the document of the Copenhagen Meeting of 1990;

Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them;

Realising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity;

Taking into consideration the specific conditions and historical traditions in the different regions of the European States,

Have agreed as follows:

Part I

General provisions

Article 1 - Definitions

For the purposes of this Charter:

a "regional or minority languages" means languages that are:

- i** traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
- ii** different from the official language(s) of that State;

it does not include either dialects of the official language(s) of the State or the languages of migrants;

b "territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;

c "non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

Article 2 - Undertakings

1. Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.
2. In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or subparagraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

Article 3 - Practical arrangements

1. Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.
2. Any Party may, at any subsequent time, notify the Secretary General that it accepts the obligations arising out of the provisions of any other paragraph of the Charter not already specified in its instrument of ratification, acceptance or approval, or that it will apply paragraph 1 of the present article to other regional or minority languages, or to other official languages which are less widely used on the whole or part of its territory.
3. The undertakings referred to in the foregoing paragraph shall be deemed to form an integral part of the

ratification, acceptance or approval and will have the same effect as from their date of notification.

Article 4 - Existing regimes of protection

1. Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights.
2. The provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.

Article 5 - Existing obligations

Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.

Article 6 - Information

The Parties undertake to see to it that the authorities, organisations and persons concerned are informed of the rights and duties established by this Charter.

Part II

Objectives and principles pursued in accordance with Article 2, paragraph

1

Article 7 - Objectives and principles

1. In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:
 - a** the recognition of the regional or minority languages as an expression of cultural wealth;
 - b** the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;
 - c** the need for resolute action to promote regional or minority languages in order to safeguard them;
 - d** the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;
 - e** the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;
 - f** the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;
 - g** the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;
 - h** the promotion of study and research on regional or minority languages at universities or equivalent institutions;
 - i** the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.
3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.
4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.
5. The Parties undertake to apply, **mutatis mutandis**, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

Part III

Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph

2

Article 8 - Education

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:
 - a
 - i to make available pre-school education in the relevant regional or minority languages; or
 - ii to make available a substantial part of pre-school education in the relevant regional or minority languages; or
 - iii to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or
 - iv if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;
 - b
 - i to make available primary education in the relevant regional or minority languages; or
 - ii to make available a substantial part of primary education in the relevant regional or minority languages; or
 - iii to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
 - iv to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient;
 - c
 - i to make available secondary education in the relevant regional or minority languages; or
 - ii to make available a substantial part of secondary education in the relevant regional or minority languages; or

iii to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
iv to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

d

i to make available technical and vocational education in the relevant regional or minority languages; or
ii to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or
iii to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
iv to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

e

i to make available university and other higher education in regional or minority languages; or
ii to provide facilities for the study of these languages as university and higher education subjects; or
iii if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects;

f

i to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or
ii to offer such languages as subjects of adult and continuing education; or
iii if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;

g to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;

h to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party;

i to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.

2. With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

Article 9 - Judicial authorities

1. The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:

a in criminal proceedings:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to guarantee the accused the right to use his/her regional or minority language; and/or

iii to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or

iv to produce, on request, documents connected with legal proceedings in the relevant regional or minority language,

if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;

b in civil proceedings:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

iii to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;

c in proceedings before courts concerning administrative matters:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

iii to allow documents and evidence to be produced in the regional or minority languages,

if necessary by the use of interpreters and translations;

d to take steps to ensure that the application of sub-paragraphs i and iii of paragraphs b and c above and any necessary use of interpreters and translations does not involve extra expense for the persons concerned.

2. The Parties undertake:

a not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or

b not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or

c not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language.

3. The Parties undertake to make available in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages, unless they are otherwise provided.

Article 10 - Administrative authorities and public services

1. Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:

a

i to ensure that the administrative authorities use the regional or minority languages; or

ii to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or

iii to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or

iv to ensure that users of regional or minority languages may submit oral or written applications in these languages; or

v to ensure that users of regional or minority languages may validly submit a document in these languages;

b to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;

c to allow the administrative authorities to draft documents in a regional or minority language.

2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:

- a** the use of regional or minority languages within the framework of the regional or local authority;
 - b** the possibility for users of regional or minority languages to submit oral or written applications in these languages;
 - c** the publication by regional authorities of their official documents also in the relevant regional or minority languages;
 - d** the publication by local authorities of their official documents also in the relevant regional or minority languages;
 - e** the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
 - f** the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
 - g** the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.
3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:
- a** to ensure that the regional or minority languages are used in the provision of the service; or
 - b** to allow users of regional or minority languages to submit a request and receive a reply in these languages; or
 - c** to allow users of regional or minority languages to submit a request in these languages.
4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:
- a** translation or interpretation as may be required;
 - b** recruitment and, where necessary, training of the officials and other public service employees required;
 - c** compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.
5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

Article 11 - Media

1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:
- a** to the extent that radio and television carry out a public service mission:
 - i** to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or

- ii to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or
 - iii to make adequate provision so that broadcasters offer programmes in the regional or minority languages;
 - b
 - i to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or
 - ii to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;
 - c
 - i to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or
 - ii to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;
 - d to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;
 - e
 - i to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or
 - ii to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;
 - f
 - i to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or
 - ii to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;
 - g to support the training of journalists and other staff for media using regional or minority languages.
- 2. The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- 3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

Article 12 - Cultural activities and facilities

1. With regard to cultural activities and facilities - especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including **inter alia** the use of new technologies - the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:
 - a to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;
 - b to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;

- c** to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;
 - d** to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;
 - e** to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;
 - f** to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;
 - g** to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;
 - h** if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language.
2. In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.
 3. The Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.

Article 13 - Economic and social life

1. With regard to economic and social activities, the Parties undertake, within the whole country:
 - a** to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations;
 - b** to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;
 - c** to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;
 - d** to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs.
2. With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:
 - a** to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;
 - b** in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;
 - c** to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;
 - d** to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;
 - e** to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages.

Article 14 - Transfrontier exchanges

The Parties undertake:

a to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;

b for the benefit of regional or minority languages, to facilitate and/or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.

Part IV**Application of the Charter****Article 15 - Periodical reports**

1. The Parties shall present periodically to the Secretary General of the Council of Europe, in a form to be prescribed by the Committee of Ministers, a report on their policy pursued in accordance with Part II of this Charter and on the measures taken in application of those provisions of Part III which they have accepted. The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report.
2. The Parties shall make their reports public.

Article 16 - Examination of the reports

1. The reports presented to the Secretary General of the Council of Europe under Article 15 shall be examined by a committee of experts constituted in accordance with Article 17.
2. Bodies or associations legally established in a Party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that Party under Part III of this Charter. After consulting the Party concerned, the committee of experts may take account of this information in the preparation of the report specified in paragraph 3 below. These bodies or associations can furthermore submit statements concerning the policy pursued by a Party in accordance with Part II.
3. On the basis of the reports specified in paragraph 1 and the information mentioned in paragraph 2, the committee of experts shall prepare a report for the Committee of Ministers. This report shall be accompanied by the comments which the Parties have been requested to make and may be made public by the Committee of Ministers.
4. The report specified in paragraph 3 shall contain in particular the proposals of the committee of experts to the Committee of Ministers for the preparation of such recommendations of the latter body to one or more of the Parties as may be required.
5. The Secretary General of the Council of Europe shall make a two-yearly detailed report to the Parliamentary Assembly on the application of the Charter.

Article 17 - Committee of experts

1. The committee of experts shall be composed of one member per Party, appointed by the Committee of Ministers from a list of individuals of the highest integrity and recognised competence in the matters dealt with in the Charter, who shall be nominated by the Party concerned.
2. Members of the committee shall be appointed for a period of six years and shall be eligible for reappointment. A member who is unable to complete a term of office shall be replaced in accordance with the procedure laid down in paragraph 1, and the replacing member shall complete his predecessor's term of office.
3. The committee of experts shall adopt rules of procedure. Its secretarial services shall be provided by

the Secretary General of the Council of Europe.

Part V

Final provisions

Article 18

This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

1. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of Article 18.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 20

1. After the entry into force of this Charter, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Charter.
2. In respect of any acceding State, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 21

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this Charter. No other reservation may be made.
2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

Article 22

1. Any Party may at any time denounce this Charter by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 23

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Charter of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Charter in accordance with Articles 19 and 20;
- d any notification received in application of the provisions of Article 3, paragraph 2;
- e any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.
 Done at Strasbourg, this 5th day of November 1992, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Charter.

E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Adopted by General Assembly resolution 47/135 of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

COUNCIL OF EUROPE
European Treaties
ETS No. 157

F. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Strasbourg, 1.II.1995

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

3. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
4. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

4. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
5. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
6. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

3. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
4. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

6. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in

the fields of education, culture and the media.

7. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

3. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
4. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
5. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
6. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

4. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
5. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
6. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

6. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.
7. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
8. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the

minority language when there is a sufficient demand for such indications.

Article 12

4. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
5. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
6. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

4. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
5. The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

3. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
4. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
5. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

3. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
4. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

6. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
7. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III**Article 20**

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV**Article 24**

4. The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
5. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

3. Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
4. Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
5. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

3. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
4. The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V**Article 27**

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

3. This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.
4. In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

3. After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.
4. In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

1. Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;

d any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 10 mai 2000**CHARTE 4299/00****CONTRIB 171****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions d'amendements aux clauses horizontales (document CHARTE 4235/00 CONVENT 27), présentées par M. Jean-Luc DEHAENE, représentant personnel du Gouvernement belge.¹

¹ Ce texte a été soumis en langues française et néerlandaise.

Les dispositions horizontales

Propositions d'amendements :

Article H.2 (numérotation CONVENT 27). Limitation des droits garantis

Paragraphe 2. Toute limitation aux droits et libertés garantis par la présente Charte doit être prévue par le législateur. Elle doit respecter le contenu essentiel desdits droits et libertés et rester, dans le respect du principe de proportionnalité, dans les limites nécessaires à la protection d'intérêts légitimes dans une société démocratique. ~~Les limitations prévues par la Convention européenne des droits de l'homme sont applicables à ceux des droits et libertés contenus dans la présente Charte qui sont également garantis par ladite Convention.~~

Le premier paragraphe de cet article énumère les articles de la Charte qui ne peuvent pas faire l'objet de limitations. Les articles qui ne figurent pas dans ce premier paragraphe peuvent donc par contre faire l'objet de limitations. Pour définir la nature de ces limitations trois options nous sont offertes : (1) reprendre les limitations prévues dans la CEDH, (2) définir pour la Charte des limitations spécifiques inspirées de la CEDH ou encore (3) laisser au législateur le soin de fixer ces limitations. Dans le projet de charte à l'examen, ces trois options ont été combinées : (1) l'article H.2., paragraphe 2, dernier alinéa se réfère aux limitations prévues dans la CEDH, (2) les limitations stipulées dans certains articles sont inspirées de la CEDH (voir notamment les articles 10 (nullum crimen sine lege – Pas de peine sans loi) et 16 (Droit de propriété), (3) l'article H.2, paragraphe 2, premier alinéa offre au législateur la possibilité d'introduire des limitations.

L'amendement proposé, à savoir la suppression du dernier alinéa du paragraphe deux de l'article H.2, a pour objet de rationaliser cet écheciveau de limitations. La raison principale de cet aménagement, c'est que la suppression de cet alinéa, permet de mettre en place au sein de l'Union un niveau de protection des droits fondamentaux supérieur à celui de la CEDH (puisque nous ne reprenons pas automatiquement toutes les limitations aux droits et libertés stipulées dans le texte de la CEDH). Ceci offre au législateur européen la possibilité d'introduire ses propres limitations aux droits fondamentaux. Il va de soi que, dans ce contexte, le législateur ne pourra jamais introduire un niveau de protection de ces droits qui soit inférieur à celui de la CEDH (l'article H.4 en est la garantie). Ainsi, la CEDH restreint la compétence du législateur en matière d'introduction de limitations aux droits fondamentaux en stipulant, par exemple, que les restrictions, prévues par la loi « constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publique, ou à la protection des droits et libertés d'autrui » (article 9, §2 CEDH qui traite de la liberté de pensée, de conscience et de religion). Grâce à l'article H.4, les restrictions imposées au législateur par la CEDH constituent en même temps le plafond des limitations que le législateur européen peut appliquer aux droits fondamentaux.

Il existe toutefois un droit qui est à ce point fondamental que toute possibilité de limitation par la loi doit être exclue, à savoir le droit à la vie (Charte, article 2). Cet article fait donc partie des articles visés au paragraphe premier de l'article H.2. La seule manière dont ce droit pourrait malgré tout être limité serait une restriction inscrite dans la Charte elle-même. Etant donné que dans la CEDH ce droit est assorti de certaines restrictions (voir article 2, paragraphe 2, CEDH), il y a lieu, par conséquent, de reprendre ces restrictions dans la Charte.

Article 2 : (le droit à la vie)

Paragraphe 3 : La mort n'est pas considérée comme infligée en violation du présent article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

- (a) pour assurer la défense de toute personne contre la violence illégale ;
- (b) pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;
- (c) pour réprimer, conformément à la loi, une émeute ou une insurrection.

Article H.3. Relation entre la Charte et les Traités de l'Union européenne.

Les droits garantis par les article (...) s'exercent dans les conditions et les limites définies par le Traité sur l'Union européenne et les Traités instituant les Communautés européennes.

Cet article a pour objet de soumettre les droits et les libertés inscrits dans la Charte qui coïncident avec des droits et des libertés inscrits dans le droit de l'Union aux mêmes conditions et aux mêmes restrictions que ces derniers. L'ajout est justifié par le fait que la portée de certains droits et libertés inscrits dans la Charte sont susceptibles d'avoir des effets sur d'autres dispositions que celles du droit de l'Union (par exemple, le Traité Euratom ou les dispositions relatives à la politique étrangère et de sécurité commune ou dans le cadre de la coopération policière et judiciaire en matière pénale).

Article H.5. Interdiction de l'abus de droit

« Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits et libertés reconnus dans la présente Charte ou à des limitations plus amples que celles prévues à ladite Charte.

Cet ajout, inspiré du dernier alinéa de l'article 17 CEDH est nécessaire pour introduire dans le texte une notion de gradation. L'annihilation de certains droits et libertés n'est en effet qu'une variante extrême (et rare) de certaines limitations injustifiées de ces libertés et droits.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 12 May 2000
(OR. fr)****CHARTE 4303/00****CONVENT 29****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union

On 12 May 2000 you received the document on civil and political rights (CHARTE 4284/00 CONVENT 28; REV 1 for the French version). This document is open to amendment, for which the deadline is **23 May**.

To make it easier to reproduce and translate your amendments, it would be helpful if you would use the attached model, and send them by e-mail to:

Margit.Huy@consilium.eu.int.

Amendments should be to the Articles and not to the statement of reasons, which will be adapted according to the final wording adopted by the Convention.

The sequence in which the Articles are presented is provisional and will have to be adapted later.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article:

Submitted by:

Proposed text:

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 May 2000**CHARTE 4308/00****CONTRIB 175****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a draft preamble, submitted by Mr. Stefano RODOTÀ, personal representative of the Italian Government, Mr. Andrea MANZELLA, Member of the Italian Parliament and Mrs. Elena PACIOTTI, Member of the European Parliament. ¹

¹ This text has been submitted in English and Italian languages.

THE EUROPEAN UNION

- considering that the safeguard of fundamental rights is one of its founding principles and the essential premise of its legitimacy;
- taking account of the need to enshrine, in a form which is visible, readable and accessible for all citizens, the fundamental rights informing its nature and actions, in accordance with the common constitutional traditions of its member States, since such rights constitute the general principles of European Community law;
- acknowledging the need to adopt autonomously a Charter of Fundamental Rights in conformity with the development of the Union and its identity and in logical and consistent continuity with the legal and moral framework established by the European Convention for the Protection of Human Rights and the Fundamental Freedoms (Rome, 1950)
- aware that the fundamental rights and liberties of people are an essential prerequisite in order that women and men look at its actions with confidence;
- recalling that Europe witnessed dramatic mishaps and divisions whenever the respect for rights was neglected and the dignity of the human beings was violated;
- aware of the need to combine the rich tradition of the past with the opportunities of the modern times and to create the conditions for stronger common action and the acknowledgement of the several traditions present in Europe;
- recognising that the full respect for human dignity; equality and the rejection of any discrimination; solidarity amongst individuals, generations and peoples; access to and control of the new opportunities made available by the scientific and technological progress; peaceful coexistence and the acceptance of diversity are founding principles and values;
- approving the draft Charter submitted by the Convention composed of the delegates of the Heads of State or Government, members of the European Parliament and the national Parliaments, and the representative of the European Commission;

adopts the following

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Stefano Rodotà
Andrea Manzella
Elena Paciotti

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 May 2000**CHARTE 4309/00****CONTRIB 176****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Frits KORTHALS ALTES, personal representative of the Government of the Netherlands. ¹

¹ This text has been submitted in French, English, Dutch and German languages.

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
(contribution by Frits Korthals Altes, representative of the Netherlands Government in the
Convention for the drawing up of a draft Charter of fundamental rights of the European
Union)**

1. I endorse the effort being made to establish a concise wording for the fundamental rights so that citizens and other residents of the European Union find them comprehensible and easy to read. However, I have two objections to proposals discussed so far.
Deviating from the wording of a fundamental rights also contained in the ECHR risks producing a difference in interpretation between the ECHR and the EU Charter. There is no objection if such deviation aims to expand that fundamental right: in my opinion, the European Union has every entitlement to expand a fundamental right in such a way as to make protection within the European Union stronger than that guaranteed by the ECHR. On the other hand, the EU Charter must never restrict a fundamental right already guaranteed by the ECHR or word it in more limited terms than the ECHR does. However, in none of the discussions of fundamental rights conducted up to now in the framework of the draft Charter has any reference been made to deliberate expansion of the fundamental rights guaranteed under the ECHR.
2. In specific cases, the ECHR authorises States to infringe a fundamental right. It also lays down the generally strict conditions under which such infringements may take place (cf. Article 5 of the ECHR). By not including an article authorising infringement and laying down the conditions under which a fundamental right may be infringed, the EU Charter risks diverging even further from the ECHR.

Discussions of the horizontal articles have already shown how very difficult if not impossible it is to formulate them in such a way that they meet three - in my view, essential - requirements, i.e.

1. That the fundamental right guaranteed in the draft charter embodies no less than the same guarantee as that contained in the ECHR, even if it is formulated differently;
2. That since the regulatory bodies of the EC/EU share the same status as national legislatures, they are authorised to restrict a fundamental right, provided the ECHR authorises national legislatures to introduce such restrictions (cf article H2, paragraph 2 of CONVENT 27, CHARTE 4235/00 of 18 April 2000);
3. That in order to introduce such restrictions, the same conditions apply as those specified in the ECHR.

If these requirements are not met, the future EU Charter will diverge from the ECHR. For European citizens there will be two divergent regimes in the field of fundamental rights; the ECHR in relation to the state of residence, and the Charter of Fundamental Rights of the European Union in relation to the institutions and bodies of the Union and to the state of residence when it applies to community or European Union law.

On a number of occasions, the view has been expressed, by, for instance the president of the group of experts, that simply to copy the relevant articles of the ECHR would make the text too long, making it less appealing to the citizens. I have therefore proposed inserting a reference to the relevant ECHR article. The citizen reading the article will know immediately that there are restrictions. This makes matters clearer. Otherwise, the reader will only discover at the end, in the horizontal articles, that the fundamental rights are not as far-reaching as he may have thought on first reading. Ms May-Weggen has also warned of the risk of the Charter giving with one hand and taking with the other. This is not likely to boost citizens' confidence in it.

I therefore explicitly urge referring article by article to the ECHR (and, where applicable, to the ESC, the relevant ILO treaty or EU document). Only when it is the express intention that the Charter grants new or more generous rights than ECHR, ESC or an ILO treaty, should no reference be made, since this is a new right.

An alternative to this method of reference is the proposal put forward by Lord Goldsmith to mention per article in a Part B (or binding explanatory note) that the right contained in the Charter is the same right as that referred to in article.... of the ECHR. and that the competent authority (to be defined) may introduce the same restrictions as referred to in said article, provided it does so under the same conditions.

EXAMPLES:

Re 1.

§ 1 Human dignity

Article 1

- 1.1. The right to human dignity shall be inseparably linked to the human person.
- 1.2. The right to human dignity shall be inviolable and must be respected under all circumstances.

Article 2

- 2.1. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- 2.2. No one shall be held in slavery or servitude.
- 2.3. No one shall be required to perform forced or compulsory labour, except in the cases provided for in Article 4.3 of the ECHR.

§ 2 Right to life**Article 3**

- 3.1. Everyone has the right to life.
- 3.2. Everyone has the right to the respect of his physical and mental integrity.
- 3.3. The death penalty may not be enforced other than in the event of war, subject to due regard for Article 2 of Protocol No 6 to the ECHR.

Article 4

- 4.1 An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.
- 4.2 Th cloning of human beings is forbidden.

§ 3 Liberty and security**Article 5**

- 5.1. Everyone has the right to liberty and security of person
- 5.2 No one shall be deprived of his liberty save in the cases referred to in Article 5.1 of the ECHR and with due regard for Articles 5.2 – 5.5 of the ECHR, Article 1 of protocol No 4 and Articles 2, 3 and 4 of Protocol No 7 to the ECHR.

§ 4 Right to a fair trial**Article 6**

In the determination of his civil and administrative rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 7

- 7.1 Everyone whose rights and freedoms are violated has the right to request an effective remedy from a court or tribunal specified by law.¹
- 7.2 Everyone charged with an offence has the following rights in accordance with Articles 6.2 and 6.3 of the ECHR:
- (a) to be presumed innocent until proved guilty according to law;
 - (b) to be informed promptly, in a language which he understands and in detail, of the accusation against him, and to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free, and to have the free assistance of an interpreter if he cannot understand or speak the language of the proceedings;
 - (d) to have access to the dossier; to examine witnesses on his behalf and to produce and examine or have examined witnesses against him under the same conditions as witnesses on his behalf.

Article 8

- 8.1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence in law at the time when it was committed. No heavier penalty than the one applicable at the time of committing the offence shall be imposed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.
- 8.2 The previous paragraph shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 9

With due regard for restrictions and exceptions referred to in Article 4 of Protocol No 7 to the ECHR, no one shall be tried or convicted for offences for which they have already been finally acquitted or convicted.

¹ This wording deviates from that of Article 13 of the ECHR to favour residents as Article 13 refers to a ‘national authority’ rather than ‘a court or tribunal specified by law’. There should therefore be no reference to Article 13 of the ECHR.

§ 5 Freedom of the individual

Article 10

- 10.1. Everyone has the right to freedom of thought, conscience, religion and belief; this right shall include freedom to change his religion of belief and freedom, either alone or in community with others and in public or private, to manifest his religion of belief, in worship, teaching, practice and observance.
- 10.2 The right to freedom of thought, conscience, religion and belief shall be subject only to such limitations as are referred to in Article 9.2 of the ECHR.

Article 11

- 11.1. Everyone has the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and images without interference by public authority and regardless of frontiers.
- 11.2 The right to freedom of expression shall be subject only to such limitations as are referred to in Article 10 of the ECHR.

Article 12

There shall be freedom of art, science and research.

§ 6 Respect for private and family life

Article 13

- 13.1. Everyone has the right to protection of their identity.
- 13.2. Respect for the privacy, reputation, home and confidentiality of correspondence, irrespective of the medium, shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 14

- 14.1 Everyone has the right to marry and to found a family, according to the national laws governing the exercise of the right.
- 14.2 Every minor has the right to protection by the public authorities.
- 14.3 Respect for family life shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 15

- 15.1. Every child has the right to compulsory free primary education within the age limits set by national legislation and to secondary education in accordance with his capabilities.
- 15.2 There shall be freedom of choice of educational establishment.
- 15.3 The right of parents or legal guardians to secure for their children an education which conforms to their religious or philosophical beliefs shall be respected.

Etc.

The Hague, 8 May 2000
Frits KORTHALS ALTES

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 17 Mai 2000**CHARTE 4310/00****CONTRIB 177****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums CHARTE 4227/00 CONVENT 26 und CHARTE 4235/00 CONVENT 27 sowie Diskussionsvorschläge der deutschen Länder für die Sitzung des Konvents am 11./12. Mai 2000, vorgelegt von Herrn Jürgen GNAUCK, Mitglied des Bundestages.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Prinzregentenstraße 89

81675 München

Vorab per Fax (089-470 27 168)!

An das
Sekretariat des Konvents
Rue de la Loi/Wetstraat 175

B-1048 Brüssel

Vorab per Fax (0032-2-285 78 37)!

Per E-mail (fundamental.rights@consilium.eu.int)!

Geschäftszeichen:	Ihr Zeichen, Ihre Nachricht vom	Telefon	Datum
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Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums
CHARTE 4227/00 CONVENT 26 und CHARTE 4235/00 CONVENT 27 sowie
Diskussionsvorschläge der deutschen Länder für die Sitzung des Konvents am
11./12. Mai 2000

Sehr geehrter Herr Vorsitzender,

der Konvent hat in seinen Sitzungen am 27./28. April und 2./3. Mai 2000 über die Vorschläge des Präsidiums zu den sozialen Rechten im Dokument CONVENT 26 und zu den horizontalen Bestimmungen im Dokument CONVENT 27 beraten. In der übernächsten Sitzung am 22./23. Mai 2000 wird der Konvent diese Bestimmungen in einem zweiten Durchgang behandeln. Die deutschen Länder haben sich im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild zu den Vorschlägen in den Dokumenten CONVENT 26 und CONVENT 27 verschafft. Ich erlaube mir, Ihnen diese Einschätzung zu übermitteln. Darüber hinaus wird die

Sitzung am 11./12. Mai 2000 dazu dienen, offene Punkte wie die Präambel und den Chartaaufbau anzusprechen und Desiderate einzubringen. Die Arbeitsgruppe der deutschen Länder hat auch hierzu Diskussionsvorschläge erarbeitet, die ich Ihnen hiermit ebenfalls übersende.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Thüringer Staatskanzlei
Referat 33/Bo, Fie

Erfurt, den 26.09.2013

**Entwurf einer Charta der Grundrechte der Europäischen Union
Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums
in den Dokumenten CONVENT 26 vom 17. April 2000 und CONVENT 27 vom 18. April 2000
sowie Diskussionsvorschläge für die Sitzung des Konvents am 11./12. Mai 2000**

A. Zu Dokument CONVENT 26

Artikel XVI. – Das Recht älterer Menschen auf sozialen Schutz

Die deutschen Länder treten für einen Verzicht auf diese Bestimmung ein. Gegen den Regelungsvorschlag bestehen erhebliche Bedenken: Ein konkretes Arbeitnehmergrundrecht auf eine einzelne, bestimmte Form der sozialen Sicherung widerspricht der Funktion von Grundrechten. Die Absicherung älterer Menschen sollte dem Sekundärrecht vorbehalten bleiben, um eine dynamische Entwicklung zu ermöglichen und um eine Überfrachtung der Charta zu verhindern. Weiter ist zu berücksichtigen, dass nicht alle Vertragsparteien der Europäischen Sozialcharta an Artikel 23 dieser Sozialcharta gebunden sind, die dem Artikelvorschlag zu Grunde liegt. Schließlich ergeben sich die Regelungen in Abs. 2 bereits aus den Bestimmungen zur Sozialhilfe (Artikel XIV) bzw. aus den Bestimmungen zur Menschenwürde und sind daher gleichfalls überflüssig. In keinem Fall darf ein derartiges Grundrecht, das weit über die Sicherung des Existenzminimums hinaus ginge, einen einklagbaren Leistungsanspruch gegen den Staat begründen. Selbst aus der als Vorbild dienenden Bestimmung der Sozialcharta ergibt sich ein solcher Leistungsanspruch nicht, da er die Mitgliedstaaten nur verpflichtet, "geeignete Maßnahmen zu ergreifen oder zu fördern". Klarstellend ist anzumerken, dass jedenfalls ein derartiges Recht älterer Menschen auf sozialen Schutz aufenthaltsbeendigende Maßnahmen gegenüber Drittstaatsangehörigen nicht beeinträchtigen darf.

Zu Artikel XVII. – Das Recht Behinderter auf berufliche und soziale Eingliederung

Das hinter dem Formulierungsvorschlag stehende Ziel, für Behinderte gleichwertige Lebens- und Arbeitsbedingungen zu schaffen, wird von den deutschen Ländern grundsätzlich unterstützt und befürwortet. Gleichwohl erscheint die Bestimmung entbehrlich. Das Verbot der Nichtdiskriminierung von Behinderten ist bereits ausdrücklicher Regelungsgegenstand des allgemeinen Gleichbehandlungsgebotes gem. Artikel XIX. Abs. 1 Dokument CONVENT 8. Jedenfalls erscheint die Formulierung "konkrete ergänzende Maßnahmen, die ihre soziale und berufliche Eingliederung fördern", in ihrem Umfang zu unbestimmt. Die Maßnahmen, die die Grundrechtsträger auf Grund dieser Vorschrift möglicherweise fordern könnten, sind in keiner Weise absehbar. Im Übrigen birgt der Vorschlag die Gefahr einer kompetenzerweiternden Wirkung über die in Artikel 137 Abs. 1 vierter Spiegelstrich EGV und Artikel 13 EGV geregelten Kompetenzen hinaus.

Zu Artikel XVIII. – Das Recht der Wanderarbeitnehmer auf Gleichbehandlung

Die deutschen Länder halten es für bedenklich, dass hier, abweichend von den bisherigen Vorschlägen und mit einer irreführenden Überschrift („Wanderarbeitnehmer“), ein eigenes Grundrecht für aufenthaltsberechtigte Drittstaatsangehörige geschaffen werden soll. Weiter ist unklar, wie der Begriff Arbeitsbedingungen auszulegen ist. Sollten darunter auch Sozialschutzbestimmungen zu verstehen sein, so besteht die Gefahr, dass Wanderarbeitnehmer aus Drittstaaten ggf. zusätzliche Leistungsansprüche erwerben würden. Dies würde zu weiteren Kosten für die nationalen Sicherungssysteme führen.

Zwischenergebnis zu den bisher vorgeschlagenen Wirtschafts- und Sozialrechten.

Entsprechend den bisher vorgelegten Anmerkungen stehen die deutschen Länder den vorgeschlagenen sozialen Rechten überwiegend ablehnend gegenüber. Sie könnten allerdings dem Gedanken näher treten, den Grundsatz der Solidarität in der zukünftigen Präambel zu verankern. Damit würde eine zusätzliche Werteentscheidung getroffen, die allen Mitgliedstaaten und den deutschen Ländern gemein ist. Darüber unterstützen die Länder den von Prof. Dr. Roman Herzog angedeuteten Kompromissvorschlag, nur solche soziale Rechte in die Charta aufzunehmen, die eng mit der Würde des Menschen verbunden sind. Um der gesamten Charta zum Erfolg zu verhelfen, ist hier allerdings ein strenger Maßstab anzulegen.

B. Zu Dokument CONVENT 27

Zu Artikel H.1 – Anwendungsbereich

Gem. Artikel H.1 Abs. 1 soll die Charta auf die Mitgliedstaaten ausschließlich bei der Anwendung des Gemeinschaftsrechts Anwendung finden. Es ist mit Blick auf die Bedeutung der Verfassungsgerichte der Mitgliedstaaten eingehend zu prüfen, wie weit die Bindungswirkung bei der „Anwendung des Gemeinschaftsrechts“ („implementing Community law“; „la mise en oeuvre du droit communautaire“) geht. In diesem Zusammenhang stellen sich zahlreiche Fragen, etwa inwieweit die Umsetzung von Richtlinien in das nationale Recht hiervon erfasst ist? Weiter ist die Bindungswirkung insbes. in der „Dritten Säule“ der EU fraglich (etwa bei der Umsetzung und Anwendung von Rahmenbeschlüssen nach Artikel 34 Abs. 2 Buchstabe b) EUV und von Übereinkommen nach Artikel 34 Abs. 2 Buchstabe d) EUV).

In Abs. 2 sollte die Formulierung dahingehend abgeändert werden, dass er lautet: „Gemeinschaft oder (statt : „und für“) die Union“.

Zu Artikel H.2 – Einschränkung der gewährleisteten Rechte

Artikel H.2 Abs. 1 dürfte entbehrlich sein. Schließlich wären hier wohl nur die Menschenwürde und das Verbot der Todesstrafe oder der Folter und Sklaverei aufzunehmen, aus deren Formulierung bereits ihre absolute Geltung hervor geht.

In Artikel H.2 Abs. 2 Satz 1 ist die Rede vom „Gesetzgeber“. Hier ist unbedingt zu klären, wer damit gemeint ist.

Zu Artikel H.3

Das Abstellen auf die „Ausübung“ der Grundrechte erscheint zumindest bei Abwehrrechten als zu eng.

Zu Artikel H.4 – Schutzniveau

Derzeit sind hierzu keine Anmerkungen veranlasst.

Zu Artikel H.5 – Verbot des Missbrauchs der Rechte

Da das Missbrauchsverbot wohl allen Rechtsordnungen bekannt ist, könnte man evtl. auf Artikel H.5 verzichten.

C. Diskussionsvorschläge

Im Hinblick auf die Sitzung des Konventes am 11. und 12. Mai 2000 unterbreiten die deutschen Länder folgende Diskussionsvorschläge:

1. Präambel

Es wird angeregt, dass die Eingangsformel der Präambel die christlichen und humanistischen Grundlagen Europas deutlich macht. Denkbar wäre etwa, an die Einleitung der Verfassung der Republik Polen vom 2. April 1997 anzuknüpfen, die diejenigen anspricht, die an Gott glauben, als auch diejenigen, die diesen Glauben nicht teilen, sondern die universellen Werte aus anderen Quellen ableiten.

Wie bereits erwähnt, wäre ein Hinweis auf den Grundsatz der Solidarität in der Präambel einer Überfrachtung der Charta mit zum großen Teil nicht justiziablen, zu detaillierten und kompetenzerweiternden Sozialrechten vorzuziehen.

Darüber hinaus sollte der Grundsatz der Subsidiarität in der Präambel verankert werden. Damit würde man zugleich der kommunalen und regionalen Identität der einzelnen Bürgerinnen und Bürger gerecht.

2. Aufbau der Charta

Die deutschen Länder halten den vom Präsidium bereits vorgeschlagenen – vorläufigen – Aufbau für zweckmäßig. Danach könnten der Präambel die fundamentalen Rechte des Menschen, die Freiheits- und Gleichheitsrechte, die wirtschaftlichen und sozialen Rechte sowie die politischen und justiziellen Rechte folgen.

Eine Zweiteilung der Charta in einen kurzen und „leserlichen“ Teil für die Bürger und einen erläuternden Teil, der gleichermaßen rechtlich verbindlich wäre, wird von den deutschen Ländern abgelehnt. Insbesondere vertreten die deutschen Länder die Auffassung, dass eine solche Zweiteilung der Charta der gebotenen Transparenz und Verständlichkeit der Grundrechte für den Bürger zuwiderlaufen würde.

3. Desiderate

Nach Auffassung der deutschen Länder wären Fragen der Presse- und Rundfunkfreiheit (unter Beachtung der Zuständigkeit der Mitgliedstaaten, die Aufgaben, die Finanzierung und Organisation des öffentlichen Rundfunks zu regeln) sowie die Möglichkeit der gemeinsamen Religionsausübung noch eingehender zu diskutieren.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 16 May 2000 (18.05)
(OR. fr)****CHARTE 4316/00****CONVENT 34****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union

- New proposal for the Articles on economic and social rights and for the horizontal clauses
(reference docs: CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19, CHARTE 4227/00 CONVENT 26, CHARTE 4235/00 CONVENT 27)

Members of the Convention will find attached the version of the social rights and horizontal clauses which is being submitted for their consideration. The deadline for filing amendments is 5 June. When drafting amendments, it would be helpful if they could be presented using the form which you have been sent (see CHARTE 4303/00 CONVENT 29).

Article 31. Social rights and principles

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter.

Statement of reasons

This provision takes account of the particular nature of social rights and highlights the implications of the scope of the Charter in their regard. Social rights are binding on the Community legislature, on national legislation enacted in implementation of Union law, and on the social partners at Community level, who can conclude agreements at Community level pursuant to Article 139 of the TEC. All these bodies must respect those social rights; when laying down rules they may not act counter to them, save where allowed by the general clause on limitations. Given that social rights are constantly evolving, and that they often only acquire tangible form by means of implementing measures, it must be stipulated, when they comprise a right to an actual benefit, that these are principles whose application will, in a certain number of cases, be subject to the adoption of implementing measures. In this case, it is clear that the adoption of such measures will depend on the allocation of responsibilities in the Treaties, with due regard for the principle of subsidiarity. In other words, it is not possible, for example, to adopt rules that would undermine the right to a social benefit or prevent its implementation. However, such rights can only be claimed within the framework of existing Community or national measures.

Article 32. Freedom to choose an occupation

Everyone has the right to choose and to engage in an occupation.

Statement of reasons

This right is recognised without any ambiguity in the case law of the Court as a fundamental right (see judgment of principle in Case 4/73 Noldé [1974] ECR 491). Pursuant to Article 48, this right is exercised under the conditions and subject to the limits laid down by the Treaties, which includes the rules on the pursuit of occupations.

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

Statement of reasons

Text based on the revised European Social Charter (Article 21) and the Community Charter (Article 17). There is a considerable Community acquis in this field : Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, under the conditions laid down by national legislation and practice.

Statement of reasons

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. The rights of collective bargaining and collective action are recognised by the revised Social Charter (Article 6) and by the Social Charter. They are mentioned in point 12 of the Community Charter. The right to collective action is recognised in the case law of the European Court of Human Rights as stemming from Article 11 of the Convention (Swedish train drivers union 1976). Finally, Articles 138 and 139 TEC deal with social dialogue at a Community level and provide for the conclusion of collective agreements. The concept of collective action includes, amongst other things, the right to strike.

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Statement of reasons

This Article is based, inter alia, on Directive 93/104/EC and Article 2 of the Social Charter.

Article 36. Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Statement of reasons

This Article is based on Directive 89/391/EC and Article 3 of the Social Charter. See also paragraph 19 of the Community Charter.

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Statement of reasons

This text is based on Article 7 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 20 to 23). First of all it reproduces the main thrust of point 20, which provides for a minimum employment age, linked to the end of compulsory schooling, which cannot under any circumstances be less than 15 years. However, the Charter begins as follows: "Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, ..."

The second paragraph is based on point 22 of the Charter, which stipulates that labour regulations applicable to young workers must be adjusted to take account of their development and vocational training needs. The wording of the paragraph comes chiefly from Article 1(3) of Directive 94/33/EC on the protection of young people at work.

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment.

Statement of reasons

This Article simply provides for protection against arbitrary termination of employment.

Article 39. Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Statement of reasons

Articles 8 and 27 of the revised Social Charter.

Directive 92/85/EEC of 19 October 1992 concerning the right to maternity leave of at least 14 weeks and Directive 96/34/EC concerning the right to parental leave of at least 3 months.

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.

Statement of reasons

Community competence in this area is established by the fourth indent of Article 137(3). The rule laid down here is simply that of non-discrimination in respect of working conditions.

Article 41. Social security and social assistance

- 1. Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.**
- 2. Provision shall be made for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.**

Statement of reasons

This is a principle implemented according to national legislation, in compliance with Community law.

Article 42. Health protection

Everyone shall have access to medical care and prophylactic measures in accordance with each Member State's rules.

Statement of reasons

This is a principle implemented essentially by national legislation.

Article 43. The disabled

Provision shall be made for social and vocational integration measures for the disabled.

Statement of reasons

Article 13 of the Treaty establishing the European Community authorises the adoption of positive measures to prevent discrimination on grounds of disability. The fourth indent of Article 137(1) establishes Community competence with a view to integrating persons excluded from the labour market.

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Statement of reasons

Community competence as regards the environment is established by Title XIX of the Treaty. This too is a principle given tangible form by means of implementing measures which define the scope of the right. The wording is similar to Article 174 of the EC Treaty.

Article 45. Consumer protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Statement of reasons

Community competence is established by Title XIV of the Treaty. The Charter enshrines a principle which takes form through Community or national legislation. The wording is similar to Article 153 of the EC Treaty.

Article 46. Scope

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.**
- 2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Statement of reasons

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, within the framework of the Union's powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council.

The term "institutions" is enshrined in the Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation. It follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). The second paragraph confirms that the Charter does not affect the competences and tasks which the Treaties confer on the Community and the Union.

Article 47. Limitation of guaranteed rights

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Statement of reasons

The purpose of this provision is to lay down general arrangements for the limitation of rights. The Article provides that the limitations laid down by the European Convention on Human Rights, which constitutes a minimum standard, may not be exceeded in any circumstances. It follows that when the Convention does not permit limitations on certain rights, they may not be limited on the basis of Community law either. As regards the Union's own limitation régime, the wording is based on the case law of the Court of Justice "...it is well established in the case law of the Court that

restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds).

Article 48. Conditions and limits defined by the Treaty.

The rights enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Statement of reasons

This Article has the effect of referring back to the Treaty where the rights in question are defined by the Treaty itself. The same applies to certain rights such as freedom of movement, the right to participate in European and municipal elections, the right to refer to the Ombudsman, the right to petition, etc.

Article 49. Level of protection

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

Statement of reasons

The aim of the provision is clear - to maintain the level of protection currently afforded by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes a minimum standard in all cases. The reference to the European Convention on Human Rights obviously means the Convention as interpreted by the European Court of Human Rights, whether now or in the future, by virtue of the principle that any interpretation is incorporated into the text interpreted. The same holds for the case law of the Court of Justice of the European Communities with respect to Community law.

Article 50. Prohibition of abuse of rights

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

Statement of reasons

This Article reproduces Article 17 of the European Convention on Human Rights:

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

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 23 mai 2000**CHARTE 4322/00****CONTRIB 188****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver une contribution relative aux droits économiques et sociaux, soumise par M. Guy Braibant, Représentant personnel du gouvernement français. ¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 19 mai 2000

CONTRIBUTION

Au moment où nos travaux entrent dans une phase décisive, je crois utile de souligner l'importance que les droits économiques et sociaux revêtent pour la réussite et l'acceptabilité de la Charte.

1. Les droits économiques et sociaux sont au cœur de la construction européenne : ils doivent donc être l'un des piliers de la Charte.

La Charte a vocation à rassembler dans un seul texte **l'ensemble des droits fondamentaux** communs aux Etats membres afin de manifester l'attachement de l'Union européenne à ces droits. Les droits économiques et sociaux figurent, avec la dignité de la personne humaine, dont ils sont d'ailleurs un prolongement, parmi ces valeurs communes fondamentales. **Ils constituent un élément essentiel et distinctif du " modèle européen "** et nul ne peut contester qu'ils font partie intégrante des traditions constitutionnelles communes aux Etats membres, visées à l'article 6 du Traité sur l'Union européenne.

La reconnaissance juridique et politique du caractère fondamental des droits économiques et sociaux a été le produit de la grande crise des années 1930 et des terribles drames de la seconde guerre mondiale. Ces droits ont constitué un **élément décisif de la reconstruction de nos sociétés démocratiques** au lendemain de la guerre, au moment même où débutait la construction européenne. C'est au cours même du conflit que la publication du célèbre rapport Beveridge par le gouvernement britannique, souligna l'importance de ces droits, notamment par la mise en place d'une protection sociale des citoyens. Toutes les Constitutions postérieures à la seconde guerre mondiale consacrent les droits sociaux parmi les droits fondamentaux qu'elles garantissent. Dans les autres Etats membres, ils font partie de la tradition constitutionnelle. Partout, ils sont mis en œuvre par la loi.

Au niveau communautaire, la dimension sociale a été fortement présente dès l'origine. Ainsi l'article 2 du Traité instituant la Communauté européenne précise-t-il que la Communauté a notamment pour mission " un niveau d'emploi et de protection sociale élevé, l'égalité entre les hommes et les femmes (...) un niveau élevé de protection et d'amélioration de la qualité de l'environnement, le relèvement du niveau et de la qualité de vie, la cohésion économique et sociale et la solidarité entre les Etats membres. " La Charte sociale européenne et la Charte communautaire des droits sociaux fondamentaux des travailleurs, auxquelles l'article 136 du Traité se réfère expressément, précisent et développent les droits économiques et sociaux.

Au plan international enfin, les droits économiques et sociaux ont été consacrés par le pacte des Nations-Unies sur les droits économiques, sociaux et culturels, auquel tous les Etats membres sont parties, et par les conventions de l'Organisation Internationale du Travail. Les pays européens ont toujours joué un rôle décisif dans la consécration internationale reçue par les droits économiques et sociaux.

2. Les droits économiques et sociaux sont des droits fondamentaux même si la mise en œuvre concrète de certains d'entre eux nécessite souvent l'intervention d'un texte intermédiaire.

Le fait de nécessiter des mesures concrètes de mise en œuvre ne retire pas à un droit son statut, comme l'illustrent, d'ailleurs, certains droits classiques (par exemple, le droit à la dignité ou le droit à l'éducation). **S'il ne déploie tous ses effets juridiques que lorsque ces mesures ont été adoptées, il a tout de même certains effets immédiats.** En premier lieu, un tel droit peut être opposé à une action qui irait directement à son encontre. Ainsi, par exemple, le droit à l'environnement pourrait être opposé directement à une directive qui autoriserait les décharges en plein air de manière très libérale. En deuxième lieu, un tel droit peut être utilisé par le juge lorsqu'il doit combiner plusieurs droits fondamentaux entre eux. De même que la liberté d'expression doit être combinée avec le respect de la dignité de la personne humaine ou avec le droit au respect de la vie privée, le droit à la protection de la santé doit pouvoir être combiné avec d'autres droits fondamentaux tels que le droit de propriété. Enfin, lorsque des mesures concrètes de mise en œuvre ont été prises, le droit peut être opposé à des actes qui viendraient remettre en cause dans leur principe même ces mesures.

Or, justement, pour l'ensemble des droits qui sont aujourd'hui proposés à la convention, les mesures de mise en œuvre ont déjà été prises : dans tous nos pays, il existe une sécurité sociale, des mécanismes d'aide au logement, une reconnaissance du droit de grève. Tout ces droits se sont déjà vu reconnaître un contenu effectif par le législateur national et l'affirmation d'un droit à la sécurité sociale ou d'un droit au logement ne constitue donc nullement la création d'un droit nouveau.

Sans doute est-ce là le critère qui doit guider notre choix : nous devons retenir les droits qui sont déjà garantis dans tous nos pays et que, justement en raison de leur caractère fondamental, nous n'envisageons pas de remettre en cause dans leur essence même. A contrario, refuser d'inscrire un droit existant signifierait que l'on serait prêt à admettre sa disparition de l'ordre juridique.

3. Le fait que certains de ces droits reposent essentiellement sur des mesures nationales de mise en œuvre est-il un obstacle à leur inclusion dans la charte ?

Je crois que non et je dirais même que, au contraire, il est peut-être encore plus nécessaire de s'assurer que les institutions de la Communauté n'y porteront pas atteinte lorsqu'elles prendront des décisions dans le cadre de leurs compétences. En effet, **la Charte a pour fonction essentielle de soumettre les institutions de l'Union au respect des droits fondamentaux.** Il est nécessaire d'encadrer les pouvoirs des institutions tant à l'égard des droits qui correspondent à des domaines où ces institutions disposent d'une compétence pour agir qu'à l'égard des droits qui correspondent au domaine de compétence des Etats membres. Ainsi, c'est parce que nous avons tous des systèmes nationaux de sécurité sociale qu'il est important d'assurer que la Communauté européenne ne remet pas en cause ces systèmes lorsqu'elle agit dans le cadre de ses compétences, par exemple au titre de ses attributions en matière de concurrence.

Poser un droit n'est pas créer une compétence ; c'est au contraire encadrer les compétences existantes. Or, compte tenu de l'étendue des compétences de la Communauté et de l'Union, il leur est déjà possible de violer, en théorie, la plupart des droits auxquels on peut songer.

Il est difficile d'exclure a priori l'hypothèse d'une atteinte à un droit fondamental donné par un acte des institutions au seul motif que ce droit n'entre pas directement dans le champ de leurs compétences. Ainsi, alors que la Communauté n'est pas compétente pour établir la peine de mort ou pour autoriser la torture, elle pourrait être amenée à méconnaître l'interdiction de la peine capitale ou de la torture si, par exemple, elle adoptait, dans le cadre de ses compétences en matière d'asile et d'immigration, des règles prévoyant le retour d'un étranger dans un pays où il risque l'un de ces traitements. De même pourrait-elle méconnaître le droit au logement tel qu'il est organisé dans les différents Etats membres si elle décidait que toute aide au logement est incompatible avec le traité. Ces quelques exemples montrent que tous les droits fondamentaux sont pertinents même s'ils correspondent à un domaine où la Communauté ne dispose pas de compétence directe pour agir.

4. La légitimité de la Charte et, donc, au fond, son sort dépendra dans une large mesure de sa capacité à intégrer les droits économiques et sociaux.

A Cologne, le Conseil européen a souligné que " le respect des droits fondamentaux constituait l'un des principes fondateurs de l'Union et la condition indispensable pour sa légitimité ". C'est pourquoi il a confié à la Convention le soin de réunir dans une Charte l'ensemble des droits fondamentaux qui sont au cœur du contrat social qui régit nos sociétés démocratiques. Dans ce cadre, il est évident que **les droits économiques et sociaux doivent avoir toute leur place dans la Charte** en se référant, comme le Conseil européen l'indique expressément, à la Charte sociale européenne et la Charte communautaire des droits sociaux fondamentaux des travailleurs, à l'exception de ceux qui constituent uniquement des objectifs pour l'action de l'Union, comme, par exemple, la réalisation d'un niveau d'emploi élevé (article 2 du TCE).

Compte tenu de l'importance que revêtent les droits économiques et sociaux dans la vie quotidienne de nos concitoyens, de leur place essentielle dans l'équilibre de nos sociétés et de la dimension sociale affirmée de la construction communautaire, la Charte devra comporter l'ensemble des droits économiques et sociaux fondamentaux. **Si la Charte devait être en retrait par rapport au niveau actuel de protection des droits sur cette question essentielle, sa légitimité même serait remise en cause** : de même que l'on ne pourrait admettre que la Charte réduise le niveau de protection des droits déjà assurée par la Convention européenne des droits de l'homme, on ne pourrait admettre que la Charte soit, pour les droits économiques et sociaux, en recul par rapport au niveau actuel de protection de ces droits tant au plan européen que national.

5. Le contenu actuel des droits économiques et sociaux tels qu'ils figurent dans le projet de Charte (convent 34) est encore insuffisant.

Des droits économiques et sociaux dont le caractère fondamental est indiscutable ont ainsi été éliminés du projet de Charte, alors qu'ils figuraient sur la liste initiale de base soumise à la convention au début de ses travaux :

a) le droit au travail en tant que tel : il s'agit pourtant d'un droit tout à fait fondamental qui vise notamment à empêcher les restrictions abusives à l'accès aux emplois et qui doit conduire à favoriser l'accès de chacun au monde du travail, notamment par les services de placement ; il ne

signifie en aucun cas que chaque individu peut exiger de se voir donner un emploi : une telle interprétation est, à l'évidence, erronée voire fallacieuse. Ce droit fondamental, qui est reconnu dans tous les Etats membres (au niveau constitutionnel : Belgique, France, Finlande, Grèce, Espagne, Pays-Bas et Portugal) et qui est consacré par la Charte sociale européenne et la pacte des Nations-Unies sur les droits économiques, sociaux et culturels doit impérativement figurer dans la Charte.

b) Le droit à une rémunération équitable et à un salaire minimum : il s'agit également d'un droit essentiel qui a déjà été reconnu dans plusieurs actes de droit communautaire dérivé en vigueur et par l'article 30 de la Charte sociale européenne révisée ; certains Etats membres lui ont même reconnu une valeur constitutionnelle (Espagne, Finlande, Italie, Portugal). Tous les Etats membres ont institué un salaire minimum, même si le niveau de ce salaire est variable et même si des exceptions ont été prévues par les législations internes. La reconnaissance de ce droit ne doit bien sûr pas avoir pour effet de remettre en cause ces particularités nationales.

c) Le droit de grève : il s'agit d'un droit fondamental qui existe dans tous les Etats membres, même si, dans chaque Etat membre, des limites ont été posées à son exercice. Il a reçu la consécration constitutionnelle dans plusieurs Etats (France, Espagne, Grèce, Italie et Portugal). Si l'article 137 du TCE exclut la compétence de la Communauté pour réglementer le droit de grève (de même, d'ailleurs, que pour le droit d'association), il est possible que, dans l'exercice de ses compétences, elle prenne des mesures qui porterait atteinte à ce droit. Il est donc nécessaire de consacrer le droit de grève dans la Charte.

d) Le droit d'accès égal aux services d'intérêt général : l'importance des services d'intérêt général au sein des "valeurs communes de l'Union" et leur "rôle dans la cohésion sociale et territoriale de l'Union" sont consacrés par l'article 16 du TCE. La Charte doit refléter le droit communautaire en vigueur, précisé par la jurisprudence de la Cour de Justice, en consacrant le droit fondamental que constitue l'accès égal de tous aux services d'intérêt général.

Par ailleurs, on peut regretter l'absence d'un article spécifique pour certains droits essentiels :

- **le droit des femmes** : s'il est mentionné à l'article 22, relatif à l'interdiction des discriminations, le droit des femmes, eu égard à son importance, mériterait une disposition spécifique, comme cela était d'ailleurs initialement prévu dans le projet de Charte ;
- **le droit au logement**, qui n'apparaît qu'à l'article 41, mériterait également une disposition particulière, comme cela était initialement proposé : ce droit est garanti dans tous les Etats membres (certains lui ont même reconnu une valeur constitutionnelle : France, Belgique, Espagne, Finlande, Grèce, Pays-Bas et Portugal).

Je déposerai très prochainement auprès de la convention les amendements qui me semblent nécessaires pour donner aux droits économiques et sociaux la place qui leur revient au sein de la Charte.

Guy BRAIBANT
Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits
fondamentaux de l'Union européenne

Editors' note to 4330/00 ADD 1,
Contribution de MM. Fischbach et Krüger,
observateurs du Conseil de l'Europe
(datée le 05/06/2000):

The INIT FR version was dated 5 June, and the words 'integral part' in the final sentence were underlined.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 June 2000**CHARTE 4330/00
ADD 1****CONTRIB 196****ADDENDUM TO COVER NOTE**

Subject : Draft Charter on fundamental rights of the European Union

Please find hereafter the English version of a contribution by MM. Fischbach and Krüger, Council of Europe observers. ¹

¹ This text exists in French and English.

5.6.2000

**OBSERVATIONS ON CONVENT DOCUMENTS 28 AND 34,
BY MR FISCHBACH AND MR KRÜGER,
COUNCIL OF EUROPE OBSERVERS**

The Council of Europe observers do not intend to propose any amendments to the text of the provisions submitted in documents Convent 28 and 34.

They note however that, as drafted in those documents, the statements of reasons contain elements which are essential to the comprehension and interpretation of the Charter. Such is the case in particular with the full text of the provisions taken from the European Convention on Human Rights and the reference to the case-law of the European Court of Human Rights. Such a reference is essential for at least two reasons.

1. Firstly, because of the fundamental importance of the case-law of the European Court of Human Rights in determining the level of protection guaranteed by the Charter.

The aim of the references to the ECHR in Articles 47 and 49 (Convent 34) is to prevent there being a lower level of protection under the Charter than that provided by the ECHR, which is considered a minimum standard. Since the adoption of the ECHR, the case-law has consistently raised the minimum standard to the point where today it is the case-law, just as much as the Convention, that determines the level of protection provided by the ECHR. There is every reason to believe that that trend will continue, as the Court has recently confirmed in its Selmouni judgment¹. For that reason, if the Charter is not to afford less protection than the ECHR, not only must regard be had to the relevant case-law, there must also be a legal obligation to that end.

Admittedly, as stated in the current draft of the statements of reasons, legal instruments are usually applied in accordance with their interpretation by the court empowered to construe them. Nevertheless, the text of the ECHR has been enhanced by no less than fifty years of case-law, and there can be no doubt but that that process will continue. Take, for example, all the positive obligations which the European Court of Human Rights has recognised and which *complement* the

¹ See the Selmouni judgment of 28 July 1999, § 101.

text of the Convention¹. How can parties to disputes under the Charter be ensured of benefiting from the existence of those obligations? Does the mere reference to the ECHR make it clear beyond doubt that they will automatically be taken into account when a corresponding provision of the Charter is being interpreted?

It cannot be said enough that a reference to the case-law of the European Court of Human Rights would not result in protection under the Charter being restricted to the ECHR level, as there is nothing to prevent the Charter being interpreted in such a way as to afford a higher level of protection. That is one of the effects of the current draft of Article 49 of the Charter. In that regard, such a reference would represent no danger to the Charter as, in the unlikely event that the level of protection under the ECHR were reduced by the case-law, the Charter would be unaffected since the ECHR level constitutes a *minimum* standard, not a *mandatory* one.

2. Furthermore, without such a reference to the case-law of the European Court of Human Rights there would be no legal guarantee that Community institutions would not interpret the ECHR differently when applying it under Articles 47 and 49 of the Charter. By acceding to the ECHR, the Contracting States have legally recognised the authority of the European Court of Human Rights in the interpretation of the ECHR (Articles 1, 32 and 46 ECHR). On the other hand, without a reference to the case-law of the European Court of Human Rights, the institutions of the European Union would escape that sort of obligation even though they, too, through the Charter, would be applying the ECHR as a minimum standard. That would result in a degree of imbalance between the Union and the member States, something which not only would be difficult to justify but could also become a source of legal uncertainty.

¹ Thus, for example, the Court has held that States have an *obligation to investigate* matters apt to constitute a violation of Articles 2, 3 or 5 of the ECHR. On the basis of Articles 2 and 3 it has imposed an obligation on States *to protect persons* whose life or physical integrity is endangered by others or by phenomena such as atmospheric pollution or nuclear radiation. Likewise, the Court has found various positive obligations to be implicit in Article 8, such as the obligations to create a suitable environment for *integrating children into their families*, to ensure effective enforcement of judicial decisions concerning the *custody of children*, to *inform the local population of health risks* resulting from certain forms of pollution and, if appropriate, to *intervene to eliminate the risks*. Very recently the Court held that Article 10 imposed a positive obligation on national authorities to make suitable arrangements to prevent groups of people, such as employers and employees, infringing each other's freedom of expression. Those are but a few examples of a long series of obligations that have been held to exist under the case-law.

For that reason, it is important to ensure that the statements of reasons, or at the very least the essential elements mentioned above, become an integral part of the Charter. The observers reserve the right to lodge proposals to that end if appropriate.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 25 May 2000 (31.05)
(OR. multilingue)****CHARTE 4332/00****CONVENT 35****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
– Amendments submitted by the members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached the amendments submitted by members of the Convention.

Amendments are set out Article by Article, and paragraph by paragraph where applicable, and bear a serial number. General comments and desiderata regarding the preamble are set out separately at the beginning of the document. The preamble will be discussed separately once the amendments have been examined.

General comments

ANDREW DUFF M.E.P.

Subject : Draft Charter of Fundamental Rights of the European Union
- Amendments to Articles 1 to 30 (Civil and political rights and citizens' rights)

I. COMMENT

1. The amendments tabled here are drafted on the following presumptions:

- *the Charter will have binding effect on the institutions and agents of the European Union;*
- *the Charter will be inserted somehow into the Treaty of Nice;*
- *there will be no preamble to the Charter that qualifies its force or meaning;*
- *the statement of reasons (or 'definitions') will have equal force to that of the articles themselves: I have suggested amendments to both parts;*
- *if we are to paraphrase the existing treaties we should attempt to do so with more style and clarity than we have usually managed to achieve in the first draft.*

2 *My amendments are especially substantive concerning:*

Article 3 to include ecology

Article 12 to exclude honour and reputation

Article 13 to make specific reference to modern partnerships

Article 15 to protect cultural, national and regional minorities

Article 18 to widen the scope of access to documents

Article 21 to reinforce the rights of asylum seekers

Article 22 to reinforce regional and cultural minorities

Article 23 to assert the principle of democracy

Article 26 bis to include the right to diplomatic protection

Article 27 to ensure transparency of legislative acts and public access to information

Article HH to introduce a new horizontal clause allowing for the widening of the scope of application of the citizenship privileges.

3. *I have made no proposals at this stage about the re-ordering of the articles.*

ANDREW DUFF M.E.P.

Brussels

23 May 2000

Comments and proposals for amendments by the representative of the Danish Government,
Dr Erling Olsen,
concerning CONVENT 28 (Articles 1-30) of 5 May 2000

General comments

- (1) The following proposals for amendment are put forward on condition that the text of the various articles and the accompanying definition of rights constitutes a composite whole. The section in CONVENT 28 entitled “Statement of reasons” (which, incidentally, I would propose be called “definition of right”/Part B, which appears more to the point), should in other words form an integral part of the Charter. I would reserve any further comments on the provisions in CONVENT 28 until such time as an adapted version of the definition of rights is available from the Secretariat: see CONVENT 29.
- (2) At various points in the “Statements of reasons” it is indicated that the question of restrictions of the rights described will be settled in the relevant horizontal provision (former Article H.2, now Article 47 in CONVENT 34). In my view this is insufficient and could give rise to legal uncertainty regarding the extent to which the relevant restrictions are to apply. As has been pointed out on a number of occasions, the exceptions laid down in the European Convention on Human Rights (ECHR) are of widely differing nature. Accordingly, the restriction of the individual right should be set out in conjunction with the right in Part B. This is to some extent already the case as regards CONVENT 28, Articles 2,5, 6, 12, 14, 15 and 17. In these cases a reference should also be made to the case law of the Court of Justice in Strasbourg.

GENERAL COMMENT ON MY AMENDMENTS

R. VAN DAM

MEP

If the Charter is to be an official document of the European Union, it should include *only* rights that are relevant to the functioning of European Union institutions and bodies. It is, after all, intended to apply to those bodies. We should not lose sight of that objective if the Charter is not to become a pointless document. If the Charter includes all sorts of rights which are not related to the powers of the Union, it will be impossible to uphold. It will promise a great deal but the rights it includes cannot be guaranteed. Existing competence cannot be expanded by this document. That is why I am advocating the deletion of a number of articles. Their content is often praiseworthy but the Charter is not a human rights convention. Human rights have to be protected and developed at other levels. The Member States are responsible in the first instance for protecting and developing fundamental rights. Then international organisations such as the United Nations and the Council of Europe have an important task in this area. That is where the protection of human rights should be concentrated primarily. The institutions and bodies of the Union must *respect* rights, but they are not the bodies primarily responsible for *guaranteeing* them.

That brings me to another point. I consider it essential that there be a uniform system for the protection of human rights throughout Europe. The text of the Charter must therefore be as closely aligned as possible on the European Convention on Human Rights. Many of my amendments are therefore intended to bring about closer alignment on the ECHR. On that point, I strongly support the proposal by the representative of the Netherlands Government, Korthals Altes. In that connection I have opted for a number of limitations *per article*, despite the Praesidium's proposal that limitations be grouped in one general horizontal article. Formulating limitations per article makes the Charter more transparent. Finally, I also consider it essential that the wording of the rights do not conflict with Europe's Christian roots.

Amendments proposed by the representatives of the Parliament of the Netherlands to the articles as set out in CHARTE 4248/00 CONVENT 28

Submitted by: E.M.H Hirsch Ballin, M. Patijn (on behalf of G.J.W. van Oven)

I. General reservations

A general reservation has been entered to the effect that as work proceeds on the establishment of the Charter, there must be a consensus on its relationship with the European Convention on Human Rights.

The proposers of these amendments are assuming that the Charter will depart as little as possible from the ECHR. At a later stage in the establishment of the Charter, specific limitation clauses will have to be drafted for each article, in accordance with the ECHR system.

There is a further general reservation on the Dutch text of CHARTE 4248/00 CONVENT 28 on the grounds that in some instances it is not in line with prevailing Dutch legal terminology.

Heinrich Neisser

*Member of the Convention for the drawing up of a draft
Charter of fundamental rights of the European Union*

Vienna, 23 May 2000

Subject: Proposed amendments to Articles 1 - 30 (CONVENT 28)

Dear Mr Chairman,

I should like to bring to your attention below a number of concrete proposals for amendments to the Articles referred to above.

However, I should first like to make a general comment regarding the problem of reservations concerning restrictions: in the current version of the draft (CONVENT 28), a horizontal provision on restrictions has apparently continued to be retained, which was not taken from the provisions on restrictions contained in the European Convention on Human Rights. Instead, CONVENT 34 contains a horizontal Article 47 (Limitation of guaranteed rights) which is intended to replace these specific provisions.

As discussion of the final wording of this horizontal Article is not intended to be held until after the "second reading" of the Civil and Political Rights, my proposed amendments below do not relate to the question of any specific provisions on restrictions. It will be possible to judge whether such provisions should be inserted only when it is established how a horizontal provision on restrictions

could be worded. It might therefore prove necessary to return to the Articles on Civil and Political Rights after the discussion of Article 47 in order to insert specific reservations regarding restrictions at that stage, if possible.

(Complimentary close).

Heinrich Neisser

23 May 2000

M Jean-Paul Jacqué
Charter Praesidium
Brussels

DRAFT AMENDMENTS TO CONVENT 28

1. Thank you for sending me Convent 28 with the Praesidium's latest draft Articles 1-30. I would like to table the following written amendments.
2. The Praesidium's work to cross refer to the language and approach of the ECHR remains welcome. But as I mentioned in my letter of 17 March, we must go further. The explanatory notes provide some guidance as to the Convention's rationale for particular draft Articles. But they cannot be taken as having the same legal force and effect as a clear definition of the right, tying the right to the corresponding existing right, e.g. under the ECHR. I therefore regard a full and integrated "Definition of Rights" section as essential if we are to stay within the remit given by the Cologne Conclusions. I remain convinced that this approach is fully consistent with Union law, e.g. Article 6.2 TEU.
3. In submitting my draft amendments, I have therefore included language for the "Definition of Rights" section. I have included the appropriate "Definition" language alongside the corresponding "Proclamation" text. I envisage the two would be in different parts of the document. My reasons are not, of course, part of the revised text. Please note that the Part A text is offered on the basis that it must be given the solid legal ground I propose for Part B. Without Part B, my Part A proposals do not stand. I have not set out the ECHR or Treaty right in full in this document, although this could be done should the Convention prefer. For ease of reference, I will send a separate annex showing how the amended two-part document would look.
4. The Horizontal Articles will need to cover key ancillary provisions (e.g. ECHR Articles 17, 18 and where appropriate 16) which will need to be read together with the ECHR-based rights. Horizontal provisions will be needed to reinforce other aspects of the two-part approach (e.g. regarding the ability to derogate, respect for national identities and to clarify that the Charter does not contain new rights or remedies.)

Lord Goldsmith QC

Stockholm
2000-05-23

Mr Jean-Paul Jacqué
EU Charter Presidium
Council Secretariat
BRUSSELS

Draft Chart of Fundamental Rights of the European Union

Dear M. Jacqué,

I have the honour to submit to you my first suggestions regarding document "CONVENT" (draft Articles 1-30) of the draft Charter.

Further comments may follow once the full text of the charter and suggestions by other members of the Convention have been presented.

At this stage I wish to make two general comments. The first is that the Swedish translation of the texts in Convent 28 is not altogether satisfactory and will need to be reviewed at a later point.

The second is that the entire text of the Charter needs to be gender neutral. To this end, I have enclosed a separate proposal which I kindly ask you to take into consideration.

Yours sincerely,

Professor Daniel Tarschys

Gender neutrality

In addition to comments and proposals for the draft text I suggest that a gender neutral text be employed. For that reasons, all the pronouns "his" should be replaced with "his or her" throughout the text.

Example:

"Everyone has the right to liberty and security of person. No one shall be deprived of his *or her* liberty save in cases prescribed by law and in accordance with a procedure prescribed by law."

Daniel Tarschys

Preamble

Proposed amendment to Article: Preamble, paragraph 2

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights (*one word deleted*), the rule of law and solidarity, principles which are common to the Member States.

Reasons:

On the basis of the "Declaration of fundamental rights and freedoms" adopted by the European Parliament on 12 April 1989, in the Preamble to which the principle of solidarity and the social state are enshrined, I would propose that the term "solidarity" be included as a further principle in the Preamble to the Charter.

Draft Charter of fundamental rights of the European Union

CONVENT 28

Submitted by: Jürgen Gnauck

The current proposal for a text for "**Principle of democracy**" in CONVENT 17 should be included, at least in part, in the Preamble. This is why it has currently elicited no proposed amendments. However, it should be pointed out in advance that the wording "All public authority stems from the people" could create misunderstandings. If such a provision had to be included in the Preamble at all, it should preferably be worded: "All public authority stems from the peoples of the States brought together within the European Union".

Proposed amendment to the Preamble/Principle of democracy

Submitted by: Prof. Dr Jürgen Meyer/Pervenche Beres/Jo Leinen/Hans-Peter Martin/Ieke van den Burg

Proposed text:

The Union and its institutions are founded on the principles of liberty, democracy, equality, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.

Reasons:

The proposed amendment reiterates the first pillar of the 3-pillar structure submitted on 4 May (CONTRIB 144).

The wording of the Article takes over a proposal from the Praesidium and adds to it the concepts of "equality" and "solidarity".

The principle of solidarity is a constituent element of every - also non-state - community. In Germany, it is implicitly contained in the social state principle laid down in the Basic Law ¹, in France in the historical constitutional link between the terms "solidarité" and "fraternité", in the Spanish Constitution (Article 2) and the Polish Constitution

¹ Jarass, Hans/Pieroth, Bodo: *Grundgesetz für die Bundesrepublik Deutschland. Kommentar.* Munich: Beck, 2000, Art. 20 para 105, p. 503 (5th edition)

(Preamble). For the EC/EU, the European Court of Justice refers to the "duty of solidarity assumed by the Member States through their accession to the Community" ECJ Judgment, Case 39/73, Rep. 1973, 101 [102]), and reiterates this in many other judgments and opinions (ECJ Opinion, Rep. 1977, 741 et seq. Opinion 1/76, ECJ Judgment, Rep. 1980, 907 et seq. Case 136/82; Case 263/82; Case 64/84; Case 250/84; Case 276/80; Case 203/86).

As the 3-pillar structure has met with general approval in the Convention, and above all the first pillar, the principle of solidarity should be taken into account in the Preamble or in a separate Article.

Proposed amendment to Article: Preamble/Principle of democracy

Submitted by: R. VAN DAM (MEP)

Proposed text:

Delete paragraph 1.

Reasons:

Sovereignty of the people is not a concept central to the Member States of the European Union.

Proposed preamble

Submitted by: Georges BERTHU, MEP

Proposed text:

“The Signatory States:

- Are convinced that peaceful and happy societies are based on respect for the fundamental rights of the person, which is sacred; they reject any form of contempt for human beings.
- Affirm that this central value of respect for the person of necessity entails:
 - protecting the life and dignity of every human being;
 - equality before the law which defines and protects fundamental rights;
 - mutual support in the face of the vagaries of existence;
 - the right of all persons to be self-governing; to participate fully as citizens in the life of their communities in order better to defend their families and protect their material and spiritual goods; to exercise freely their sovereign rights by political democracy and the market economy;
 - respect for the affection and solidarity felt by each person, and thus for the feeling of belonging based on transmitted culture, a learnt past and the use of a common language;
 - the inalienable right of all citizens to exercise effective control over their representatives; to delegate only close, controllable and always revocable powers; to give institutions only subsidiary and subordinate powers.

- Recognise that the citizens of Europe's countries express their desire for solidarity by specific associations and communities, such as family or local communities, cantons, Länder, counties, regions and provinces; that the broadest and firmest expression of that support is in a nation's shared values which is where democracy is most fully exercised, and where the main thrust of political association must be situated.
- Consider contempt for nations one of the major causes of the wars which have ravaged Europe; but that respect for the diversity of nations and their peoples will benefit Europe, since it will promote freedom, emulation and pluralism which are the sources of European civilisation's oldest and most steadfast wealth.
- Are convinced that ignorance of, forgetting or scorning the rights of the person, as of families, communities or nations, are the sole causes of public misfortune and government corruption;
- State therefore that the European Union is a union of nations which, in mutual respect for each other and the democratic expression of each people, must pursue the following goals:
 - encouraging a common defence of the peoples of Europe in order together to protect their values, rights, languages, social models, territories and borders;
 - contributing to laying the foundations for sustainable development, through respect for life and by seeking the most fulfilling balance between man and his natural environment;
 - promoting the prosperity of the peoples of Europe by domestic free trade and competition, and by negotiating external trade agreements for fair trade between zones with different rules.

Reasons:

What the European Union needs is less a charter of citizens' rights (which, with the notable exception of the right to democratic expression at national level, are already well protected), than a solemn declaration setting forth member countries' common values.

Such a declaration, answering the prime question of "What brings us together?", would have the merit of making the European Union much more "visible" (as the Cologne Council wanted) than a

mere list of legal rights which are in any case shared with many countries in the world outside the EU.

Proposed amendment to Article: Principle of democracy (page 24 of CONVENT 28)

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. Redraft paragraph 1 to read as follows:

“From the parish to Europe, all public authority stems from the people.”

2. Add a paragraph 3 to the proposed provision to read as follows:

“The requirement of transparency which characterises democracy implies that all legislative deliberations are open to the public.”

Reasons:

Re 1: It should be pointed out that the democratic principle applies, without exception, to all levels of public action.

Re 2: Applies a secular principle of democratic protection to the European Union.

Proposed amendment to Article: Principle of democracy

Submitted by: Simone BEISSEL

Proposed text:

All public authority stems from nations.

Reasons:

Proposed amendment to: Preamble**Submitted by:** Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention**Proposed text:**

1. There are no rights without duties.
2. No freedom is absolute. The law, by its principles and in its texts, determines the circumstances in which limitations may be recognised, and any limits or derogations.
3. Any alien in Union territory shall enjoy the protection granted to persons and goods by this Charter, unless it provides otherwise.

Reasons:

Such important principles must be laid down at the beginning of the Charter if we do not want to distort the perception of the text or even its legal effectiveness.

Proposed amendment to Article: preamble (“Principle of democracy”)

Submitted by: Pervenche BERÈS

Proposed text:

1. Public authority stems firstly from the people.
2. The Union and its institutions are founded on the principles of liberty, equality, solidarity, democracy, respect for human rights and the rule of law, principles which are common to the Member States.

Reasons:

*All public authority does not stem directly from the people, or else judges would have to be elected.
Equality and solidarity must appear in a modern list of the Union’s founding principles.*

Proposals concerning the whole of Article 1

AMENDMENT 1

Proposed amendment to Article: 1

Submitted by: Andrew DUFF, MEP.

Proposed text:

Article 1. Personal Dignity [delete: 4 words]

1. The dignity of the (delete: 1 word) person [delete 5 words] is inviolable.
2. Everyone is equal before the law.

Reasons:

This Article appears as the first Article of the Charter since dignity of the (delete: 1 word) person is the very foundation of fundamental rights. The Universal Declaration of Human Rights sets out this principle in its preamble:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Respect for the dignity of the (delete: 1 word) person constitutes an inherent limitation to all the other rights, which may not be used to infringe that dignity.

Paragraph 2 sets out a principle which the Court has held to be a fundamental Community principle (judgment of 13 November 1984, Racke, Case 283/83, ECR 3791).

AMENDMENT 2

Proposed amendment to Article: 1

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

- 1. The dignity of the human person must be respected and protected.**
- 2. Everyone is equal before the law.**
- 3. *Everyone has the right to develop their personality freely.***

Reasons:

The principle of freedom, like the principle of equality, stems from human dignity and should therefore not be left out of this article. General freedom of action is known to several European constitutions.

AMENDMENT 3**Proposed amendment to Article: 1**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete all. Substitute the following two-part text:

For Part A, “Proclamation of Rights”:

“Article 1: Object and purpose

“All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law. In recognition of this, the European Union Institutions respect, within the spheres of their competences, the fundamental rights set out below.”

Reasons:

This draft of Article 1 is intended to state clearly at an early stage the important principles of dignity, equality and equal protection before the law which are the context and indeed the ultimate source of the substantive rights which follow. They are not, however, as the Praesidium’s draft of Article 1 might suggest, to be put on the same basis as existing, justiciable, substantive rights. For example, dignity does not, as such, exist as a separate right in the ECHR, or elsewhere in Union law. To treat these principles as constituting the same sort of justiciable rights could create legal uncertainty and confusion. It might lead to obligations of uncertain scope and effect for the European Union institutions – and for Member States when acting as agents. My approach is intended clearly to show that this opening article is of a different nature from the Articles which follow. It is for that reason also that the Article should appear before the first heading for “Proclamation of Rights” and why there appears to be no need to provide a Definition of Rights (Part B) text (although I reserve the right to reconsider that issue once the text is otherwise complete).

AMENDMENT 4

Proposed amendment to Article: 1.– Dignity of the human person

Submitted by: Gabriel Cisneros LABORDA

Proposed text:

1. The dignity of each human being must be respected and protected.
2. All human beings shall be equal before the law.

Reasons:

Avoid exclusions derived from specific interpretations of the concept of person. Furthermore, the expression *human being* is the one used in Article 1 of the Universal Declaration of Human Rights.

Perhaps owing to a translation oversight, paragraph 2 of the Spanish text of the proposal is grammatically and legally incomplete.

AMENDMENT 5

Draft Article 1 Dignity of the human person

Move 1.1. to a preambular part of the Charter.

Merge 1.2 (equality before the law) with Article 22 on equality and non-discrimination.

Reasons:

1. "Dignity" is not really a right but rather a fundamental convention that must inform all legislation and political action. The UN Universal Declaration of Human Rights sets out the principle of the dignity of "members of the human family", "human beings" and "the human person" in its preamble and not in the operative part of its text.

AMENDMENT 6

Proposed amendment to Article: 1.

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Substitute the following for the article:

- “1. The dignity and the freedom of a human being are inviolable.
2. The European Union shall recognise and protect fundamental rights and guarantee the free development of personality and respect for the principle of solidarity”.

Reasons:

The term “inviolable” stresses the fundamental value of a human being’s dignity and freedom with respect to the specific rules concerning them.

The second paragraph stresses the relevance of fundamental rights as an element in the progressive and concrete self-assertion of the human being.

AMENDMENT 7**Proposed amendment to Article: 1**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

- Reverse the order of the first two rights
- Replace paragraph 2 by the following:
Human beings are born free and equal in law and so remain.

Reasons:

- for the first point: A person must be born before he acquires dignity by deserving respect in his own right.
- for the second amendment:
 - we should not depart from tradition
 - the wording should be more in line with the spirit of the language

Proposals for Article 1(1)

AMENDMENT 8

Proposed amendment to Article: 1

Submitted by: Win Griffiths MP

Proposed text:

Article 1.1 Delete here but include in preamble of Clauses.

Reasons:

A statement similar to this one is included in the preamble of the Universal Declaration of Human Rights.

AMENDMENT 9

Proposed amendment to Article: 1 - Dignity of the human person – Paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete paragraph 1

(“The dignity of the human person must be respected and protected.”)

Reasons:

This principle is so fundamental that it should not appear in the Charter itself but in the Preamble so that it permeates all of the rights set out in the rest of the text.

AMENDMENT 10

Proposed amendment to Article: 1(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

The dignity of the human person **is inviolable**.

Reasons:

The text proposed in CONVENT 28 is “*the dignity of the human person must be respected and protected*”. The qualification “*human*” may be omitted because it already appears in the title. On the other hand, the qualification “*inviolable*” is intended to strengthen the value of human dignity, also bearing in mind the fact that it frequently appears in national constitutions.

^{*} The amendments proposed are indicated by **bold type**.

AMENDMENT 11

Proposed amendment to Article: 1.

Submitted by: Johannes VOGGENHUBER

Proposed text:

1. The dignity of the human person is inviolable.

Reasons:

AMENDMENT 12

Proposed amendment to Article: 1.1.

Submitted by: Pervenche BERÈS

Proposed text:

Everyone shall be entitled to respect for and protection of his dignity.

Reasons:

In the interests of harmonious drafting, “everyone” ought to be the subject of this article.

AMENDMENT 13

Proposed amendment to Article: 1.1.

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Respect for the inviolable dignity of the person and of the rights inherent therein shall constitute the foundation of the Union's legal, political and social order.

Reasons:

Improved drafting. The dignity of the person is not strictly speaking an actionable right or one on which courts can rule separately in the context of the foundation of all the rights that inherently attach to the person entitled to them. That being so, the wording of the provision does not express, with the force appropriate at the beginning of a charter such as this, the value of the dignity of the person or its relationship with the fundamental rights enunciated later.

Proposals for Article 1(2)

AMENDMENT 14

Proposed amendment to Article: 1

Submitted by: Win GRIFFITHS, MP

Proposed text:

Article 1.2 Delete but include in Article 8 (see later amendment).

Reasons:

Equality before the law is more suitable for Article 8.

AMENDMENT 15

Proposed amendment to Article: 1

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Transfer paragraph 2 to Article 22.

Reasons:

Paragraph 2 is better placed in Article 22 (provision on non-discrimination). See the amendment to Article 22.

AMENDMENT 16

Proposed amendment to Article: 1(2)

Submitted by: Pervenche BERÈS

Proposed text:

Make this a separate article (*Everyone is equal before the law.*)

Reasons:

Equality and dignity are two different concepts and each deserves its own article.

AMENDMENT 17

Proposed amendment to Article: 1.2.

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Everyone is equal before the law.

Reasons:

The Spanish translation of this provision is incomprehensible (Equality of rights for all persons) and is not in line with the French text (Everyone is equal before the law).

The right to equality before the law must be compatible with the existence of differences in treatment that are proportionate and can be justified objectively and reasonably.

AMENDMENT 18

Proposed amendment to Article: 1.Dignity of the human person

Submitted by: Jordi SOLÉ TURA

Proposed text:

2. Everyone is equal before the law.

Reasons:

More appropriate wording in Spanish.

AMENDMENT 19

Proposed amendment to Article: 1(2): Dignity of the human person

Submitted by: Dr Ingo Friedrich

Proposed text:

“1. Die Würde des Menschen ist zu achten und zu schützen.

2. Alle Menschen sind vor dem recht gleich.”

(No change to the English text).

Reasons:

The term “Gesetz” (law) belongs to the Member States’ legal domain. “Gesetz” could be misunderstood as “a” law in the formal sense: fundamental rights have to apply to all legal pronouncements. Its use elsewhere in the draft Charter should consequently also be checked.

AMENDMENT 20

Proposed amendment to Article: 1(2)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Alle Menschen sind vor dem Recht gleich". (No change to the English text).

Reasons:

The term "Gesetz" (law) belongs to the Member States' legal domain. Its use elsewhere in the draft Charter should consequently also be checked.

Proposals for Article 1a

AMENDMENT 21**Proposed amendment to Article: 1**

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

After Article 1 insert the following:

"Article 1a. Equality and non-discrimination

1. Everyone shall be equal before the law.
2. Any form of discrimination on the basis of sex, race, skin colour, ethnic or social origin, language, religion or personal conviction, political opinion, membership of a national minority, possessions, birth, handicap, age or sexual orientation, genetic characteristics or state of health shall be prohibited.
3. Within the scope of the Treaty establishing the European Community and the Treaty on European Union all discrimination on the basis of nationality shall be prohibited.
4. The Union shall strive to eliminate existing inequality and to promote conditions that make equality effective".

Article 22 is accordingly deleted.

Reasons:

Every aspect of the fundamental principle of equality is regulated in full here (produced by combining the provisions of Articles 1 and 22, appropriately reframed, of the Praesidium text).

Proposals for the whole of Article 2

AMENDMENT 22

Proposed amendment to Article: 2

Submitted by: François LONCLE

Proposed text:

“Everyone is equal before the law.”

Reasons:

The purpose of this amendment is to separate the principle of equality from Article 1, which also deals with the dignity of the human person.

AMENDMENT 23

Proposed amendment to Article: 2, Statement of reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted as the Charter is addressed to EU bodies and so does not have to fix exceptions as the ECHR does.

AMENDMENT 24

Proposed amendment to Article: 2

Submitted by: Andrew DUFF, MEP.

Proposed text:

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to (delete: 1 word) death (delete: 3 words).

Reasons:

Paragraph 1 is taken from Article 2 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

The exceptions referred to in Article 2(2) of the Convention apply in the context of this Charter in accordance with the general clause in draft Article H2 in CHARTE 4235/00 CONVENT 27.

Paragraph 2 is taken from the second sentence of Article 1 of Protocol No 6 to the European Convention on Human Rights. Article 2 of the Protocol is worded as follows:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in

the law and in accordance with its provisions".

Since Protocol No. 6 was signed on 28 April 1983, the death penalty has been abolished in most Member States and has not been applied in any of them (Declaration No. 3 of the Treaty of Amsterdam relating to the Treaty on European Union). The problem of limitations will be resolved by the horizontal clause relating to the European Convention.

AMENDMENT 25**Specific proposals for amendment**

Submitted by: Evling OLSEN

Article 2: Replace “Everyone” by “Every individual”.

AMENDMENT 26

Proposed amendment to Article: 2. Right to life

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. (a) Everyone has the right to life.
(b) No one shall be condemned to the death penalty, or executed.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Reasons:

The right to life is regarded as "*the supreme right*" among fundamental human rights (Human Rights Committee, No 146/1983, *Baboeram v. Suriname*, A/40/40, paragraph 697; General Comment 6/16 of 27 July 1982, paragraph, 1 and General Comment 14/23 of 2 November 1984; also to be found in: NOWAK, M., *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein, Engel Verlag, 1993, p. 851 and p. 861), or as "*one of the most fundamental provisions*" of the European Convention on Human Rights (Court of Human Rights, *McCann, Farrell and Savage*, 27 September 1995, *Publications of the Court*, Series A, Vol. 324, paragraph. 147; Court of Human Rights, *Andronicou and Constantinou*, 9 October 1997, *Reports*, 1997, paragraph. 171; Court of Human Rights, *Kaya*, 19 February 1998, *Reports*, 1998, paragraph 107; Court of Human Rights, *Caciki*, 8 July 1999, *Reports*, 1999, paragraph 86), in view of the fact that the exercise of all other protected rights presupposes respect for the right to life. The "fundamental nature" of the right to life requires that the possible restrictions be expressly included in Article 2 itself.

Proposals for Article 2(1)

AMENDMENT 27

Proposed amendment to Article: 2(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Every *person* has the right to life.

Reasons:

It is proposed that *every person* be substituted for *everyone*, both to conform to the expression used in Article 1 (which refers to the "human person") and to avoid any interpretations that might lead to a general prohibition on abortion, contrary to many countries' national legislation.

* Proposed amendments are in **bold type**.

AMENDMENT 28**Proposed amendment to Article: 2(1)****Submitted by:** Hubert HAENEL**Proposed text:**

1. Everyone has the right to life *for the term of his natural life*.

Reasons:

The right to life is so fundamental that it should be without limits: whatever a person's age or state of health, that right should not be violated on any account. It is thus worth stating that this right applies until the end of a person's natural life.

AMENDMENT 29

Proposed amendment to Article: 2. Right to life, paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

1. Everyone has the right to life, **from the beginning until natural death.**

Reasons:

The addition of “from the beginning until natural death” is intended to mean that the right to life is in no way diminished by the person’s inability to express himself, either at the beginning or the end of his life.

On the other hand, the right to life may be subject to other limitations for various reasons (see paragraph 1a).

AMENDMENT 30

Proposed amendment to Article: 2(1)

Submitted by: Gabriel Cisneros LABORDA

Proposed text:

Every human being has the right to life from its beginning until its natural end.

Reasons:

The same argument as in connection with Article 1.

AMENDMENT 31**Proposed amendment to Article: 2****Submitted by:** R. VAN DAM, MEP**Proposed text:**Replace paragraph 2 by:

- That right shall be protected from conception to the end of life.

Reasons:

It is hard to imagine that Union bodies would ever acquire jurisdiction to impose penalties, much less a death penalty. This provision does not belong in a Charter addressed to the Institutions of the Union (cf. horizontal Article H.1(2) in CONVENT 27). A more precise definition of the right to life clarifies the implications which are inherent in inserting that right.

AMENDMENT 32

Proposed amendment to Article: 2(1)

Submitted by: M. PATIJN (on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace current wording by: Everyone's right to life shall be protected by law.

Reasons:

The wording of that fundamental right should be closely aligned on the ECHR.

AMENDMENT 33

Proposed amendments to Article: 2. Right to life

Submitted by: Daniel TARSCHYS

Proposed text:

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

2.2 Retained.

Reasons:

Paragraph 2:1 is taken from Article 2 of the ECHR. However, while ECHR stipulates that the right shall be protected by law, no such formulation is included in the Convent 28 version of this Article. The ECHR places a positive obligation on Contracting States to ensure that their penal law includes provisions criminalising murder, manslaughter and also acts by which a person's death is caused unintentionally. It does not, however, hold them responsible for human rights violations as a result of acts (e.g. murders) committed by third parties. Since the draft Article has no equivalent formula, this might be interpreted as meaning that whoever is the addressee of the draft Article may be held responsible for ensuring that, for instance, no murders *de facto* take place within the EU territory.

AMENDMENT 34

Proposed amendment to Article: 2(1)

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to respect for his life.

Reasons:

To make the first paragraph less ambiguous.

AMENDMENT 35**Proposed amendment to Article: 2(1)**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister.

Proposed text:

Todos tienen derecho a la vida. (No change to English text).

Reasons:

The proposal is to translate “everyone” by “todos” instead of “toda persona” to avoid any conflict in the legal definition of “person” which varies between Member States.

AMENDMENT 36

Proposed amendment to Article: 2(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Everyone's right to life shall be protected by law. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

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

Reasons:

The general limitation clause in the “horizontal provisions” (Art. 47 of CHARTE 4316/00 CONVENT 34) is too broad for the fundamental right to life. The link with the clause on the level of protection, basically guaranteeing that no further limitations can be placed on the right to life, as provided in Article 2 of the ECHR, is not clear enough for citizens to understand. It is important to see immediately that the fundamental right to life can only be limited in specific circumstances.

To preclude any differing interpretations of Article 2 of the ECHR in this important area, the wording of that Article should be taken over.

AMENDMENT 37**Proposed amendment to Article: 2**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, "Proclamation of Rights":

Delete in 2.1: "Everyone has the right to life"

Substitute in 2.1: "Everyone's right to life shall be protected by law"

Retain 2.2 as drafted

For Part B, "Definition of Rights":

"The rights in Article 2 are the rights guaranteed by Article 2 of the ECHR and Articles 1 – 4 of Protocol 6 to the ECHR."

Reasons:

The Praesidium's draft of Article 2 is inconsistent with the corresponding right in the ECHR. It may be taken by the ECJ or others to have a different meaning, for example that it confers new rights upon the unborn. My amendment ensures that Article 2 is understood within the meaning of the relevant existing ECHR rights and subject to ECHR case law. I do not accept that limitations to this, or the other Charter rights, can be dealt with satisfactorily in a single "horizontal" clause. Limitations differ in type and effect from right to right. They need to be defined precisely in relation to each right so as to ensure legal certainty.

AMENDMENT 38

Proposed amendment to Article: 2 – Right to life
Paragraph 1a

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

“However the law may lay down measures departing from the previous paragraph if they are absolutely vital to protect the lives of other persons from unlawful violence or in defence of society”.

Reasons:

After affirming the right to life, to be honest, we should immediately be reminded of the traditional limitations, either by an explicit reference to Article H2 (horizontal clause), or by stating the spirit of those limitations directly.

Not to do so might impair understanding of the Charter were the reader not to read right to the last line which radically alters the whole meaning.

Proposals for Article 2(2)

AMENDMENT 39

Proposed amendment to Article: 2 – Right to life
Paragraph 2

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete paragraph 2 (“No one shall be condemned to the death penalty, or executed”).

Reasons:

This paragraph does not correspond to any existing European Union powers.

AMENDMENT 40

Proposed amendment to Article: 2.

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1.
2. **The death penalty shall be prohibited.** No one shall be condemned **to death** or executed.

Reasons:

AMENDMENT 41**Proposed amendment to Article: 2**

Submitted by: RODOTÀ, PACIOTTI and MANZELLA

Proposed text:

Substitute the following for paragraph 2:

"2. No public authority may provide for the death penalty or impose or execute a sentence of death".

Reasons:

The aim of paragraph 2 is the outright elimination of the death penalty from the legal systems of the Union. The wording proposed addresses legislators, courts and administrative authorities alike.

AMENDMENT 42

Proposed amendment to Article: 2(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. No one shall be condemned to death or executed, save under military criminal law in time of war.

Reasons:

Protocol No 6 to the ECHR provides, by way of exception to the abolition of the death penalty, for its application in time of war, and the Convention was ratified on that basis. With Organic Law 11/1995 of 27 November 1995 Spain abolished the death penalty even in such cases; Article 15 of Spain's constitution, however, provides for the possible application of the death penalty in the event of war if at that juncture the legislator so stipulates, a rule with which total abolition is not compatible.

The statement of reasons for the draft addresses that situation, but considers an exception to be made for it through the establishment of a general horizontal clause on the limitation of rights, a general approach used in the other articles, with all references to limitations, exceptions and definitions being omitted. I feel, on the contrary, that limitations on rights, as part and parcel of their make-up, must appear in the definition of the rights themselves, which provides, furthermore, the best guarantee that they will be safeguarded under implementing legislation, as well as ensuring proper coexistence of rights that may clash with each other.

The existence of a horizontal clause – subject at present to the drafting chosen for that clause so that it is acceptable to Spain – does not resolve the problems of the specific limitations on the exercise of certain rights; what would be unacceptable to Spain, as I have repeatedly indicated, is a clause that merely makes reference to the relevant provisions of the ECHR.

In addition, a general limitations clause is not a valid way of resolving the problem. In fact, in some of the articles it is not a question of enabling rights to be limited but rather of defining them negatively to make it clear beyond what point the content of the right does not extend. In other cases it is a matter of regulating those limits, to ensure that when the public authority (the legislator) establishes them it is similarly limited in the way in which it frames them. Clearly, that is not required in the case of every right in the Charter, but only for some which, because of their nature, so require.

The EU Charter of Fundamental Rights must be an autonomous text, drafted, naturally, in such a way as to comply with the fundamental rights "contained" in the ECHR, i.e. in content. But that does not mean that the EU Charter of Fundamental Rights must restrict itself merely to following or transcribing the text of the ECHR, as that would render unnecessary (being pointless and repetitive) a large part of the Convention's work.

In addition, the technique of resolving the problem of the limitations on the exercise of rights recognised in the Charter by means of a reference to the corresponding article of the ECHR in which exceptions or limitations are laid down is unacceptable, as I have already said in Convention working meetings. For that would mean introducing the ECHR law as directly applicable within the Charter. Or, in other words, including the ECHR in Community Treaty law, producing a result equivalent to the EU's accession to the ECHR. That is a possibility that the Council, the IGC and the Court of Justice of the European Communities have expressly rejected.

It should be noted that the reference to the ECHR in Article 6(2) of the TEU is not actually incorporating the ECHR into the text of the Treaty, but doing something quite different: obliging the European Union to respect fundamental rights, as guaranteed by the ECHR, as principles of Community law.

The proclamation of the fundamental rights and freedoms in the Charter (all the more so if the latter is to be incorporated into the EU Treaty as a text with legal force) must be an autonomous text, which does not need to be incorporated or supplemented (as if blank or incomplete) by other legal provisions alien to the Community law of which it forms part (such as the ECHR, the Universal Declaration of Human Rights or any other international law treaty or convention on human rights). There is therefore no room for any other source of human rights alongside or external to the Charter itself.

The contrary would mean that to a large extent the Charter (or at least that part of its content which overlaps with the ECHR) would be rendered redundant as a legal instrument, as it would serve to convert the ECHR into an autonomous standard by which to gauge the validity of acts and provisions of Community institutions and bodies from the point of view of the fundamental rights that the latter must respect.

If that were the case, there would be no need for the solemn declaration of those rights in the Charter and it would be sufficient if the Charter simply made reference to the ECHR, so that the Convention would be incorporated, as directly applicable law, into the Charter and into primary Community legislation.

I must make it clear that the amendment I propose is not meant to deny or detract from the crucial, outstanding value and importance of the role to be played by the ECHR and the case law of the CDH in the interpretation of the fundamental rights and freedoms in the Charter. Nor is it intended to call into question the relationship or cooperation between Community institutions (in particular the Court of Justice) and the Strasbourg court. Quite the contrary, what must be avoided is

that, through a legal subterfuge, what the European Council and the Luxembourg Court of Justice have rejected – EU accession to the ECHR – is indirectly incorporated into Community Treaty law, like some Trojan horse.

Perhaps many of the fears that have arisen in connection with the references to the ECHR might be dispelled if in the end it were clearly established in the horizontal clauses that the Charter does not alter existing legal rules or the jurisdiction of the courts. Furthermore, the risk that two courts may interpret the same rights text in different ways exists at present, witness the wording of the Treaties and the case law of the Luxembourg court.

Finally, I would say that, if the intention of the agreements reached at the European Council meeting in Cologne and the Convention is to draw up a Charter that makes fundamental rights and freedoms visible for the citizen, referring to another standard (such as the ECHR) for the purpose of settling the limits to their exercise in every case will deprive the Charter of all visibility, make it complicated and confused and render it accessible only to legal experts, since to know fully the scope and content of a right it will be necessary to have recourse to another, different text, which is just what "visibility" is meant to avoid.

AMENDMENT 43

Proposed amendment to Article: 2(2)

Submitted by: EINEM/HOLOUBEK

Proposed text:

No one shall be condemned to the death penalty or executed. *No limitation of this right shall be permissible.*

Reasons:

The first sentence is unchanged and corresponds exactly to the Praesidium proposal. The added second sentence is intended to make it clear to the citizen in a directly comprehensible manner that the death penalty has in fact been abolished. The possibility of making this provision subject to the general limitation of the horizontal clause in Article 43 of the draft would be a step backwards from the position of the ECHR.

The drafting proposed fundamentally takes over the level of protection afforded by Protocol No 6 to the ECHR. It goes further in that even "in time of war or of imminent threat of war" the death penalty is not permissible. In view of the rule-of-law and democratic standards achieved in the European Union there is no convincing basis for the death penalty at all. It is not necessary even in time of war. The dangers involved in this type of penalty are much greater than any benefit to society. This applies in time of war as well, because in exceptional circumstances the danger of defective procedures and accordingly of miscarriages of justice is particularly great.

Proposals for Article 2(3)

AMENDMENT 44**Proposed amendment to Article: 2**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Add the following new paragraph 3:

3. No one shall be expelled or extradited to a State where there are substantial grounds for believing that he would be in danger of being subjected to the death penalty or execution.

Reasons:

This provision is more appropriate here than in Article 4, which deals with the prohibition of torture and inhuman treatment. The text is in line with the grounds adduced by the European Court of Human Rights in the Case Soering v United Kingdom of 7 July 1989.

Proposed amendment to Article: 2**Proposed text:**

Add the following new paragraph 4:

4. Deprivation of life shall not be regarded as in contravention of this Article when it results from the use of force which is no more than absolutely necessary, in accordance with the instances listed in Article 2(2) of the ECHR.

Reasons:

This provision is in line with Article 2(2) of the ECHR, which lists a number of instances of deprivation of life resulting from the use of force which is no more than absolutely necessary. In keeping with the desire for conciseness, reference is made to Article 2(2) of the ECHR. The same technique has been used in amending the other articles.

Proposals for Article 3 as a whole

AMENDMENT 45**Proposed amendment to Article: 3**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this Article entirely but see Reasons below

Reasons:

I remain concerned as to how to deal with this issue pending the entry into force of the Human Rights and Biomedicine Convention in all the Member States. It is not yet ratified by the majority of Member States. The matters dealt with in the Convention on Human Rights and Biomedicine are complex and sensitive. Reference in the Charter to only some of the principles in the Biomedicine Convention is an unsatisfactory way forward and would be likely to create uncertainty, controversy and possible conflict with national positions. It should be noted that ECHR Articles 2, 3 and 8 have some bearing on the matters referred to in Charter Article 3. To that extent these matters may be covered by the Charter indirectly. I am not aware of any other rights existing at Union level.

I am prepared to consider this issue further but it could only be on the basis of a statement tied to existing national laws and practices, such as:

A: Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine.

B: The right in Article 3 is the right, to the extent recognised in national law, of:

- a) respect for the informed consent of the patient;
- b) prohibition of making the human body and its parts, as such, a source of financial gain;
- c) prohibition of creation of a human being identical to another human being whether living or dead.

It would have to be made clear, moreover, that the right cannot extend further than the corresponding provisions in the Biomedicine Convention.

AMENDMENT 46

Proposed amendment to Article: 3

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 3. Right to respect for (delete: 1 word) personal integrity (delete: 4 words)

- 3. Everyone's (delete: 7 words) physical and mental integrity shall be respected.**
- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenics (delete: 1 word);**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**
- 3. In the field of ecology, the principle of sustainable development shall be respected.**

Statement of reasons

The principles in the field of medicine and biology are set out in the Convention on Human Rights and Biomedicine. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for development to take account of future (delete: 1 word) developments in this area.

Article 2 of the Treaty on European Union as amended by the Treaty of Amsterdam sets for the Union the objective of achieving "balanced and sustainable development". Article 3(l) of the Treaty establishing the European Community establishes a competence in the field of environment

policy. The obligatory nature of the principle of sustainable development is established in Article 6, which reads:

"Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development."

AMENDMENT 47**Proposed amendment to Article: 3**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. **Everyone has the right to respect for his physical and mental integrity.**
2. **Everyone has the right to a clean and healthy environment and to the protection of natural life support systems.**
3. **In the fields of medicine and biology, the following principles must be respected in particular:**
 - **any intervention directed at alteration of the human genome may be undertaken only for preventive, diagnostic or therapeutic purposes and only if it is not intended to bring about any alteration in the genome of progeny;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**
4. **Everyone has the right to be informed of all data concerning his health and genetics. The wish not to be informed of such matters must be respected.**
5. **Genetic information may be used and passed on only with the patient's consent. The use of genetic diagnostics in employment and insurance matters is in any event prohibited.**

Reasons:

AMENDMENT 48

Proposed amendment to Article: 3. Right to respect for the integrity of the human person

Submitted by: Jürgen GNAUCK, Minister for Federal and European matters of Thuringia

Proposed text:

"Article 3. Right to respect for the integrity of the human person.

Everyone has the right to respect for his physical and psychological integrity."

Reasons:

Article 3 should contain only the above key statement. The term "psychological" also seems to be more appropriate than the term "mental" actually used.

Paragraph 2 should be deleted for the following two reasons: the principles mentioned in paragraph 2 are set out in the Convention on Human Rights and Biomedicine. It should be noted that not all Member States have acceded to that Convention.

The principles mentioned here also appear to be greatly in need of interpretation. Where, for example, does the boundary lie between genuine and reprehensible eugenic practices? In particular, the "prohibition of eugenic practices" referred to in the first indent is too indefinite, and so far-reaching in its effects as also to affect existing national provisions. Any measure intended to avoid genetically diseased progeny could ultimately be termed "eugenic". Accordingly, the abortion of a genetically affected embryo would also be "eugenic". This would also affect the current intensive discussion over pre-implantation diagnostics, as the latter's top priority aim is to detect genetic defects and "sort out" the corresponding embryos from the outset. In addition, the Article leaves the question entirely open as to whether "everyone" (cf. paragraph 1) covers the post-natal human being or also the unborn embryo. Paragraph 2 does not differentiate in this respect, however. In the case of "reproductive cloning of human beings" also referred to in paragraph 2, it does not seem clear what kind of human cloning (!) is indeed permitted (the cloning of parental cells, perhaps?). Further clarification in the statement of reasons at least would be helpful here.

Furthermore, it can be seen from the provisions of Article 3(2) how difficult it is to formulate "modern fundamental rights" succinctly. This is why the German Länder are in favour, at least

for the moment, of refraining from seeking a fundamental solution to problems such as medicine and biology, in particular, and of omitting the proposed paragraph 2. In the case of the problems raised, sufficient protection against abuse should be provided by Article 1 in conjunction with Article 3(1).

AMENDMENT 49

Proposed amendment to Article: 3

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the text of the Article with the following:

- "1. Everyone is entitled to respect for physical and mental integrity.**
- 2. No medical intervention can be carried out without the prior, free and informed consent of the person concerned and unless it is in conformity with his/her rights.**
- 3. The human body and its parts cannot be objects of trade.**
- 4. Eugenic practices aimed at organising the selection and the instrumentalisation of the person are prohibited.**
- 5. Human reproductive cloning is prohibited".**

Reasons:

The text, worded in prescriptive terms, reflects the state of development of the law regarding bioethics (cf. European Convention on Biomedicine).

AMENDMENT 50**Proposed amendment to Article: 3**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace Article 3 by the following text :

1. The physical and mental integrity of the human person may not be harmed.
2. Respect for moral and physical integrity implies free access for all to advances in medicine and other sciences, and in particular equal access for all to health care.
3. Scientific research must also take account of everyone's rights:
 - increasing mastery of human genetics may not lead to eugenic practices designed to deprive the weakest of their rights;
 - the human body, its components and products may not be a source of financial gain;
 - more generally, living matter may not be patented, in whole or in part.
4. When old age impairs a person's integrity, that person shall receive specific help and assistance, regardless of his right to a pension,.
5. Everyone has the right to request and obtain a death which respects his dignity, particularly when respect for his physical and moral integrity or his dignity as a human being is infringed.
6. Everyone has the right to protection of the environment and shall have the right to compensation if that environment is altered without his agreement and his integrity is impaired.

Reasons:

Re 1: Stylistic improvement.

Re 2: Stylistic improvement; the right to free and equal access to health care is added as requested in a number of contributions to the Convention.

Re 3: Progress in genetics as a science requires a fuller text dispelling any ambiguity.

- Re 4: The community must rise to the challenges created by longer life-expectancy if human dignity is not to be sacrificed.
- Re 5: The Convention cannot avoid taking a stand on what happens when the right to life comes into conflict with respect for human dignity and is mistaken for a duty to remain alive.
- Re 6: The Charter cannot fail to address the implications of protection of the environment for the individual.

Proposals for Article 3(1)

AMENDMENT 51

Proposed amendment to Article: 3(1)

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

“Everyone has the right to respect for his physical, genetic and mental integrity.”

Reasons:

The reference to genetic integrity in Art. 3(1) clarifies the enumeration in Article 3(2). This seems desirable given the high value of genetic integrity.

AMENDMENT 52

Proposed amendment to Article: 3. Right to respect for the dignity of the human person

Submitted by: Jordi SOLÉ TURA

Proposed text:

p. 1 “Everyone has the right to respect for his physical and moral integrity.”

Reasons:

“Moral” is a more appropriate term than “mental” (in Spanish “psíquico”).

AMENDMENT 53**Proposed amendment to Article: 3(1)****Submitted by:** Piero MELOGRANI**Proposed text***

p. 1 Every **person** has the right to respect for his physical and mental integrity.

Reasons:

It is suggested that *everyone* be replaced by *every person* both in order to bring the text into line with Article 1 and with the title of Article 3 (which has “human person”) and to preclude interpretations which might lead to a general ban on abortion, in contrast to national legislation in many Member States.

* Proposed amendment in bold.

AMENDMENT 54

Proposed amendment to Article: 3(1)

Submitted by: Alvaro Roríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to respect for his physical and moral integrity.

Reasons:

The French text does not contain the term “psychique”. Mental is a broader term, as is moral.

AMENDMENT 55

Proposed amendment to Article: 3(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Every *individual* has the right to respect for his physical and mental integrity”.

Reasons:

As a principle it seems expedient to make a clear distinction in the Charter between “individuals”, i.e. natural persons, and “persons” i.e. natural or legal persons. We therefore propose as a rule to speak of “individuals” when only natural persons are meant, and “persons” when natural and legal persons are meant.

There is no change to the content of the proposal by the Praesidium.

AMENDMENT 56

Proposed amendment to Article: 3(1)

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

“Everyone has the right to respect for his physical, genetic and mental integrity.”

Reasons:

The reference to genetic integrity in Art. 3(1) clarifies the enumeration in Art. 3(2). This seems desirable given the high value of genetic integrity.

Proposals for Article 3(2)

AMENDMENT 57**Proposed amendment to Article: 3****Submitted by:** Win GRIFFITHS, MP**Proposed Text:**

Everyone has the right to respect for his/her physical and mental integrity.

Delete 3.2

Reasons:

3.2 sets out criteria which, if included at all in the Charter, would be better placed in "Part B" – however that may be set out in the Charter.

It will also be necessary to indicate any limitations to the individual right to appeal when the individual himself/herself is not able to make decisions on his/her own.

AMENDMENT 58**Proposed amendment to Article: 3****Submitted by:** Erling OLSEN**Proposed text:**Paragraph 2 should be deleted.

AMENDMENT 59**Proposed amendment to Article: 3**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

In the third indent of the second paragraph, insert “, *its parts*” after “*the human body*”.

Reasons:

As presently drafted, the provision that the human body cannot be commercialised is incomplete as it does not cover organs.

AMENDMENT 60**Proposed amendment to Article: 3(2)**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (on behalf of G.J.W. VAN OVEN)

Proposed text:

- Amend the introductory phrase to read as follows:

The following principles must be respected in this connection:

- Add the following to the fourth indent:

“and the creation of human/animal hybrids”.

Reasons:

The original introduction is too restrictive. The proposed addition reflects developments in bio-ethics.

AMENDMENT 61

Proposed amendment to Article: 3

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2, fourth indent: prohibition of the (one word deleted) cloning of human beings.

Reasons:

The Article would thus provide greater protection against threats to human integrity.

AMENDMENT 62**Proposed amendment to Article: 3(2)****Submitted by:** Piero MELOGRANI**Proposed text** *:

In the fields of medicine and biology, the following principles must be respected in particular:

- prohibition of eugenic practices;
- respect for the informed consent of the patient, ***although an intervention may be carried out on a person who does not have the capacity to consent, solely for his or her direct benefit.***;
- prohibition of making the human body and its products a source of financial gain;
- prohibition of the reproductive cloning of human beings.

Reasons:

The words in bold are taken from Article 6 of the Oviedo Convention and are intended to allow interventions which may be necessary for minors and those who are temporarily or permanently incapacitated.

* Proposed amendment in bold.

AMENDMENT 63**Proposed amendment to Article: 3(2)**

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the (*one word deleted*) consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (*one word deleted*) cloning of human beings.

Reasons:

1. (Does not apply to the English text.)
2. It is a principle that the patient's decision must be respected and not made conditional upon prior information which doctors are in any case required to give.
3. Delete the term "reproductive" which to my mind (a) is unclear and (b) may be interpreted as restricting a total ban on cloning human beings.

AMENDMENT 64

Proposed amendment to Article: 3(2) Right to respect for the integrity of the human form

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;¹
 - [...] free and informed consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the reproductive cloning of human beings.

Reasons:

1. “Respect” in the second indent repeats the verb in the introductory sentence.
2. Consent must not only be informed but also and above all free (see also Article 5(1) of the Convention on Human Rights and Biomedecine).

¹ The concept of eugenic practices must be clarified in the statement of reasons by, for instance, pointing out that its main purpose is the selection and instrumentalisation of persons.

AMENDMENT 65

Proposed amendment to Article: 3(2)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Prohibition of the cloning of human beings"

Reasons:

The prohibition of the production of human beings with the same genetic material as a certain person living or dead must cover all stages of human development starting from the fusion of egg and sperm cell. Restricting the prohibition of cloning to reproductive cloning only would be wholly untenable and would certainly undermine acceptance of the Charter by numerous people in Europe.

AMENDMENT 66

Proposed amendment to Article: 3. Right to respect for the integrity of the human person

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Article 3. Right to respect for the integrity of the human person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the informed **and stated** consent of the patient, **although that consent may not be to acts which are unlawful under domestic law or in breach of the rights guaranteed in this Charter and in particular in Article 2;**
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (...) cloning of human beings.

Reasons:

- A. The patient's consent must not only be based on detailed prior information, but must also be clearly expressed.
- B. There must be a total ban on cloning of human beings, not just on reproductive cloning, to prevent any risk of slippage. The distinction is in fact artificial, since the act is still the same and it is a fundamental principle that the law punishes acts, not the reasons for them.

AMENDMENT 67**Proposed amendment to Article: 3****Submitted by:** Pervenche BERÈS**Proposed text:****Article 3. Right to respect for the integrity of the human person**

Everyone has the right to respect for his physical and mental integrity.

In the fields of medicine and biology, the following principles must be respected in particular:

- prohibition of eugenic practices, with the purpose of selection and instrumentalisation of persons;
- respect for the informed consent of the person;
- prohibition of making the human body and its products into any kind of saleable commodity;
- prohibition of the reproductive cloning of human beings.

Reasons:

AMENDMENT 68

Proposed amendment to Article: 3: Right to respect for the integrity of the human person

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. Everyone has the right to respect for his physical and mental integrity. (No change to English text)
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the informed consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (one word deleted) cloning of human (one word deleted) life forms in all stages of their development.

Reasons:

Re paragraph 1:

Does not apply to the English text.

Re paragraph 2:

Only by banning the cloning of human beings can their uniqueness be ensured.

AMENDMENT 69**Proposed amendment to Article: 3**

Submitted by: Heinrich NEISSER

Proposed text:

Article 3. Right to respect for the integrity of the human person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the informed consent of the patient;
 - prohibition of making the human body and its products **as such** a source of financial gain;
 - prohibition of the reproductive cloning of human beings.

Reasons:

The expression “as such” bases the Article more closely on Article 21 of the Council of Europe Convention on Human Rights and Biomedicine. A total ban on any financial gain in connection with the human body and its parts seems excessive, particularly as far as getting blood and blood plasma from voluntary donors is concerned. The explanatory notes to Article 21 of the Convention state that organs and tissues proper should not be bought or sold or give rise to financial gain, but that technical acts (medical testing, pasteurisation, storage) performed in that connection should give rise to reasonable remuneration, and that medical devices incorporating processed human tissue may be sold. Further, blood and plasma donors may thus receive compensation (for their time and loss of income), but not payment in the sense of a purchase price.

AMENDMENT 70

Proposed amendment to Article: 3 : Right to respect for the integrity of the human person

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

1. Everyone has the right to respect for his physical and **moral** integrity.
2. At the end of the next paragraph, add:

All human life must necessarily result from the fusion of gametes of human origin.

Reasons:

1. *Moral* is considered a more appropriate word than *mental*.
2. Science is progressing constantly. Apart from cloning, research is being conducted into ways of creating life in which a human being will not originate from a man and a woman. Attempts are also being made to produce human eggs from any kind of living cell.

AMENDMENT 71

Proposed amendment to Article: 3. Right to respect for the integrity of the human person

Submitted by: Daniel TARSCHYS

Proposed text:

Article 3.1. Delete the words "physical and mental".

Article 3.2. It is suggested to make a separate paragraph of this Article.

Reasons:

Paragraph 1.

Swedish experts are uncertain as to the precise meaning of the expression "mental integrity". I would leave out the qualification.

The relationship of this Article to Article 12 (respect for private life) requires further consideration.

Paragraph 2.

While paragraph 1 of this draft Article is a more general protection clause, paragraph 2 appears to deal with very specific aspects of a person's physical and mental integrity. It would be better to treat these aspects separately.

(For the Swedish translation of the second indent, revert to the version used in Convent 13).

AMENDMENT 72**Proposed amendment to Article: 3**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Delete paragraph 2.

Reasons:

Paragraph 2 may be omitted as it concerns a number of principles contained in the Council of Europe Convention on Human Rights and Biomedicine. Various Member States have not yet adopted a definitive position on a number of provisions of that Convention. It would also raise the question of why principles contained in other Council of Europe Conventions (such as the Framework Convention for the Protection of National Minorities, the European Charter of Local Self-government and the European Charter for Regional or Minority Languages) have not been included. This would not benefit the succinctness of the Charter, which is a further reason for deleting paragraph 2.

Proposed amendment to Article: 3**Proposed text:**

Add a new paragraph 3 reading as follows:

3. The right to respect for physical and mental integrity may be restricted only in accordance with the conditions laid down in Article 8(2) of the ECHR.

Reasons:

It would be preferable, as in the case of the ECHR, to indicate, for each right, the conditions under which the right in question may be restricted. A general restrictive clause would involve the danger that the possibilities for restriction might become too broad. In the interests of succinctness, Article 8(2) of the ECHR is not quoted in full, but merely referred to. It is thus clear that the conditions laid down by the ECHR must at least be fulfilled.

Proposals for Article 4

AMENDMENT 73

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete the second sentence (“No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.”).

Reasons:

While the first sentence sets out a general principle, the second sentence deals with a specific case.

This specific case would be better placed in Article 21 (Right to asylum and expulsion), assuming that the wording of Article 21 does not render it superfluous.

AMENDMENT 74**Proposed amendment to Article: 4****Submitted by:** R. VAN DAM, MEP**Proposed text:**Article 4 to be deleted.**Reasons:**

This Article may already be inferred implicitly from Articles 1 and 3 of the Charter. The expansion of the relevant concept in this Article does not contain any useful message for the *bodies of the European Union*. They do not have, nor should they be given, any penal jurisdiction. However necessary, protection against torture and inhuman or degrading treatment and punishment would be better dealt with in other contexts (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 75

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jordi SOLÉ TURA

Proposed text:

Sentence 2: “No one may be expelled or extradited to a State whose legal order does not condemn the death penalty, torture or inhuman treatment.”

Reasons:

The concept of “a State where he would be in danger of being subjected to” is inappropriate in law.

AMENDMENT 76

Proposed amendment to Article: 4

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

In the title, after “inhuman”, insert “or degrading”.

Also insert “or degrading” towards the end of the second sentence of the Article.

Reasons:

The aim is to make the title more consistent with the content of the Article and prevent the second sentence from being interpreted to mean that degrading treatment is not sufficient to prevent expulsion or extradition.

AMENDMENT 77

Proposed amendment to Article 4: Prohibition of torture and inhuman treatment

Submitted by: Dr Ingo FRIEDRICH

Proposed text: Delete sentence 2 from Article 4 and add as paragraph 2 to Article 21.

Reasons:

Contents belong to Article 21.

AMENDMENT 78

Proposed amendment to Article: 4

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Delete the second sentence of this Article.

For Part B, “Definition of Rights”:

“The right in Article 4 is the right guaranteed by Article 3 of the ECHR.”

Reasons:

I believe that, as with the other formulations, a clear legal definition is required which avoids any risk of uncertainty or conflict and in every case attracts the relevant jurisprudence of the European Court of Human Rights. This is not the case here. Equally, it would be a mistake for the Charter to single out particular items of ECHR case law: that could imply that other important case law is less important or to be ignored.

AMENDMENT 79**Proposed amendment to Article: 4**

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State *where the circumstances give reason to believe that he could be* subjected to the death penalty, torture or other inhuman treatment.

Reasons:

The words in bold replace “*where he would be in danger of being*”, which cannot be seen as a sufficient guarantee. The proposed amendment is in line with the case law of the European Court of Human Rights.

* Proposed amendments are in bold.

AMENDMENT 80

Proposed amendment to Article: 4

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 4. Prohibition of torture and inhuman treatment

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

No one may be expelled or extradited to a state where he or she would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

This Article is taken from Article 3 of the European Convention on Human Rights:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The second sentence of the Article (delete: 1 word) embodies the jurisprudence of the European Court of Human Rights (delete: 1 word) on Article 3.

AMENDMENT 81**Proposed amendment to Article: 4****Submitted by:** Erling OLSEN**Proposed text:**

The words "death penalty" contained in the second sentence of this provision should be deleted. (The prohibition on expulsion or extradition to countries in which the party concerned risks the death penalty comes under Article 2 of the Charter.)

Reasons:

The reason for this proposed amendment is that the prohibition on expulsion or extradition to countries in which the party concerned risks the death penalty does not follow from the jurisprudence of the Court of Human rights on Article 3 of the ECHR, as claimed in the "statement of reasons". On the contrary, the prohibition is regarded as a reflex effect of Article 2 of and Additional Protocol No 6 to the Convention. This provision therefore comes under Article 2 of the Charter, possibly through a reference to the relevant case law in part B.

AMENDMENT 82**Proposed amendment to Article: 4**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Turn the first sentence into paragraph 1 and the second sentence into paragraph 2.

Reasons:

This corresponds more closely to the structure of the other Articles.

Proposed amendment to Article: 4 (second sentence)**Proposed text:**

The second sentence of Article 4 would read as follows:

2. No one may be expelled or extradited to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment.

Reasons:

The text corresponds to the grounds of the European Court of Human Rights in the case of *Soering v. United Kingdom* of 7 July 1989. Article 4 relates to torture. There is no obvious reason, therefore, why the death penalty should be referred to here. See the amendment to Article 2.

AMENDMENT 83

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Reasons:

In order to bring the second sentence of this Article fully into line with the European Court case law on Article 3 of the European Convention on Human Rights (CDH, Cruz Varas et al., 20 March 1991, *Publications of the Court*, Series A, Vol. 201, par. 69-70; CDH, Vilvarajah et al., 30 October 1991, *Publications of the Court*, Series A, Vol. 215, par. 103), the words “*or degrading treatment or punishment*” need to be added to this provision (CONVENT 28 version).

AMENDMENT 84**Proposed amendment to Article: 4**

Submitted by: Win GRIFFITHS MP

Proposed text:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State where allegations against him/her would put him/her in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

Amended text relates more specifically to any charge which would justify an application for extradition.

AMENDMENT 85

Proposed amendment to Article: 4, second sentence

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of Mr G.J.W. VAN OVEN)

Proposed text:

"No one may be expelled or extradited to a State if it can reasonably be foreseen that he may be subjected to torture or other inhuman treatment".

Reasons:

The wording proposed is more balanced than that contained in CONVENT 28.

AMENDMENT 86**Proposed amendment to Article: 4****Submitted by:** Pervenche BERÈS**Proposed text:**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited directly or indirectly to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

The aim is to prevent expulsion to a destination from which an individual is likely to be ultimately expelled to a State where his physical integrity is threatened.

AMENDMENT 87

Proposed amendment to: 4 (second sentence)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Delete the second sentence or, if it is retained, refer only to a third State.

Delete “expelled”.

Reasons:

The wording of this provision is highly confusing and could well lead to misinterpretation. What does “in danger of being” actually mean? How can this be verified? As the European Union is not excluded from the scope of this clause, this right could be exercised between Union States, which is inadmissible in a Union of law. In the case of expulsion – if the text is interpreted literally – illegal immigrants (in breach of immigration laws) could not be expelled to their countries of origin under such circumstances.

The text must be seen in the light of Protocol 29 of the Treaty establishing the European Community which covers asylum and extradition between Member States of the Union; this provides that given the level of protection of fundamental rights and freedoms “Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters.”

Given the sweeping nature and vagueness of the concepts it introduces and the way it is drafted, this clause is unacceptable. It is as well to remember that within the European Union, members of terrorist groups frequently claim to be “in danger” of being subjected to torture or inhuman treatment and use this as a legal loophole to prevent their being expelled or extradited to a European Union Member State wishing to try them for terrorist acts they have committed.

AMENDMENT 88

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

Article 4. Prohibition of torture and inhuman treatment

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

Reasons:

Article 4 should contain only the above. The second sentence (prohibition of expulsion and extradition) should be added to Article 21 as a new paragraph 3 for reasons of logic.

AMENDMENT 89

Proposed amendment to: Article 4 (sentence 2)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be expelled or extradited to a **third country whose legal order does not explicitly reject the death penalty, torture and other human treatment.**

Reasons:

The concept of “danger”, which is a clearly defined concept in criminal law, is unsuitable in this context and would be lacking in all legal rigour.

European Conventions on extradition provide that such bans must be limited to States which are not members of the European Union.

AMENDMENT 90

Proposed amendment to Article: 4

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Delete from “No one may be expelled ...” to the end of the Article.

Reasons:

This sentence has been transferred to Article 21 (see corresponding amendment).

AMENDMENT 91**Proposed amendment to Article: 4****Submitted by:** EINEM/HOLOUBEK**Proposed text:**

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment. *Any restriction of this right is prohibited.*”

Reasons:

Sentence 1 and sentence 2 of the proposed text remain unchanged. However, the third sentence which we propose adding should make it clear – in a way that the citizen can easily understand – that this fundamental right may not be restricted, in particular not in the framework of the “limitation of guaranteed rights” of Article 43 of the horizontal clauses.

Proposals for Article 5 as a whole

AMENDMENT 92

Proposed amendment to Article: 5. Statement of reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted since the Charter refers to EU bodies and therefore none of the exceptions laid down in the ECHR apply.

AMENDMENT 93**Proposed amendment to Article: 5****Submitted by:** R. VAN DAM, MEP**Proposed text:**Article 5 to be deleted.**Reasons:**

This Article is already implied in Articles 1 and 3 of the Charter. Such expansion does not contain any useful message for the bodies or institutions of the European Union. In this case too, although the right in question needs to be protected, such protection would be better regulated and safeguarded elsewhere (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 94**Proposed amendment to Article: 5**

Submitted by: Andrew DUFF, MEP

Proposed text:**Article 5. Prohibition of slavery and forced labour**

No one shall be (delete: 5 words) enslaved or subjected to forced labour.

(Delete: paragraph 2)

Reasons:

This Article is taken from Article 4 of the European Convention on Human Rights.

- "1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. For the purpose of this Article the term "forced or compulsory labour" shall not include:*
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objections in countries where they are recognised, service exacted instead of compulsory military service;*
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - (d) any work or service which forms part of normal civic obligations."*

The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. It will be incorporated via the horizontal clause relating to the European Convention on Human Rights. (Delete: 5 words) The concept of forced labour does not cover, inter alia, personal services laid down by law which are exacted of citizens for civic reasons or in case of an emergency or calamity, the fulfilment of military obligations or alternative service, or any work ordinarily exacted of a person deprived of liberty.

AMENDMENT 95

Proposed amendment to Article: 5. Prohibition of slavery and forced labour

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 5. Prohibition of slavery, forced labour and trafficking in human beings.

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

Reasons:

Trafficking in human beings is a growing problem throughout the world. It should, therefore, be expressly prohibited in the Charter.

AMENDMENT 96

Proposed amendment to Article: 5. Prohibition of slavery and forced labour

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the draft text and replace it by Article 4 ECHR, possibly split between a part A and a part B.

Reasons:

Paragraph 3 of Article 4 of the ECHR does not merely contain definitions (a term used in the statement of reasons to the draft Article). Article 4 paragraph 3 of the ECHR implies significant limitations of the prohibition of forced and compulsory labour as found in paragraph 21 of the same Article. The only proper manner to deal with this is to reintroduce the exact wording of the ECHR, i.e. the whole text of Article 4 ECHR.

AMENDMENT 97

Proposed amendment to Article: 5

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Retain existing text.

For Part B, “Definition of Rights”:

“The right in Article 5 is the right guaranteed by Article 4 of the ECHR”

Reasons:

I welcome the Praesidium’s reliance on the ECHR wording. But I disagree that limitations in this case or qualifications from ECHR case law “go without saying”. These matters are not necessarily obvious or beyond argument. The Charter must be completely clear and precise. It must avoid any legal uncertainty or conflict with existing obligations.

AMENDMENT 98**Proposed amendment to Article: 5****Submitted by:** Erling OLSEN**Proposed text:**

No changes to the wording of this Article are proposed. However, the definition of the right should make it clear that the performance of community service as an alternative to imprisonment is not covered by the term "forced or compulsory labour".

AMENDMENT 98

Blank

Proposals for Article 5(1)

AMENDMENT 99

Proposed amendment to Article: 5(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

No one shall be held in slavery or servitude. *Any restriction of this right is inadmissible.*

Reasons:

Sentence 1 corresponds word for word to the proposed text. Our proposal for an additional sentence 2 should make it immediately clear to citizens that this fundamental right cannot be restricted, and particularly not under the “general limitation clause” in Article 43 of the horizontal provisions.

Proposals for Article 5(2)

AMENDMENT 100

Proposed amendment to: Article 5(2) (addendum)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add a third paragraph to read as follows: **“Forced or compulsory labour shall not include personal services as established by law or required of citizens for civic reasons or, in the case of an emergency or calamity, the performance of military service or alternative community service, or any work ordinarily required of a person in the course of detention.”**

Reasons:

Pursuant to Article 4(3) (a), (b), (c), and (d) of the ECHR “forced labour” excludes personal services exacted of citizens for civic reasons or in the case of an emergency or calamity, or the performance of military service or alternative community service or any work ordinarily required of a person in the course of detention. Although the statement of reasons states that the horizontal clause is a sufficient way of incorporating these exceptions, it must be stressed that, without pre-empting the status that this Charter must be given in the European legal order, a provision of this nature addressed to the States should set out in appropriate terms the legal justification for excluding the circumstances listed from being considered as forced labour.

The reasons given in the statement of reasons for the amendment to Article 2(2) should be reproduced here.

AMENDMENT 101

Proposed amendment to Article: 5(2)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

2. No one shall be required to perform forced or compulsory labour, save in the cases referred to in Article 4(3) of the European Convention on Human Rights.

Reasons:

Article 4(3) of the ECHR stipulates those activities not to be regarded as forced or compulsory labour for the purposes of that article. In view of the system followed as regards limitations, reference should be made to Article 4(3) of the ECHR.

AMENDMENT 102

Proposed amendment to Article: 5. Prohibition of slavery and forced labour
Paragraph 2

Submitted by: Georges BERTHU, MEP

Proposed text:

“No one shall be required to perform forced or compulsory labour, **subject to the reservations set out in Article H2** (provisional numbering)”.

Reasons:

The same as for Article 2(1).

AMENDMENT 103**Proposed amendment to Article: 5**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. ...
2. **No one shall be subjected to forced or compulsory labour.**

Reasons:

AMENDMENT 104

Proposed amendment to Article: 5

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace paragraph 2 of the proposed text by the following:

Apart from a legal requisition to fulfil a social obligation, no one shall be required to perform forced or compulsory labour.

Reasons:

There are cases in which the survival of a community may justify compulsory labour, even if it is arduous or dangerous, but legal texts must lay down specific arrangements for the various cases conceivable.

Proposals for Article 6

Proposals for Article 6

AMENDMENT 105**Proposed amendment to Article: 6**

Submitted by: R. VAN DAM, MEP

Proposed text:

The second sentence to be deleted.

Reasons:

The second sentence bears no relation to the powers of the institutions and bodies of the European Union. In this case too, although the right in question needs to be protected, such protection would be better regulated and safeguarded elsewhere (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 106

Proposed amendment to Article: 6. Reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted since the Charter refers to EU bodies only and therefore none of the exceptions laid down in the ECHR apply.

AMENDMENT 107

Proposed amendment to Article: 6

Submitted by: Peter ALTMAIER, Member of the German Bundestag

Proposed text:

Delete sentence 2.

Reasons:

To be systematic, sentence 2 should be deleted since the general limitation clause in the horizontal provisions of the Charter of Fundamental Rights also applies to Article 6.

AMENDMENT 108**Proposed amendment to Article: 6**

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Delete the second sentence.

Reasons:

The limitation results from the horizontal articles.

AMENDMENT 109**Proposed amendment to Article: 6**

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in **specified cases and in accordance with a procedure prescribed by law as laid down in the European Convention on Human Rights.**

AMENDMENT 110**Proposed amendment to Article: 6****Submitted by:** AndrewDUFF, MEP**Proposed text:****Article 6. Right to liberty and security**

Everyone has the right to liberty and security (delete: 2 words) . No one shall be deprived of (delete: 2 words) these save in cases prescribed by law (delete: 1 word) and in accordance with (delete: 1 word) judicial procedures (delete: 3 words).

Reasons:

Article 5 of the European Convention on Human Rights defines the cases in which a person may be deprived of his liberty as follows:

- "1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*

- (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The aim of Article 6 of the Charter is not to allow any cases of deprivation of liberty other than those authorised by the European Convention on Human Rights, which apply by virtue of draft Article H2(2) on the limitation of guaranteed rights, set out in CHARTE 4235/00 CONVENT 27. (Delete: 11 words) These rights should in particular be respected when, in accordance with Title VI of the Treaty on European Union, the Union adopts framework decisions for harmonisation in criminal matters.

AMENDMENT 111

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Art. 6. Right to liberty (delete two words)

Everyone has the right to liberty (delete two words) of person. No one shall be deprived of his liberty save in specific cases and in accordance with a procedure prescribed by law.

Reasons:

If the concept of “security” was viewed in isolation, namely as an object of legal protection in its own right, including it in the Charter of Fundamental Rights would add a new dimension to its contents which would legally bind the State, i.e. the security authorities and thus also the police, to a very large extent. The Member States’ constitutions will not contain provisions of this sort explicitly guaranteeing (public) security. The Amsterdam Treaty does indeed set the Union the aim of creating “an area of freedom, security and justice” (Article 2 of the TEU) and this political objective may be seen as a guarantee of the security of persons living on Union territory. However, there is no need to create an individual legal status with very unspecific contents.

AMENDMENT 112

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 6. Right to liberty.

Everyone has the right to liberty. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law”.

Reasons:

The term “security” in Article 6 sentence 1 still seems unacceptable to the Länder. Taken over from French judicial usage, this term could cause problems under a German understanding of law. It might, for example, give rise to the mistaken belief that citizens had claims to internal security measures. The term is not explained in detail in the statement of reasons; it therefore seems preferable to delete it.

AMENDMENT 113**Proposed amendment to Article: 6**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. Everyone has the right to liberty and security of person.
2. No one may be deprived of his liberty except in the cases mentioned in Article 5(1) of the ECHR.
3. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
4. Everyone arrested or detained in accordance with the introductory part of Article 5(1) and Article 5(c) of the ECHR shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
5. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
6. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Alternative text:

1. Everyone has the right to liberty and security of person.
2. No one may be deprived of his liberty except in the cases mentioned in Article 5(1) of the ECHR and having regard to the rights guaranteed in Article 5(2) to (5) of the ECHR.

Reasons:

As with the ECHR, it is preferable, in the case of each right, to indicate the conditions under which that right may be restricted. With a general restriction clause, the possibilities for restriction may become too extensive. As a result, the proposed text refers to the grounds mentioned in Article 5(1) of the ECHR.

The rights guaranteed in Article 5(2) to (5) of the ECHR are set out in paragraphs 3 to 6 of the present article. Reference to the ECHR would be insufficient here as what is involved is not possible restriction of rights but the substance of rights themselves. If this should prove undesirable given the wish to keep the Charter concise, it would suffice to refer to the rights of someone deprived of his liberty, as laid down in Article 5(2) to (5) of the ECHR. In this connection see the alternative amended text.

AMENDMENT 114**Proposed amendment to Article: 6**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The text of Article 5 (1) of the ECHR should be adopted word for word.

Reasons:

An exhaustive description of the fundamental right to liberty and security is contained in the ECHR. The text of Article 6 as contained in CONVENT 28 is loosely worded.

AMENDMENT 115

Proposed amendment to Article: 6

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Amend to read: “Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law”

For Part B, “Definition of Rights”:

“The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR”

Reasons:

I am happy with the substance of the Praesidium proposal but would suggest the small adaptation shown above which I think reads better and expresses the limitation better. My comments about Article 5 above are relevant. The Praesidium asserts in its commentary that these rights necessarily apply when the Union adopts framework decisions for harmonisation in criminal matters in accordance with Title VI of TEU. That assertion would have to be examined very carefully in the context of existing provisions about competence and justiciability.

AMENDMENT 116

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the second sentence of the draft Article. Reproduce the full Article 5 of the ECHR in a part B of the Charter.

Reasons:

Article 5 of the ECHR is the source of inspiration for this draft Article. It regulates in an exhaustive manner all the instances when the deprivation of a person's liberty is in line with the ECHR. To merely have a reference to (some) "cases" without express mention of those cases would be a step backwards as far as European protection of human rights is concerned. Moreover, the fact that important additional rights as provided for in Article 5 paragraphs 2-5 of the ECHR are left out of the draft Article means that the protection intended to be covered by it is not as wide-reaching as that already afforded by the ECHR.

AMENDMENT 117

Proposed amendment to Article: 6

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty **save in cases prescribed by law and in accordance with a procedure prescribed by law.**”

Reasons:

More appropriate legal drafting in Spanish.

AMENDMENT 118**Proposed amendment to Article: 6****Submitted by:** Piero MELOGRANI**Proposed text** ^{*}:

Right to liberty

Everyone has the right to liberty (...) of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Reasons:

It is proposed that the reference to *security* be deleted from both title and text of the Article, as it is a potential source of misunderstanding. The words “right to security of person” tend to suggest a guarantee against danger, for example dangers relating to crime. The Court has consistently interpreted the “right to security of person” as a safeguard against arbitrary detention, as with the right of *habeas corpus*. That concept is covered by “right to liberty”.

* Proposed amendments are in bold.

AMENDMENT 119**Proposed amendment to Article: 6****Submitted by:** Pervenche BERÈS**Proposed text:**

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed and in accordance with legal procedures.

Reasons:

“Loi” is a concept which does not exist in continental European law.

AMENDMENT 120

Proposed amendment to Article: 6

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty **save in cases prescribed by law and in accordance with a procedure prescribed by law.**”

Reasons:

The proposed wording is a linguistic improvement [to the Spanish], and also brings the text into line with technical legal language: “specific” cases [used in the Spanish] are only those which are prescribed by law and the “legal means” [in Spanish] are the forms or procedures also prescribed by law. Moreover, this is the wording in the French text, suggesting that there must just be a problem with the Spanish translation.

AMENDMENT 121**Proposed amendment to Article: 6****Submitted by:** EINEM/HOLOUBEK**Proposed text:**

“Every *human being* has the right to liberty and security. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.”

Reasons:

It is only possible to deprive natural persons of their liberty. For the sake of clarity, we propose using “human being”.

AMENDMENT 122

Proposed amendment to Article: 6

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

After “security of person” add “and family”.

Reasons:

The aim in specifying further the concept of security is to ensure that it applies to the family sphere and not just the individual.

AMENDMENT 123**Proposed amendment to Article: 6**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:**Replace Article 6 by the following:**

1. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.
2. The public authorities have a duty to organise society in such a way that the safety of persons and property is guaranteed, giving society a sense of security.

Reasons:

Re 1: The general right to liberty has been recognised by Article 1(2). No amendment has been made to the second sentence of Article 6.

Re 2: Society's headlong slide into violence starting at school necessitates a more precise formulation very different from the text in the European Convention on Human Rights.

Proposals for Article 7

AMENDMENT 124**Proposed amendment to Article: 7**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Defer consideration of this Article (although see the proposal in the body of the Reasons)

Reasons:

This article creates problems which cannot be resolved until the totality of the other rights in the Charter have been finalised. This provision relates principally to the provision of remedies. The provision of remedies is rather the question of the horizontal articles and the legal status of the document.

The proposed Article is in any event unsatisfactory in extending Article 13 ECHR to all rights and in removing reference to “national authority”.

My position therefore is that this should be deferred until later. At that stage it may be possible to agree that a version along the following lines be put forward:

For Part A, “Proclamation of Rights”:

“Everyone whose rights and freedoms in this Charter are violated has the right to an effective remedy before an appropriate authority.”

For Part B, “Definition of Rights”:

“The rights in Article 7 are the rights provided a) in the case of acts of the Union Institutions, by Articles TEC 230 (action for annulment), 232 (failure to act); and 234 (preliminary rulings); and b) in the case of Member States implementing Community law, by national rules.”

AMENDMENT 126

Proposed amendment to Article: 7

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Reasons:

This Article (delete: 1 word) reflects Article 13 of the European Convention on Human Rights:

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

The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Johnston, Case 222/84, ECR I 651). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties: an action for annulment when the conditions for admissibility have been fulfilled or a preliminary ruling on admissibility when the case is brought before a national judge. The wording of the Article has been adapted to take account of the specific characteristics of the Union. Thus, reference to a national authority has been deleted, since the Charter applies only to institutions and organs of the Union and since, in this framework, an action may be brought either before the Community judge or before the national judge who is the ordinary-law judge as regards

application of Community law. Accordingly, reference to a national authority has been replaced with reference to a court because the Court precedent refers to judicial protection.

AMENDMENT 126

Proposed amendment to Article: 7

Submitted by: Pervenche BERÈS

Proposed text:

Everyone whose rights or freedoms **have been** violated has the right to an effective remedy before a court.

Reasons:

This wording is in line with the new wording of Article 4.

AMENDMENT 127

Proposed amendment to Article: 7. Right to an effective remedy

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone whose rights and freedoms are violated **within the framework of the activities of the European Union** has the right to an effective remedy **before an independent and impartial court**.

Reasons:

As the Charter should concern only the direct or indirect activities of the institutions of the European Union, it is important to emphasise that here.

Addition of the phrase “before an independent and impartial court” moreover makes it possible to do without Article 8 (see that Article).

AMENDMENT 128

Proposed amendment to Article: 7:

Submitted by: Heinrich NEISSER

Proposed text:

Article 7: Right to an effective remedy

*Everyone whose rights and freedoms **as set forth in this Charter** are violated has the right to an effective remedy before a court.*

Reasons:

This Article is meant to correspond to Article 13 of the European Convention on Human Rights. That Article contains a procedural guarantee which extends only to rights guaranteed in the ECHR; in other words it is accessory. Article 7 of the Draft should therefore also be accessory. However, the present version (CONVENT 28) would include a general right to access to a court, which already exists in Article 8 of the Draft. Our proposed wording would emphasise the binding character of the rights set forth in the Charter.

AMENDMENT 129

Proposed amendment to Article: 7. Right to an effective remedy

Submitted by: Daniel TARSCHYS

Proposed text:

Rephrase this Article in the following way: "Everyone whose rights and freedoms *according to this Charter* are violated has the right to an effective remedy before a *competent authority*".

Reasons:

There are two main problems with the draft version of this Article.

In the first place it is not at all clear what is to be understood by the notion of "rights and freedoms". Article 13 of the ECHR is limited to the rights and freedoms set forth in the ECHR. Are rights and freedoms under domestic law to be included or does the formula in Convent 28 refer only to the rights that are included in the proposed charter? Assuming the latter, I propose to insert a clarification on this point. If any right under domestic legislation is to be covered by the draft Article, including such rights that do not fall within the scope of a "civil right" as this notion is interpreted by the European Court of Human Rights in the light of Article 6 of the ECHR, parts of the procedural laws of Member States (cf. the reference in the statement of reasons to the application of "this principle" also to Member States when they are implementing Community law) probably have to be amended in order to fulfil the requirements of this Article.

A second problem is linked to the reference to "courts" rather than "national authorities", which is the term used in Article 13 of the ECHR. The statement of reasons is not convincing on this point, since national bodies are involved in the implementation of Community legislation.

AMENDMENT 130

Proposed amendment to Article: 7:

Submitted by: Heinrich NEISSER

Proposed text:

Article 7: Right to an effective remedy

*Everyone whose rights and freedoms **as set forth in this Charter** are violated has the right to an effective remedy before a court.*

Reasons:

This Article is meant to correspond to Article 13 of the European Convention on Human Rights. That Article contains a procedural guarantee which extends only to rights guaranteed in the ECHR; in other words it is accessory. Article 7 of the Draft should therefore also be accessory. However, this version (CONVENT 28) would include a general right to access to a court, which already exists in Article 8 of the Draft. Our proposed wording would place particular emphasis on the binding character of the rights set forth in the Charter.

AMENDMENT 131

Proposed amendment to Article: 7

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Everyone whose rights and freedoms, as recognised in this Charter, are violated has the right to effective judicial protection”

Reasons:

1. Given the context of the Charter the precise scope of this right should be specified; it should therefore be stated explicitly that the rights and freedoms to be protected are those recognised by the Charter, and no others.
2. The Spanish word ‘recurso’ [appeal] is used when a case on which sentence has already been passed by a lower body is reviewed either by an administrative or a legal body. The technically more correct phrase – “access to effective judicial protection” is therefore proposed.

The right to effective judicial protection is a fundamental “service” right, requiring that the legislator regulate the relevant form and conditions (i.e. organise the judiciary and the administration of justice) for this right to be exercised and enjoyed by anyone.

AMENDMENT 132

Proposed amendment to Article: 7

Submitted by: Erling OLSEN

Proposed text:

As I already pointed out in my written submission of 17 March 2000, this provision should either be deleted or be dealt with separately as a horizontal provision.

In any case, the words "as referred to in this Charter" should be inserted after the words "rights and freedoms". Moreover, the words "before a court" should be deleted.

Reasons:

This provision does not make sense unless it is made clear which rights and freedoms it covers.

AMENDMENT 133

Proposed amendment to Article: 7

Submitted by: R. VAN DAM, MEP

Proposed text:

"Everyone whose rights and freedoms are violated has the right to an effective legal remedy before a court of competent jurisdiction."

Reasons:

This brings the text closer to Article 13 of the ECHR while taking account of the special characteristics of the Union.

AMENDMENT 134**Proposed amendment to Article: 7****Submitted by:** Piero MELOGRANI**Proposed text** ^{*}:

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court *or an equivalent body*.

Reasons:

As the horizontal clauses specify, the Charter applies not merely to Union bodies but also to Member States when they are applying or implementing Community law. It should therefore be made clear that, at national level, effective remedy may also be sought before “*an equivalent body*”, i.e. a body which, while technically speaking not forming part of the judicial machinery, will by virtue of its position and procedures provide equivalent safeguards (impartiality, fair hearing, etc.) to those of the courts.

* Proposed amendments are in bold

AMENDMENT 135

Proposed amendment to Article: 7. Right to an effect remedy

Submitted by: Micheal O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 7

Everyone whose rights and freedoms are violated has the right to an effective remedy before a **competent authority.**

Reasons:

Change "court" to "competent authority" as there are wider sources of remedies than courts, such as an Ombudsman. This also reflects the language of the ECHR.

AMENDMENT 136

Proposed amendment to Article: 7. Right to effective legal protection (delete 1 word)

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Everyone whose rights and freedoms are violated has the right to (delete 6 words) effective legal protection before a court.

Reasons:

“Legal protection” should be used rather than “remedy”, since “remedy” has a specific and very narrow meaning. Further, “effective remedy” could create the mistaken impression that the remedy must also in some way be successful.

The term “court” should be understood in the sense decided by the CJEC in relation to requests for preliminary ruling pursuant to the second paragraph of Article 234 of the TEC; therefore rulings on appeal in the area of asylum law, for example, may also be taken by an independent and impartial review body (see Section III point 8 of the Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures, OJ C 274/13 of 19 September 1996).

AMENDMENT 137

Proposed amendment to Article: 7. Right to effective remedy

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 7. Right to effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.”

Reasons:

The wording in CONVENT 13 seems preferable to that in CONVENT 28 since the term “remedy”, as understood in German law, has a specific and very narrow meaning.

AMENDMENT 138

Proposed amendment to Article: 7

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

“Every one whose rights and freedoms are violated has the right to **effective access to the courts**”.

Reasons:

The use of the word “recurso” [appeal] in the Spanish could cause confusion with a body of second instance.

AMENDMENT 139

Proposed amendment to: Article 7 (heading)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 7. Right to an effective remedy before a court

Reasons:

This brings the wording of the heading into line with the wording used in the Article.

AMENDMENT 140

Proposed amendment to Article: 7

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone whose rights and freedoms are violated has the right to an effective remedy before **the national or Community court having jurisdiction.**

AMENDMENT 141

Proposed amendment to Article: 7

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace the proposed text of Article 7 by the following:

The European Union guarantees the right of everyone whose rights and freedoms are violated to an effective and rapid remedy before an independent court.

Reasons:

The European Union does not have the power to modify social conduct but has the right and the duty to establish a procedure for protection and remedy.

It is normal and necessary that rapidity be guaranteed; otherwise remedy becomes derisory.

Finally, in such a context, remedy cannot be sought in just any court.

Proposals for Article 8 as a whole

AMENDMENT 142

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Daniel TARSCHYS

Proposed text:

Reconsider the whole text of this Article.

Reasons:

Paragraph 1:

I have several problems with this text which is said to follow Article 6 of the ECHR. Not quite. Firstly, Article 6 ECHR makes a distinction between civil and criminal cases and the case law of the Strasbourg Court is extensive when it comes to the definitions, in particular regarding the meaning of "civil rights and obligations".

Paragraph 2

The draft Article leaves open the object of the "fair and public hearing". Can anyone request a tribunal to conduct a hearing on any matter whatsoever? Article 6 paragraph 1 of the ECHR applies only to cases where the "determination of [a person's] civil rights and obligations or of any criminal charge against [a person]" is concerned.

The way the present draft Article is construed leaves room for doubt as to whether there is a need for draft Article 7. The relationship between the two Articles needs further clarification.

I also question the second paragraph of the draft Article which seems to guarantee free legal aid in all cases, including civil matters. Like many other Member States, Sweden does not automatically grant legal aid in all matters. Article 6 of the ECHR, according to its wording, guarantees legal aid in the form of legal assistance in criminal matters only. Furthermore, neither the Article nor statement of reasons indicates who would bear the costs for what might become a substantial undertaking. EU institutions? Member States? Any estimate of the financial implications of this Article?

AMENDMENT 143

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

Paragraph 2 corresponds rather to a measure implementing the general principle set out in paragraph 1 (everyone is entitled to a fair hearing). It should therefore be included in a legislative text of a lower level, not in a charter of fundamental rights.

Paragraph 1 could be transferred to Article 8 (see amendment to that Article) so as to shorten the Charter by condensing provisions which are in any case already contained in a multitude of international texts and are disputed by no-one.

AMENDMENT 144**Proposed amendment to Article: 8****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

1. Everyone is equal before the law and is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. Legal aid shall be provided in circumstances prescribed by member states.

Reasons:

1. The inclusion of the principle of equality before the law is a more appropriate place, I believe, than in Article One where it is linked with the dignity of the person. It is better to link it with the right in a fair trial.
2. I am not aware of a legal base making legal aid a fundamental right so if it is to be mentioned at all it should be in the context of the legislation of member states.

AMENDMENT 145**Proposed amendment to Article: 8**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The title to be changed to: "Right to access to justice"

The following text to be added to paragraph 1: "Judgment shall be pronounced publicly."

Reasons:

The proposed amendments conform more closely to the ECHR.

AMENDMENT 146

Proposed amendment to Article: 8.1 Right to a fair trial

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 8

1. **In the determination of the civil and political rights and obligations of any person or of any criminal charge against any person,** everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Reasons:

Article 8.1 requires an introduction in order to identify in which area the right applies. It is therefore suggested that the introduction from the ECHR be restored.

AMENDMENT 147

Submitted by: Erling Olsen

Article 8:

A description of the areas covered should be added to paragraph 1.

Paragraph 1 should be reworded as follows: “In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

In paragraph 2 it should be added that legal aid is provided subject to the conditions laid down by national legislation or by the Rules of Procedure of the Court of Justice and the Court of First Instance.

Reasons:

Pursuant to Article 6 (1) of the ECHR, this provision covers only criminal offences and matters relating to civil rights and obligations. As regards the addition to paragraph 2, more detailed provisions concerning the right to a free trial are contained in national legislation and in the Rules of Procedure of the Court of Justice and the Court of First Instance. In its current form, this provision fails to specify *inter alia* that there must be reasonable grounds for conducting proceedings.

AMENDMENT 148**Proposed amendment to Article: 8****Submitted by:** Heinrich NEISSER**Proposed text** (for the Article and the comment):*Article 8. Right to a **fair trial***

1. *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*
2. **Everyone is entitled to be advised and represented by a legal counsel in matters of law.**
Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons:*This Article favours [...]**In Community law [...] applies*

The concept of a “court” is understood here in the broad sense as developed by the European Court for Human Rights in its case law on Article 6 of the ECHR: as an independent and impartial judicial body which decides on cases according to the law on the basis of a regulated procedure with appropriate guarantees. However, the mere fact of being termed a “court” is not sufficient.

The term “legal counsel” means that it is left to the national legal systems to regulate representation in and out of court under the law on professions.

The limitations have not been adopted [...]

Reasons:

The right to legal council is expressly provided for in some European constitutions (Netherlands, Portugal, Italy, Spain) and should therefore be included in the Draft.

The term “court” must be explained to take account of the wide range of judicial bodies in the Member States.

AMENDMENT 149**Proposed amendment to Article: 8****Submitted by:** EINEM/HOLOUBEK**Proposed text:** Article 8. Right to a **fair trial**

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*
2. *Everyone is entitled to make use of a legal counsel.* Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons: The heading should refer to the general concept of a “fair trial”. The right to an impartial tribunal is only one part of this, albeit an important one.

Unlike the Praesidium Draft, the proposed wording of paragraph 1 follows the rule in Article 6(1) of the ECHR that this fundamental right applies to “the determination of (his) civil rights and obligations or of any criminal charge”. Right of access to a court for all actions – the basis for the statement of reasons in the Praesidium text – is already guaranteed in Article 7. The specific procedural guarantees, in particular the principle of a public trial, should in accordance with Article 6 of the ECHR refer to civil rights and obligations and/or criminal charges.

The proposed text avoids having to allow for numerous exceptional procedures (e.g. tax tribunals) via the “general limitation clause”. It makes it immediately clearer to citizens what their rights are. The wording should not create the impression that comprehensive and very far-reaching rights are being promised, which are then largely taken away by a single provision.

The first sentence of paragraph 2 contains a proposal for a new right entitling every person to make use of a legal counsel. In view of the complexity of legal provisions, this right is one of the essential requirements for holding a fair trial. It can also be seen as the logical prerequisite for the right to legal aid guaranteed under the second sentence of paragraph 2. This second sentence follows the Praesidium Draft word for word.

AMENDMENT 150

Proposed amendment to: Article 8

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Right to an impartial judge

Replace “*prudencial*” with “*razonable*” [reasonable] in the Spanish text, replace “tribunal” with “judicial authority” and replace “established” with “predetermined”. Amend the second sentence by adding: “unless the claim is manifestly untenable or unfounded”.

Reasons:

The word “*razonable*” is more correct in Spanish, and moreover is the word used in the ECHR. The term “judicial authority” is more correct in Spanish in that it covers both single court judges and collegiate bodies, which is what tribunals are in Spain. The phrase “predetermined by law” is better than “established”.

As regards free legal aid, the ECHR has agreed that under the Convention such aid may be refused if the claim is manifestly unfounded.

AMENDMENT 151

Proposed amendment to Article: 8. Right to an independent tribunal

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 8. Right to an independent tribunal.

1. “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.
2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice, and where there is a reasonable chance of success.
3. Special tribunals are inadmissible.”

Reasons:

The addition to paragraph 2, “ and where there is a reasonable chance of success” is intended to prevent legal aid being requested for actions which are clearly hopeless or querulous.

The proposed paragraph 3 is intended to exclude special tribunals which would thwart the legal protection of citizens.

AMENDMENT 152

Proposed amendment to Article: 8

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

"1. “Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.

"2. “If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.”

For Part B, “Definition of Rights”:

“The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR”

Reasons:

My amendment defines the right in terms of the relevant ECHR provision. The CONVENT 28 draft is not an accurate expression of the relevant obligations accepted by parties to the ECHR. I do not accept the implied additional general obligations in Article 8 (e.g. relating to hearings in the determinations of all disputes, whether or not about a civil right or obligation or a criminal charge, and legal aid). Accordingly they should not be included in the Charter. I also disagree (for the reasons given in relation to Article 5 above) that it is possible or acceptable to deal with limitations to rights such as these in a general horizontal article.

In any event the detailed provisions of Article 6 ECHR, the corresponding right in this case, contain many positive rights which are not picked up by the short form text, either in the Praesidium’s text or in mine. It is to attract those, as well as any limitations, that the Part B definition text is necessary. This point applies also to several other ECHR-based Articles.

AMENDMENT 153

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. To ensure effective access to justice, legal aid shall be provided to those who lack sufficient resources.

Reasons:

The proposed text retains the principle of free legal aid for those in need. The stipulation that the aid must be “indispensable” to ensure effective access to justice has been left out in order to widen access to justice. The omission of this supplementary condition is in line with the case law of the European Court of Human Rights (see the note to this Article in CONVENT 13).

Proposals for Article 8(1)

AMENDMENT 154**Proposed amendment to Article: 8(1)**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. *All or part of the trial may be held in camera under the conditions listed in Article 6(1) of the ECHR, but judgment shall be pronounced publicly.*

Reasons:

The proposed text follows Article 6(1) of the ECHR more closely since it states explicitly that judgment must be pronounced publicly and also refers to the grounds on which the court may decide that all or part of the proceedings are to be held in camera. For the sake of brevity, reference is made to Article 6(1) of the ECHR.

AMENDMENT 155

Proposed amendment to Article: 8

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1, replace “established” by “already established”.

Reasons:

The proposed amendment is designed to strengthen the right to a fair trial: by emphasising that the tribunal must already be established, it aims to avoid the possibility of ad hoc laws.

AMENDMENT 156

Proposed amendment to Article: 8

Submitted by: R. VAN DAM, MEP

Proposed text:

A new paragraph to be inserted between paragraphs 1 and 2:

2. Judgment shall be pronounced publicly. This right shall not be subject to any restrictions other than those permitted under Article 6(1) of the ECHR.

Reasons:

The text thus conforms more closely to the ECHR.

Proposals for Article 8(2)

AMENDMENT 157

Proposed amendment to Article: 8(2) Right to a fair trial

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Delete paragraph 2

Reasons:

This provision is only binding for access to the CJEC, as the Union is not competent for regulating national provisions on legal aid. For the CJEC, the institution of legal aid is sufficiently embodied in its Rules of Procedure. Moreover, the intent of paragraph 2 is already contained in paragraph 1: it is inherent in the right to a fair trial.

The provision is also problematic from a budgetary perspective.

AMENDMENT 158

Proposed amendment to Article: 8(2)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

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

Reasons:

“*Necessary*” is proposed instead of “*indispensable*”, as it is felt that the latter excessively restricts the substance of the right to legal aid.

* Proposed amendments are in bold

AMENDMENT 159

Proposed amendment to Article: 8

Submitted by: José BARROS MOURA and Maria Eduarda AZVEDO

Proposed text:

Concerns the term used for “legal aid” in the Portuguese version only.

AMENDMENT 160**Proposed amendment to Article: 8**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 2, replace “Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable” by “Those who lack sufficient resources shall be provided with the necessary legal aid”.

Reasons:

The proposed amendment is designed to strengthen the right to a fair trial.

AMENDMENT 161

Proposed amendment to Article: 8

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice *and their defence*.
2. This also applies to witnesses and to victims of acts of criminal violence.

Reasons:

1. Legal aid must be free so as to ensure equality before the law for everyone.
2. With respect to paragraph 2, it would be desirable if – particularly in criminal proceedings – in addition to the rights of the accused, those of the witnesses or those of the victims of acts of criminal violence in general were provided for in an appropriate manner and if they were also guaranteed free, effective protection of their rights in proceedings. This is proposed in the new sentence 3.

AMENDMENT 162**Proposed amendment to Article: 8**

Submitted by: Prof. Jürgen MEYER/Pervenche BERES/ Jo LEINEN/Hans-Peter MARTIN /Ieke VAN DEN BURG

Proposed text:

Article 8 Right to a fair trial and legal counsel

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone is entitled in matters of law to be advised and represented by a lawyer.
2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons:

Paragraph 1 sentence 1 follows the Praesidium's wording.

In sentence 2 the right to a legal counsel is supplemented. Although this right is not explicitly mentioned in the German Basic Law, the Federal Constitutional Court has derived such a right from the concept of the constitutional state (Constitutional Court 63, 266, 284).

This right is expressly provided for in the constitutions of the Netherlands (Art. 18), Italy (Art. 24), Portugal (Art. 20(2) and Art. 269(3) and Spain (Art. 17(3) and Art. 24(2)).

Paragraph 2 follows the Praesidium's wording.

Proposals for Article 9 as a whole

AMENDMENT 163**Proposed amendment to Article: 9****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 9. Presumption of innocence and rights (delete: 2 words) to defence**

Everyone who has been charged shall be presumed innocent until proved guilty according to law, and shall have the right to a defence.

(Delete: paragraph 2)*Statement of reasons*

This Article is taken from Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Given the decision taken in favour of concise drafting, it was not thought necessary to include this Article in full, but in accordance with Article 6 of the TEU these provisions, which clarify the principles set out in the Article of the Charter, are applicable in Community law.

AMENDMENT 164

Proposed amendment to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 9

Everyone who has been charged **with a criminal offence** shall be presumed innocent until proved guilty according to law.

Everyone who has been charged **with a criminal offence** shall be guaranteed respect for that person's right to defence.

Reasons:

It is suggested that "with a criminal offence" be included as it conforms with the ECHR and it makes clear that the Article is about criminal offences only. The original formulation would cause unforeseen consequences if not amended.

AMENDMENT 165

Proposed amendment to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. [In the Swedish text, the words "för ett brott" should be deleted and the word "hans" changed to "**hans/hennes**".]
2. Everyone who has been charged shall be guaranteed respect for his **or her** rights to defence.
[In the Swedish text, the words "för ett brott" should be deleted.]

Reasons:

The Swedish version, which includes the words "ett brott" ["a crime"], does not correspond to the French or English versions. The Swedish version should be changed so that it corresponds to the French and English versions; the words "ett brott" should therefore be deleted from this Article.

AMENDMENT 166

Proposed amendment to Article: 9

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Now covered in Article 8. Therefore delete.

Reasons:

My version of Article 8 deals with the matters in Article 9. In any event, as it stands and without a clear definition in the Part B text defining these rights as the right in Article 6 ECHR, Article 9 would be much too imprecise and apt to create confusion and conflict.

Proposals for Article 9(1)

AMENDMENT 167

Proposed amendment to Article: 9(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Everyone who has been charged *with a criminal offence* shall be presumed innocent until proved guilty according to law.

Reasons:

This addition, whereby the person must have been charged “*with a criminal offence*”, comes from Article 6(2) of the ECHR and makes clear that the presumption of innocence does not apply to “charges” in connection with investigations under administrative law.

* Proposed amendments are in bold

AMENDMENT 168

Proposed amendment to Article: 9

Submitted by: Win GRIFFITHS, MP

Proposed Text:

Everyone who has been charged shall be presumed innocent until proven guilty according to the law and guaranteed respect for his/her rights of defence.

Delete 2

Reasons:

Brevity without loss of meaning.

Proposals for Article 9(2) and (3)

AMENDMENT 169**Proposed amendment to Article: 9****Submitted by:** Kathalijne BUITENWEG**Proposed text:**

Paragraph 2 to be amended as follows:

2. Everyone charged with a criminal offence has the following minimum rights:

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

Reasons:

This amendment replaces paragraph 2 with the verbatim text of Article 6(3) of the ECHR. A list of the "rights of the defence" is best placed in a charter of fundamental rights.

AMENDMENT 170

Proposed amendment to Article: 9

Submitted by: R. VAN DAM, MEP

Proposed text:

Article 6(2): Everyone who has been charged shall be guaranteed respect for his rights to defence pursuant to Article 6(2) and (3) of the ECHR.

Reasons:

The text thus conforms more closely to the ECHR.

AMENDMENT 171

Proposed amendment to Article: 9(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

“Everyone who has been charged has the right to respect for his rights of defence”. (No change to English text.)

Reasons:

The non-gender specific wording “jeder angeklagten Person” is preferable to “jedem Angeklagten” which can only be masculine (translator’s note: this applies to the German only).

AMENDMENT 172

Proposed amendments to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Daniel TARSCHYS

Proposed textU:

Proposal (9.2):

It is suggested to change "respects for his rights" to "the right".

Reasons:

Article 6 paragraph 3 of the ECHR provides important minimum standards for human rights protection in the field of criminal procedural law. It therefore seems insufficient to refer to those rights merely by means of a reference to Article 6 of the TEU. In any event it seems uncertain in which situations this Article is supposed to be applied: to what extent does Community law allow its institutions to charge or prosecute individual citizens?

Guaranteeing only "respect for his rights" seems very weak.

AMENDMENT 173**Proposed amendment to Article: 9(2)**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

2. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Alternative:

2. Everyone charged with a criminal offence is entitled to respect for his rights to defence, as laid down in Article 6(3) of the European Convention on Human Rights.

Reasons:

Article 6(3) of the ECHR has been incorporated word for word. The only change is the use of the term "*strafvervolging*" [charged with a criminal offence] instead of "*vervolging*" [charged] in Dutch, for the sake of clarity. It is not sufficient here to refer to the ECHR, as the provision is concerned not with any limitations on rights but with the actual substance of those rights. Should this version not be desirable in the interests of keeping the Charter concise, the alternative, making clear the defence rights involved by reference to Article 6(3) of the ECHR, will suffice.

AMENDMENT 174

Proposed amendment to Article: 9(3)

Submitted by: Pervenche BERÈS

Proposed text:

Add:

3. Everyone who has been denied justice has the right to compensation.

Reasons:

Proposals for Article 10 as a whole

AMENDMENT 175

Proposed amendment to Article: 10 – No punishment without law

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

The first sentence of paragraph 1 posits an excellent principle (no punishment without law) but which, as it says itself, stems from national or international law, and not from European law.

The continuation of the Article (after the first sentence) sets out simple procedures for applying the general principle and should have been deleted in any case for reasons of simplification, even if the first sentence had been retained.

AMENDMENT 176

Proposed amendment to Article: 10

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed text for the heading:

"No punishment without general legal rule"

Reasons:

See reasons given for Article 1(2).

[For the record SN 2888/00: The term "law" ("Gesetz") belongs to the Member States' legal domain. Its use elsewhere in the draft Charter should consequently also be checked.]

AMENDMENT 177**Proposed amendment to Article: 10****Submitted by:** Pervenche BERÈS**Proposed text:**Title: Principle of legality

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

Reasons:

It is important to provide for the case where the offence no longer exists, as was the case with abortion, and in future the possible decriminalisation of certain drugs.

AMENDMENT 178

Proposed amendment to Article: 10. No punishment without law

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

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

Reasons:

The translation into Swedish which includes "ett brott" does not correspond to the French and English versions. "Offence" in English means more than "brott" does in Swedish – "brott" should be "criminal offence" in English. The Swedish version should be amended so that it corresponds to the French and English texts and therefore "ett brott" should be deleted from the Article.

"Lagöverträdelse" is proposed as a translation instead, which is closer to "offence"/"infraction" respectively.

¹ Does not concern English text.

AMENDMENT 179**Proposed amendment to Article: 10****Submitted by:** Heinrich NEISSER**Proposed text:**

Article 10. No punishment without law

1. *No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be **used as a basis when the penalty is determined.***
2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law¹.*

Reasons:

In its original wording the last sentence of paragraph 1 is misleading since it literally directs that the penalty should be applicable in any case.

In the German version the more common term "Völkerrecht" should be used in paragraph 2 instead of "internationales Recht".

¹ Does not concern English text.

AMENDMENT 180

Proposed amendment to Article: 10

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

Delete the last sentence of 10.1 and all of 10.2 so that the text reads:

“No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed”

For Part B, “Definition of Rights”:

“The right in Article 10 is the right guaranteed by Article 7 of the ECHR”

Reasons:

I have no objections of substance to the Praesidium’s proposed text, although I have previously suggested a text which might be shorter and easier to understand, namely “No one shall be punished except under the law.” My proposals for Part B ensure that Article 10 is understood within the meaning of ECHR Article 7. I have not included the reference made to the principle of retroactivity of a more lenient penal law. I confirm that the UK recognises that principle, but await confirmation that that is so in other Member States.

AMENDMENT 181

Proposed amendment to Article: 10. No punishment without law

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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

Reasons:

The proposed text is intended to replace the term "*general principles of international law*" (CONVENT 28 version) with "*general principles of (international) law*". The latter term is broader in scope and is also more in keeping with the terminology used in public international law. The "*general principles of (international) law*" represent the fundamental rules of the various national legal systems (FRIEDMANN, W., "The uses of "General Principles" in the Development of International Law", in *American Journal of International Law*, 1963, pp. 279-299; DEGAN, V.D., "General Principles of Law – A Source of General International Law", in *Finnish Yearbook of International Law*, 1992, pp. 1-102; ELIAS, O. and LIM, C., "General Principles of Law", "Soft" Law and the Identification of International Law", in *Netherlands Yearbook of International Law*, 1997, pp. 3-50). As regards the origin of the "general principles of (international) law", legal theory divides them into three types (MOSLER, H., "General Principles of Law", in *Encyclopedia of Public International Law*, BERNHARD, R (ed.), Amsterdam, Elsevier, 1995, Vol.II, pp. 511-527): (1) the general principles of law which are recognised in national legal systems and which are relevant to international law; (2) the general principles of law which have come into being in international relations; (3) the general principles of law which apply in all kinds of legal systems, whether national or international.

Proposals for Article 10(1)

AMENDMENT 182**Proposed amendment to Article: 10****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 10. No punishment without law**

No one shall be held guilty of any offence (delete: 7 words) which did not constitute an offence under (delete: 4 words) law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the (delete: 1 word) committing of the offence, the law provides for a lighter penalty, that penalty shall be applicable.

(Delete: paragraph 2)**Reasons:**

This Article is intended to reflect Article 7 of the ECHR, and follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights. Article 7 of the European Convention on Human Rights is worded as follows:

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

In paragraph 2, the reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular.

AMENDMENT 183

Proposed amendment to Article: 10

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1, replace “under national or international law” with “under the law in force”.

Reasons:

The amendment to paragraph 1 is intended to prevent overlapping with paragraph 2.

AMENDMENT 184

Proposed amendment to Article: 10

Submitted by: François LONCLE

Proposed text:

Article 10

In the final sentence of paragraph 1, the word “lighter” should be replaced by “lesser”.

Reasons:

Editorial amendment in line with the terminology used in criminal law.

Proposals for Article 10(2)

AMENDMENT 185

Proposed amendments to Article: 10(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text: regarding “Principle of legality in criminal cases”

Paragraph 2: should be deleted.

Reasons:

Paragraph 2 introduces an open-ended criminal offence, “any act or omission which, at the time when it was committed, was criminal according to the general principles of international law”, which is incompatible with the principle of legality in criminal cases. Vague, unspecific and open-ended references to “the general principles of international law” in order to classify forms of behaviour as offences are inadmissible. In criminal matters, which are strictly subject to a reservation in law, references to indefinite generic “principles” create major legal uncertainty.

This provision should be deleted or, at the very least, the term “general principles” should be removed.

AMENDMENT 186

Proposed amendments to Article: 10(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. This Article shall not prejudice the trial and punishment for any act or omission *in connection with crimes against humanity* which, at the time when it was committed, was criminal according to the general principles of international law.

Reasons:

The inclusion of the reference to “crimes against humanity” more clearly defines the purpose of Article 10(2).

AMENEDMENT 187

Proposed amendments to Article: 10(2)

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 2, replace “of international law” with “of the international legal system”.

Reasons:

The amendment to paragraph 2 uses the expression “international legal system” to include evolving principles now established in the international community.

Proposals for Article 10a

AMENDMENT 188

Proposed amendments to Article: 10

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Add the following after Article 10:

“Article 10a. right to equal humane treatment

1. Any punishment or penalty shall be proportionate to the seriousness of the offence and shall not exceed the limits of what is appropriate and necessary to the achievement of the aim sought.
2. Punishment may not consist of inhumane treatment and shall be directed towards the re-education of the convicted person.”

Reasons:

The principle enshrined in paragraph 1 has frequently been asserted in the decisions of the Court of Justice (see judgement in the *Atalanta Case*, 21/6/79).

Paragraph 2 establishes a civilised principle accepted in a number of European constitutions or legal systems.

Proposals for Article 11

AMENDMENT 189

Proposed amendments to Article: 11. Right not to be tried or punished twice

Submitted by: Georges BERTHU, MEP

Proposed text: Delete this Article.

Reasons:

This Article deals explicitly with criminal law, which comes within the Member States' jurisdiction. If it were to remain, it would need to be linked to specific European jurisdiction, which is not the case here.

It should be noted that the same criticism could probably be levelled at the previous Articles, although there is no express reference in them to criminal law.

AMENDMENT 190**Proposed amendment to Article: 11****Submitted by:** Erling OLSEN**Proposed text:**

The provision in Article 4(2) of Protocol No 7 to the ECHR on the reopening of a criminal case should be incorporated into Article 11, or be clearly evident from Part B.

Reasons:

AMENDMENT 191**Proposed amendment to Article: 11****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 11. Right not to be tried or punished twice**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been (delete: 1 word) lawfully acquitted or convicted (delete: 5 words).

Statement of reasons

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

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

Paragraph 2 of the Article in Protocol No 7 will be applicable by virtue of the horizontal clause relating to the Convention. The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65,

Gutmann v Commission [1966] ECR 150 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij-NV v Commission, not yet published).

AMENDMENT 192

Proposed amendment to Article: 11

Submitted by: R. VAN DAM, MEP

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law, in accordance with Article 4 of Protocol No 7 to the ECHR.

Reasons:

This text fits in better with the ECHR and moreover leaves open the possibility of a case being reviewed (on the basis of new facts or circumstances).

AMENDMENT 193**Proposed amendment to Article: 11****Submitted by:** Frits KORTHALS ALTES**Proposed text:**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law, *due account being taken of the requirements of Article 4 of Protocol No 7 to the European Convention on Human Rights*.

Reasons:

The addition of a reference to Article 4 of Protocol No 7 to the ECHR is necessary as the provision would otherwise be too imprecise.

AMENDMENT 194

Proposed amendments to Article: 11. Right not to be tried or punished twice

Submitted by: Daniel TARSCHYS

Proposed text:

The draft text needs to be complemented and include what is presently in paragraph 2 of Article 4 of Protocol 7 to the ECHR.

Reasons:

The draft roughly corresponds to paragraph 1 of Article 4 of Protocol 7 of the ECHR but leaves out paragraph 2. The explanation that the latter will be applicable by virtue of the horizontal clause is not sufficient. It needs to be reproduced, at least in part B.

If the Charter later becomes a legally binding text it would be acceptable only with an inclusion of paragraph 2 of Article 4 of Protocol 7 ECHR.

AMENDMENT 195

Proposed amendment to Article: 11

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and the French Prime Minister

Proposed text:

Add "*and with the penal procedure of that State*" to this Article after "*in accordance with the law*".

Reasons:

This addition is in line with Article 4 of Protocol No 7 to the ECHR. It is essential in order to ensure that no court interprets this provision as prohibiting the application of both an administrative and a criminal penalty for one and the same offence.

AMENDMENT 196

Proposed amendment to Article: 11. Right not to be tried or sentenced twice for one and the same offence

Submitted by: Jordi SOLÉ TURA

Proposed text:

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

Reasons:

The term "sentenced" is more appropriate in law than "punished", which is a more general word, more often used outside the legal context. The amended title of the Article is clearer, since anybody can be tried and sentenced more than once for different offences.

AMENDMENT 197**Proposed amendment to Article: 11****Submitted by:** Piero MELOGRANI**Proposed text** *:

“No one shall be liable to be tried or punished again in criminal proceedings ***within the same legal system*** for an offence for which he has already been finally acquitted or convicted ***in criminal proceedings*** in accordance with the law ***of that system.***”

Reasons:

Article 4 of Protocol No 7 to the ECHR, from which the present regulation draws inspiration, establishes the *non bis in idem* principle only for the jurisdiction of a single State. At present, international law allows one country to try for the same act a person who has already been tried and convicted in another country (e.g. in cases of international drug trafficking or counterfeiting of money). It is therefore proposed to specify that the prohibition of second trials applies only within a single *"legal system"*. This expression is preferred to the word "State" used in Article 4 of Protocol No 7 to the ECHR to allow extension of the regulation to Union bodies in the event, rather remote in fact, that in the future the Union assumes direct powers in criminal matters. It also needs to be specified that the final judgment that prevents a second trial must be a judgment *"in criminal proceedings"*.

* The parts it is proposed to amend are indicated in bold.

AMENDMENT 198

Proposed amendment to Article: 11

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Insert “, under the jurisdiction of the European Union or of one of its Member States,” between “for which” and “he has already been finally”.

Reasons:

This proposed qualification, which is also included in the ECHR, is indispensable.

AMENDMENT 199

Proposed amendment to Article: 11

Submitted by: Pervenche BERÈS

Proposed text:

Heading: Right not to be tried or convicted twice

Reasons:

The term “conviction” is more accurate.

AMENDMENT 200

Proposed amendment to Article: 11

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Right not to be tried or **convicted** twice **in criminal proceedings for the same conduct**

No one shall be liable to be tried or convicted again in criminal proceedings for conduct for which he has already been finally acquitted or convicted in criminal proceedings.

or alternatively:

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

Reasons:

The fact that this Article applies only to criminal proceedings needs to be made clearer, thus leaving open the possibility of both a criminal and a disciplinary penalty for the same conduct. Spain has not ratified Protocol No 7 to the ECHR. The problem which this principle raises is its extension to disciplinary matters, prohibiting the imposition of both a criminal and an administrative penalty for the same conduct in the case of the special constraints which apply, for instance, to civil servants or others having particularly close links with the administration (for example, an employee of the authorities may receive a custodial sentence for murder from a criminal court and may subsequently, as a consequence of the criminal conviction, be dismissed from the administration by an administrative authority in disciplinary proceedings. Besides this, the first wording is preferred in this case as it more precisely confines the scope of the preclusion of double jeopardy to two criminal penalties for the same **conduct**, rather than offence, although an alternative draft accommodating the above comments is also proposed.

The reservations expressed by Spain are shared by other States in the Union.

A qualification must be attached to the renewed assertion in the statement of reasons that “the “*non bis in idem*” principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 150 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission, not yet published)”. At least in the case of the first decision, which it has been possible to consult, what it covers is a prohibition on double non-criminal disciplinary penalties (in the case in question, imposed by the Commission on a Community official) for the same conduct, a different matter from that considered here. In Spanish, the term [*sentencia*] “*firme*” (i.e. not open to any further appeal) is considered more technically correct than “*definitiva*” (i.e. not merely interlocutory) for “finally”.

AMENDMENT 201

Proposed amendment to Article: 11

Submitted by; Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“No one shall be tried or punished twice for the same criminal offence”

For Part B, “Definition of Rights”:

“The right in Article 11 is the right guaranteed by Article 4 of Protocol 7 to the ECHR. It does not prevent the reopening of the case in accordance with the law if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings which could affect the outcome of the case”

Reasons:

The Praesidium draft differs from the corresponding ECHR right because it is not confined to retrial in the same state and because it may prevent cases being reopened in circumstances where ECHR Protocol 7 would permit that. I do not believe that ECJ case law or the constitutional traditions common to the member states justify the Praesidium wording. My version ensures that Article 11 is understood within the meaning of Article 4 of ECHR Protocol 7 and the case law. It also makes clear, in Part B, that there are very significant qualifications.

AMENDMENT 202

Proposed amendment to Article: 11

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be tried or **convicted** again for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Reasons:

For reasons of legal exactitude, the phrase *punished in criminal proceedings* should be replaced by the word *convicted*.

AMENDMENT 203

Proposed amendment to Article: 11

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

After "acquitted or convicted", add "in criminal proceedings."

Reasons:

The double jeopardy principle relates solely to judgments in criminal cases (a disciplinary or administrative penalty is no obstacle to criminal proceedings for the same conduct).

AMENDMENT 204

Proposed amendment to Article: 11. Right not to be tried or punished twice

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings in a Member State of the European Union for an offence for which he has already been finally acquitted or convicted in a Member State of the European Union.

Reasons:

The existing version (CONVENT 28) implies that the jurisdiction of every other State in the world must be recognised. However, Article 4 of Protocol No 7 to the ECHR limits such recognition to jurisdiction within a State. The text proposed here occupies an intermediate position and extends the recognition of judgments in criminal cases to Member States of the European Union. The preclusion of double jeopardy then applies within this single judicial area.

AMENDMENT 205**Proposed amendment to Article: 11**

Submitted by: Paul-Henri MEYERS, representative of the Luxembourg Government

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings by a court of a State for an offence for which he has already been finally acquitted or pardoned in accordance with the law of that State or of another State.

Reasons:

The absolute wording of the text is out of line with the provisions of the Rome Statute of the International Criminal Court, signed in Rome on 17 July 1998. In Article 20, the Statute expressly requires compliance with the double jeopardy principle (*ne bis in idem*). However, an exception to that principle is made in the same Article for instances where the aim of proceedings before another court was to shield a person from his criminal responsibility.

AMENDMENT 206**Proposed amendment to Article: 11****Submitted by:** Simone BEISSEL**Proposed text:**

“... finally acquitted or convicted in accordance with the law, **subject to the provisions concerning the jurisdiction and organisation of the International Criminal Court**”.

Reasons:

To avoid a conflict of texts.

Proposals for Article 12

AMENDMENT 207**Proposed amendments to Article: 12****Submitted by:** Daniel TARSCHYS**Proposed text:**

Merge this text with the present draft Article 13 (paragraph 1) and make sure that the wording corresponds to Article 8 of the ECHR.

Reasons:

Draft Article 12 is said to be based on Article 8 of the ECHR. That Article, however, refers to respect for private *and* family life. It is difficult to separate the two concepts. A single Article covering both aspects would be preferable.

The words "honour and reputation" have been added. It is not entirely clear how these terms should be interpreted. Concern has been expressed that this addition might entail limitations on the freedom of expression.

Paragraph 2 of Article 8 of the ECHR has not been included in draft Article 12. Instead there is a separate draft horizontal Article dealing with limitations in general terms. That Article speaks of legitimate interests, a term found in the case-law of the European Court. Unlike Article 8 (and also Articles 9, 10 and 11) it does not specify which those interests are. Exceptions from a right should be defined as precisely as possible. It is therefore preferable to have a special paragraph in this Article dealing with exceptions, as in the ECHR.

AMENDMENT 208

Proposed amendment to Article: 12

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 12. Respect for private life

**Everyone has the right to respect for his or her privacy, (delete: 5 words) home
(delete: 6 words) and communications.**

Reasons:

This Article is based on Article 8 of the European Convention on Human Rights, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

AMENDMENT 209

Proposed amendment to Article: 12

Submitted by: R. VAN DAM, MEP

Proposed text:

Add: No limitations on this right going beyond those possible under Article 8 of the ECHR shall be permitted.

Reasons:

This aligns the text more closely on the ECHR.

AMENDMENT 210

Proposed amendment to Article: 12

Submitted by: Win GRIFFITHS, MP

Proposed text:

Everyone has the right to respect for his/her privacy, his/her home and correspondence.

Reasons:

This is closer to the ECHR Article 8. This issue of honour and reputation would be better considered in the preamble if inclusion is thought to be essential

Strasbourg Court judgements have already determined, I believe, that correspondence covers all forms of modern communication such as e-mails.

AMENDMENT 211

Proposed amendments to Article: 12

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Delete “his honour and his reputation” and replace “geheim” (“secrecy”) in the Dutch text by “vertrouwelijkheid” (“confidentiality”).

Reasons:

The right to respect for honour and reputation has no need of protection as a fundamental right. Protection is already guaranteed by both the civil and the criminal law remedies which are available.

The equivalent of “confidential correspondence and communications” would be more natural in Dutch than “secrecy of correspondence” or “secrecy of communications”.

AMENDMENT 212

Proposed amendments to Article: 12

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Everyone has the right to respect for his privacy (5 words deleted), his home and the confidentiality of his correspondence and communications.

Reasons:

The addition of a right to the protection of honour and reputation goes beyond Article 15(2) of the ECHR and threatens to undermine freedom of expression and freedom of the press.

AMENDMENT 213

Proposed amendments to Article: 12. Respect for privacy

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

"Article 12: Respect for privacy

1. Everyone has the right to respect for his privacy, his personality (5 words deleted), his home and place of business and his communications, in particular the confidentiality of his correspondence and communication.
2. (new) Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.

Reasons:

Re the heading and paragraph 1:

The concept of "private life" appears to be too narrow in view of the risks facing modern man. "Privacy" is, therefore, a more appropriate term.

Both home and place of business need to be protected.

The insertion of the concept of "communications" is intended to cover new media developments, e.g. Internet communications.

Re paragraph 2:

Paragraph 2 has been taken from Article 19 on data protection, which is to be deleted, and in terms of both content and systematic arrangement belongs here.

AMENDMENT 214

Proposed amendment to Article: 12

Submitted by: Heinrich NEISSER

Proposed text:

Article 12. Respect for private life

*Everyone has the right to respect for his privacy, his honour and his reputation, his home and **his communications.***

Statement of reasons:

This Article is based on [...].

The term "honour" has been added [...].

This fundamental right has also to be weighed against other fundamental rights in individual instances, in particular the right to freedom of speech or of the press.

Reasons:

The English term "communications" is better rendered in German by the far more comprehensive term "*Kommunikation*".

Article 8 of the European Convention on Human Rights, on which this Article draws, does not include the terms "honour" and "reputation". Their inclusion in draft Article 12 could create the impression here that, in the event of a conflict of fundamental rights with the right to freedom of expression, the scales are being tilted against freedom of speech. The balance between respect for private life and freedom of speech should remain unaltered.

AMENDMENT 215**Proposed amendments to Article: 12**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

"Everyone has the right to respect for his privacy, his honour and his reputation; the right to the inviolability of the home and the confidentiality of communications, irrespective of the medium used, shall also be guaranteed ... The exercise of such rights may be limited by law for reasons of public policy and, where appropriate, subject to prior judicial authorisation."

Reasons:

The alternative version includes a reference to the limits on the exercise of this right. The non-compliance expressed in the previous amendments to the form in which rights and their limits are defined is thus repeated. The conviction that the limits on rights are part and parcel of their content and very definition must be added to all that has been previously stated. In some cases, as with the freedom of expression, the limit is established specifically in defence of other rights, such as the right to honour or privacy. In the case of those rights which apply also to private relationships, the idea that the statement of limits somehow deprives the right of any expressive force, when what it does is precisely the reverse, i.e. it guarantees such right, has to be resisted. The limitations are intended not so much for States as for the citizenry. In this case there has to be a reference to both the existence of limits on such rights (see Article 8 of the ECHR), and even the requirement that they be established by law, and their guarantee, with the requirement of limitation by judicial act.

AMENDMENT 216

Proposed amendments to Article: 12. Respect for private life

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 12: Respect for privacy

Everyone has the right to respect for his privacy, his honour and his reputation, his home and his communications, in particular the confidentiality of his correspondence and communications."

Reasons:

The notion of "private life" appears to be too narrow in view of the risks facing modern man. The term "privacy" is, therefore, proposed.

The adoption of the modern term "communications" – already originally provided for in CONVENT 13 – is designed to guarantee coverage of the entire Internet problem.

AMENDMENT 217

Proposed amendments to Article: 12

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

"Everyone has the right to respect for his privacy (*5 words deleted*), his home and the confidentiality of his correspondence and communications."

Reasons:

The explicit protection of a person's "honour and reputation" involves the risk of huge restrictions on the right of free speech, particularly in the case of criticism levelled at people in public life and at state institutions. Reference may also be made to Article 1, which expressly protects human dignity.

AMENDMENT 218

Proposed amendments to Article: 12

Submitted by: EINEM/HOLOUBEK

Proposed text:

"Everyone has the right to respect for his privacy, his honour and his reputation, his home and *the confidentiality of his information and communications (secrecy of correspondence and communications)*".

Reasons:

In order to give greater force to the idea, already tackled in the proposal of the Praesidium, that developments in means of communication be taken into account, we propose that a right to respect for the confidentiality of information and communications be fundamentally incorporated.

In the light of technical developments, it should be made clear at the outset that this Article extends protection to confidential information and communications, including if necessary the confidentiality of the sender or the recipient of such information or communications, irrespective of the means of communication selected. Such protection covers any information and communications intended by the sender not for general consumption but for a specific person or a limited, set number of persons, excluding third parties.

AMENDMENT 219

Proposed amendment to Article: 12

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the text of the Article with the following:

"Everyone has the right to respect for his privacy, his honour and his reputation, his home and for the freedom and confidentiality of his communications."

Reasons:

The rewording is intended to make the scope of the rule clearer.

AMENDMENT 220

Proposed amendment to Article: 12

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. Everyone has a right to respect for his privacy, including his personal data, his home, his correspondence and other confidential communications.
2. The right referred to in paragraph 1 may be limited only in accordance with the conditions laid down in Article 8(2) of the European Convention on Human Rights.

Reasons:

It is preferable to drop Article 19 and include the right to protection of personal data in the general article on privacy. The proposed Article 19, which grants everyone the right to determine for himself whether his personal data may be disclosed and how they may be used, is too broad in view of (recent) legislation in force in the Member States on data protection. The basic assumption is that personal data may be processed, provided this is for justified purposes and that processing takes place in an appropriate manner, that there is sufficient transparency towards those concerned and that, where appropriate, they are given the opportunity to protest against the processing of their data. The same basic assumption is central to the EC Directive on data protection (Directive 95/46/EC), on which Member States' data protection legislation is based. The provision in the EU Charter need go no further than recognition of the right of every individual to protection of his personal data. Moreover, it is important that the limitation clause in Article 8(2) of the ECHR also applies to the handling of personal data.

It would be preferable to use the expression “*vertrouwelijke communicatie*” (“confidential communications”). This wording fits in better with language usage than “*communicatiegeheim*” (“confidentiality of .. communications”). Furthermore, “reputation” does not need separate protection, since it is already included in “privacy”. Singling out reputation for separate protection could also conflict with freedom of expression.

AMENDMENT 221

Proposed amendment to Article: 12

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.”

For Part B, “Definition of Rights”:

“The right in Article 12 is the right guaranteed by Article 8 of the ECHR”

Reasons:

The Praesidium draft includes references to “honour”, “reputation” and “communication” which are not found in the relevant ECHR right; and it separates family life (see Article 13). I do not believe that the additional references are common to the constitutional traditions of the member states, or supported by ECJ case law, and I am concerned that they could entail new rights of uncertain meaning and application for the EU institutions and for member states when acting on their behalf. My version restores the meaning of the corresponding ECHR right. As regards “communication”, I believe, subject to the views of the Council of Europe representative, that the European Court of Human Rights has developed and continues to develop the meaning of “correspondence” in the light of its general jurisprudence – as it did in the Malone case, for example.

AMENDMENT 222

Proposed amendments to Article: 12

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Add a new paragraph reading:

"2. Everyone has the right to protect the confidentiality of his communications by means of encryption."

Reasons:

European and national governments have been unable and/or unwilling to protect their citizens' communications against uncontrolled tapping. Keyword: Echelon. Citizens and businesses should thus have the right to protect the confidentiality of their (digital) communications by cryptographic means. Promotion of the use of encryption to the point where it becomes a fundamental digital right is the logical end consequence of the developments of recent years, with national governments in the EU having eased and scrapped restrictions on the use of cryptography.

Compare the European Commission standpoint: "The public needs access to technical means providing effective protection against the violation of communications confidentiality. Data keying is often the only effective and affordable means of satisfying this need." (from European Commission document entitled "Towards a European Framework for Digital Signatures and Encryption" - COM (97) 503, October 1997).

Compare also the EP Resolution of 16 September 1998 on transatlantic relations/Echelon system : "considers that the increasing importance of the Internet and worldwide telecommunications in general and in particular the Echelon System, and the risks of their being abused, require protective measures concerning economic information and effective encryption."

AMENDMENT 223

Proposed amendments to Article: 12

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

Replace Article 12 with the following:

- “1. Everyone has the right to respect for his privacy, his honour and his reputation.
2. The home shall be inviolable.
3. The confidentiality of correspondence shall be respected and the law shall organise protection of other means of communication.
4. This Article may only be departed from by the law and for reasons of public policy.”.

Reasons:

The proposed text wrongly covers situations which are different to the point of being contradictory. Thus, the confidentiality of correspondence remains the rule in the social life of today, while the general public wrongly believes that confidentiality is ensured in telecommunications.

It is important, therefore, to distinguish between the general principle (par. 1), the specific situation of the home (para. 2) and the confidentiality of communications (pars. 3 and 4).

The Charter must guarantee that principles may be departed from only by force of law, with the contradictory publicity which that entails. Furthermore, there can be legislation to that effect solely for reasons of public policy, far removed from the degrading rules and regulations established by authorities which are too often faceless and acting purely on budgetary grounds, as happens in Belgium (and elsewhere) in the treatment of welfare beneficiaries.

Proposals concerning the whole of Article 13

AMENDMENT 224

Proposed amendments to Article: 13

Submitted by: Peter ALTMAIER, Member of the Bundestag (German Parliament)

Proposed text;

Delete paragraph 1.

Paragraph 2 to become paragraph 1.

Paragraph 3 to become paragraph 2 and to read:

“Marriage and family shall enjoy respect and protection.”

Reasons:

Article 13 as it stands is unclear and repetitive. The proposed wording of paragraph 2 (new paragraph 2) dispenses with the need for paragraph 1. The inclusion in the protection prescribed in Article 13, alongside the family, of marriages entered into in accordance with the respective national provisions would also seem to be appropriate.

AMENDMENT 225**Proposed amendment to Article: 13****Submitted by:** José BARROS MOURA and Maria Eduarda AZEVEDO**Proposed text:**

Article 13

1. ...
2. Everyone has the right to marry according to the national laws governing the exercise of this right.
3. Everyone has the right to found a family according to the national laws governing the exercise of this right.
4. Present paragraph 3.

AMENDMENT 226

Proposed amendment to Article: 13. Family life

Submitted by: Georges BERTHU, MEP

Proposed text:

- “1. **The family, which brings up children, is the basic unit of society; it has the right to the protection of the public authorities and of society.**
2. Everyone has a right to respect for his family life.
3. **Men and women** have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

Reasons:

It should be remembered that the family is based on the union of a man and woman, who bring up any children. This wording is based on the Universal Declaration of Human Rights (Article 16(3)), which states that the family is the natural and fundamental element of society and has a right to the protection of society and of the State. The wording does not preclude the existence of other possible forms of union not resulting in the birth of children and ineligible, therefore, to claim the same protection from the public authorities as the family as such under this head.

The proposed amendment adds a new paragraph 1 defining the family and guaranteeing it the protection of the public authorities and of society (thereby making paragraph 3 of the basic text redundant).

AMENDMENT 227

Proposed amendment to Article: 13

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 13. Family life

(Delete: paragraph 1)

**1 (ex: 2). Everyone has the right to marry, to form a partnership and to found a family
(delete: 12 words).**

2 (ex: 3). The family shall enjoy legal, economic and social protection.

Reasons:

The first paragraph of this Article is based on Article 12(2) (delete: 8) of the European Convention on Human Rights (delete: 9 words), which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right."

The reference to partnerships refers to the contemporary practice of establishing households outside the definition of orthodox marriage, and is consistent with Article 13 of the Treaty establishing the European Community.

(Delete: 19 words) Paragraph 2 (delete: 3) applies to the Union when it adopts measures within its powers to take account of family protection needs. (Delete: 15 words)

AMENDMENT 228**Proposed amendment to Article: 13**

Submitted by: Prof. Dr Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN

Proposed text:

Article 13. Marriage and family

1. Everyone has the right to marry and to found a family, according to national laws and with the free and full consent of the intending spouses.
2. Long-term partnerships shall have the right to protection against discrimination.
3. Marriage and the family shall enjoy special protection. The family shall enjoy legal, economic and social protection. Single parents, families with numerous children and families with disabled members shall be entitled to special social assistance from the public authorities.

Reasons:

The proposed amendment repeats, in a slightly amended form, the proposed amendment I submitted on 28 March (CONTRIB. 60) and clarifies my original draft for discussion (submitted on 6 January; CONTRIB. 2).

Protection of marriage and of family life is an essential fundamental and human right which must be taken into account in the Charter of Fundamental Rights.

Paragraph 1 firstly guarantees the right to marry freely and to found a family. Both rights represent rights of protection against State intervention.

This right is embodied in Articles 8 and 12 of the ECHR, in Article 16 of the Universal Declaration of Human Rights, in Article 23(2) and (3) of the International Covenant on Civil and Political Rights (ICCPR), in Article 6(1) of the (German) Basic Law and in numerous constitutions of the Member States.

The European Court of Justice has stated that the right to marry and the protection of the family already belongs to the fundamental rights recognised by Community law.¹ Even the European Court of Human Rights has repeatedly confirmed this principle.²

The restriction "according to national laws" is based on the identical provision in Article 12 of the ECHR. The aim is to avoid the Convention having to produce a Europe-wide definition of the term "marriage".

The statement "with the free and full consent of the intending spouses" takes over the corresponding wording of Article 23(3) of the ICCPR. This rule is also contained in the Universal Declaration of Human Rights (Article 16(2)), which conveys the rule's general recognition and esteem.

Paragraph 2 takes account of a sociological change in society which must be covered by a modern Charter of Fundamental Rights. The number of unmarried persons living together in Germany has increased more than six-fold between 1978 and 1998. Similar trends are to be noted in all European countries. Even conservative parties are therefore taking these sociological facts into account to an increasing extent.³

¹ See Wetter, Irmgard: *The Charter of Fundamental Rights of the European Court of Justice*. Frankfurt a.M. inter alia, 1998, pp. 168 et seq and the references to judgments of the European Court of Justice in the footnotes pp. 660 et seq.

² Frowein, Jochen Abr./Peukert, Wolfgang: *European Convention on Human Rights*, Strasbourg inter alia, 1996, pp. 421 et seq.

³ e.g. at the Small Party Congress of the German CDU, see *Frankfurter Allgemeine Zeitung* of 11.12.1999 "Small Party Congress discusses charity and family policy".

Even in new constitutions, for example in the Constitution of Brandenburg, the need for protection of long-term partnerships is recognised (Article 26(2)).

In addition, more and more Member States of the Union are also taking account of the rights of homosexuals by giving them the possibility of registering their partnership with the aim of preventing existing legal discrimination. While paragraph 2 is not intended to prompt any options in favour of a particular lifestyle, the ban on discrimination does, however, constitute a minimum requirement.

The second sentence of paragraph 3 takes over the wording adopted by the Praesidium. The third sentence of paragraph 3 places particular categories of families under the special protection of the Union. The protection of families with numerous children is embodied in the Constitutions of Greece (Article 21(2)), Italy (Article 31) and Poland (Article 71(1)). The Constitution of Brandenburg (Article 26(1)) also contains a protective rule concerning single parents and families with disabled members.

In accordance with the relevant case law of the European Court of Human Rights, Article 8 of the ECHR also protects single parents who come under general family protection.¹

Although the current proposal from the Convention (CONVENT 28) contains an explicit Article on the protection of children, it does seem appropriate at this point to place the sociological unit in which the majority of children live under special protection.

¹ Frowein, Jochen Abr./Peukert, Wolfgang: European Convention on Human Rights. Strasbourg, inter alia, 1996, p. 424.

AMENDMENT 229**Proposed amendment to Article: 13****Submitted by:** Pervenche BERÈS**Proposed text:**

1. Everyone has the right to respect for his life with his partner and for his family life.
2. Everyone has the right to marry and to found a family (eleven words deleted).
3. The family shall enjoy legal, economic and social protection.

Reasons:**Account should be taken of situations outside marriage.**

In the second paragraph the reference to national law should be deleted so that third-country nationals do not follow practices which are contrary to the principles of the Member States of the Union (polygamy, etc.).

AMENDMENT 230

Proposed amendment to Article: 13. Family life

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. Everyone has the right to respect for and protection of his married and family life.
2. Men and women have the right to marry and to found a family, according to the national laws governing the exercise of this right.
3. Delete.

Reasons:

Re paragraph 1

Protection of the family is covered by the amended paragraph 1, which means that paragraph 3 can be deleted.

Re paragraph 2

The wording takes over the ECHR wording to a large extent.

AMENDMENT 231

Proposed amendment to Article: 13. Family life

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 13. Family life

1. Everyone has the right to respect for his family life.
2. Everyone has the right to marry or to found a family according to the national laws governing the exercise of this right."

Reasons:

The use of the word "or" instead of "and" should make it clear in paragraph 2 that founding a family may also be possible and permissible irrespective of whether people are married.

Moreover, the German Länder are in favour, at least at present, of deleting paragraph 3, since its current wording would confer a comprehensive right to benefits.

AMENDMENT 232**Proposed amendment to Article: 13****Submitted by:** Dr Sylvia-Yvonne KAUFMANN**Proposed text:**

1. Everyone has the right to respect for *his lifestyle*.
2. Everyone has the right to chose his lifestyle freely and to found corresponding partnerships.
3. All lifestyles shall enjoy equal respect and legal, economic and social protection.

Reasons:

This proposed amendment embraces everyone's right to marry and have a family. However, it also takes account of social trends towards a variety of lifestyles which means that, in accordance with individual Member States' laws, an individual's right to choose his lifestyle and partnership is to be guaranteed.

AMENDMENT 234

Proposed amendment to Article: 13

Submitted by: EINEM/HOLOUBEK

Proposed text:

- "1. Every *individual* has the right to respect for his family life.
2. Every *individual* has the right to marry and to found a family, according to the *Member States'* laws governing the exercise of this right. *No one shall be compelled to marry.*
3. The family shall enjoy legal, economic and social protection."

Reasons:

For reasons of clarity of terms it is proposed that "individual" be used, as only natural persons are meant.

The reference to the "Member States'" (instead of "national" in the draft) laws makes it clear that the Member States have jurisdiction over this matter.

The newly proposed second sentence of paragraph 2 is intended to make it clear that in particular even custom must not threaten the voluntary nature of marriage.

For the rest, the proposal takes over unchanged the draft text proposed by the Praesidium.

AMENDMENT 235

Proposed amendment to Article: 13

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right”

For Part B, “Definition of Rights”:

“The right in Article 13 is the right guaranteed by Article 12 of the ECHR”

Reasons:

The Praesidium formulation of the relevant ECHR right (in Article 13.2) is not identical with that accepted by parties to the ECHR, and fails to attract the case law. The accretion in 13.3 has no satisfactory legal base and is inappropriate. 13.1 is unnecessary if my proposal to restore it to Article 12 is followed (see above). My version of Article 13 ensures that the acceptable content of Article 13 is understood within the meaning of the relevant ECHR provision, and the case law.

AMENDMENT 236

Proposed amendment to Article: 13(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

(The change from “gezinsleven” to “familieleven” in the Dutch text does not affect the English version).

Reasons:

(Does not concern the English text).

Proposed amendment to Article: 13(3)

Proposed text:

Delete paragraph 3.

Reasons:

Paragraph 3 contains a vaguely-worded provision made redundant by the guarantee in paragraph 1.

AMENDMENT 237

Proposed amendments to Article: 13. Family life

Submitted by: Daniel TARSCHYS

Proposed text:

Merge paragraph 1 with Article 12.

Reasons:

Paragraph 1 is redundant as this right follows from other Articles (i.a. 3 and 12).

Paragraph 3 spells out an objective for public policy and is thus better placed in the preamble.

AMENDMENT 238

Proposed amendments to Article: 13

Submitted by: Jean-Maurice DEHOUSSE, Alternate Member of the Convention

Proposed text:

Replace Article 13 with the following:

1. Men and women of marriageable age have the right to marry and to found a family according to the procedures laid down by law.
2. The family shall enjoy, irrespective of its composition, legal, economic, social and fiscal protection.
3. Two persons, whether or not of the same sex, may enter into a long-term union the details of which are defined by law; the law shall also define the protection such a union is to enjoy.
4. Everyone has the right to respect for his family life.

Reasons:

Over the last half century, the situation described in this Article has evolved sufficiently for the wording of the Charter text to depart from the text of the European Convention in order to take account of that fact.

A single-parent family must, therefore, be protected in the same way as a traditional two-parent family.

Likewise, it is important to take account of changing habits regarding homosexuality.

Finally, measures applying to homosexual couples which have been recently introduced in several parts of Europe are proving useful in the case of couples whose homosexuality is a matter of fact, and not of love.

Experience also shows the value of including a fiscal chapter in family protection.

Proposals for Article 13(2)

AMENDMENT 239

Proposed amendments to Article: 13

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to respect for his family life.
2. **Everyone has the right, under the laws governing the exercise of this right and by mutual consent, to marry or cohabit and to found a family."**

Reasons:

AMENDMENT 240

Proposed amendments to Article: 13

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2: delete.

Reasons:

Paragraph 2 is unrelated to any Union powers.

AMENDMENT 241

Proposed amendments to Article: 13. Family life

Submitted by: Jordi SOLÉ TURA

Proposed text:

“2. Everyone has the right to found a family according to the national and Community laws governing the exercise of this right.”.

Reasons:

The word “**marry**” has been deleted since the family may or may not be founded on the basis of marriage, depending on the laws. the words “and **Community**” have been added in order to allow for European Union competence.

AMENDMENT 242

Proposed amendments to Article: 13(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Men and women have an equal legal right to marry and to found a family according to the national laws governing the exercise of this right.”

Reasons:

Wording in line with Article 8 of the European Convention on Human Rights.

AMENDMENT 243

Proposed amendment to Article: 13(2). Family life

Submitted by: Hubert HAENEL

Proposed text:

2. *Men and women* have the right to marry and to found a family, according to the national laws governing the exercising of this right.

Reasons:

Discussions within the Convention have made it clear that the article on family life should guarantee the possibility for men and women to marry and found a family as a fundamental right. That possibility is also guaranteed by Article 12 of the European Convention on Human Rights, and the proposed amendment accordingly follows the wording of that provision.

Proposed amendment to Article: 13(3). Family life

Proposed text:

3. *Marriage and* the family shall enjoy legal, economic and social protection.

Reasons:

Legislation should not regulate the different forms of couple, as that is a matter of personal choice and thus of individual freedom. However, it is only right that marriage should enjoy the same legal, economic and social protection as the family.

AMENDMENT 244

Proposed amendment to Article: 13(2) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

2. **Men and women have** the right to marry and to found a family, according to the national laws governing the exercise of this right.

Reasons:

To make it clear that marriage is understood as being between persons of different sexes. The proposed text makes it possible to reconcile Article 12 of the European Convention on Human Rights with present circumstances.

Proposals for Article 13(3)

AMENDMENT 245

Proposed amendment to Article: 13

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo Nikula

Proposed text:

It is proposed that Article 13(3) (“*The family shall enjoy legal, economic and social protection*”) be deleted on the grounds of being superfluous.

AMENDMENT 246

Proposed amendment to Article: 13(2) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

3. **Marriage and** the family shall enjoy legal, economic and social protection.

Reasons:

To make it clear that marriage is understood as being between persons of different sexes. The proposed text makes it possible to reconcile Article 12 of the European Convention on Human Rights with present circumstances.

AMENDMENT 247

Proposed amendment to Article: 13

Submitted by: R. VAN DAM, MEP

Proposed text:

3. The family, as a natural and social unit, shall enjoy legal, economic and social protection.

Reasons:

Paragraph 3 gives a more detailed definition of the position of the family. The family is described in similar terms in Article 16 of the Universal Declaration of Human Rights, Article 16 of the European Social Charter and Article 10 of the International Covenant on Economic, Social and Cultural Rights.

AMENDMENT 248

Proposed amendment to Article: 13. Family life

Submitted by: Daniel TARCHYS

Proposed text:

Merge paragraph 1 with Article 12.

Move paragraph 3 to the preamble.

Reasons:

Paragraph 1 is redundant as this right follows from other articles (i.e. 3 and 12).

Paragraph 3 spells out an objective for public policy and is thus better placed in the preamble.

AMENDMENT 249

Proposed amendment to Article: 13

Submitted by: Erling OLSEN

Paragraph 3 should be deleted.

Reasons:

Paragraph 3 sets out an objective, not a right.

AMENDMENT 250**Proposed amendment to Article: 13****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

1 and 2 as written. Delete 3

Reasons:

The reasons for the existing text throw doubt on its (Article 3.3) place here and raise an issue of when it would be relevant for the European Union to regard it as a fundamental right. Further discussion is needed before a decision can be made on the appropriateness of its inclusion in the Charter.

AMENDMENT 251

Proposed amendment to Article: 13

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Delete paragraph 3 of the text in CONVENT 28.

Reasons:

The current formulation refers to an obligation which does not belong in this part of the Charter.

Proposals for Article 14

AMENDMENT 252

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Georges Berthu, MEP

Proposed text:

Every human being has the right to freedom of thought, conscience and religion. **This right includes freedom to change his religion or belief and freedom to manifest his religion or belief in worship, teaching and observance.**

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of individuals.

Reasons:

This amendment incorporates the wording of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which seems preferable.

- Paragraph 1: it is necessary to point out that freedom of thought, conscience and religion is not an abstract right, but has practical consequences and outward manifestations (worship, teaching, practice, etc.).
- Paragraph 2: same reasons as for Article 2 of the Charter (paragraph 1a). The presence of a final horizontal clause referring to possible limitations in general terms is not adequate in most cases. Where the need arises, details must be added to each article concerned.

AMENDMENT 253**Proposed amendment to Article: 14****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 14. Freedom of thought, conscience and religion****1 (new). Everyone has the right to freedom of thought, conscience and religion.****2 (new). No one is obliged to disclose thought, religion or belief.****Reasons:**

This wording (delete: 1 words) is based on Article 9 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The fact that the Charter does not incorporate the limitations set out in paragraph 2 does not deprive those restrictions of their effects under Union law, by virtue of the horizontal clause relating to the Convention. The Court of Justice of the European Communities endorsed religious freedom in the Prais Case (judgment of 27 October 1976, Case 130/75, ECR 1589). Given the decision in favour of concise drafting for the Charter, the implications of religious freedom have

not been included, but this is not intended to deprive these provisions of their effect as they are only the implications of the general principle.

Paragraph 2 accords inter alia with the principle of non-discrimination established by Article 13 of the Treaty establishing the European Community.

AMENDMENT 254

Proposed amendment to Article: 14

Submitted by: R. VAN DAM, MEP

Proposed text:

Add two new paragraphs:

2. This right includes the right to change religion and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance.
3. No limitations on this right are permissible other than those provided for in Article 9(2) of the ECHR.

Reasons:

These additions are essential if this right is to mean anything in practice. This text also corresponds more closely to the ECHR.

AMENDMENT 255

Proposed amendment to Article: 14

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The text in CONVENT 28 should be deleted and replaced by the full text of Article 9(1) of the ECHR.

Reasons:

Article 9(1) of the ECHR contains a comprehensive statement of freedom of religion.

AMENDMENT 256**Proposed amendment to Article: 14**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to freedom of thought, conscience and religion. No one may be compelled to participate in a religious or ideological act, or to take a religious oath. *This right includes the freedom to manifest ones religion or belief either alone or in community with others and in public or private.*
2. No one shall be obliged to disclose his religious or ideological views.
3. If a citizen of the Union is unable to fulfil any obligations imposed on him by a public authority because they conflict with his conscience, the community may, as far as it is able, substitute other obligations of equal value. This does not apply to taxes and similar charges.

Proposed text: Meyer; amendments by Voggenhuber in italics.

Reasons:

AMENDMENT 257

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Professor Dr. Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN

Proposed text:

- "1. Everyone has the right to freedom of thought, conscience and religion. No one may be compelled to participate in a religious or ideological act or to take a religious oath. Freedom of religion shall include the public and private, individual and communal manifestation of religion and the right of churches and religious communities to order and administer their affairs in accordance with the laws of the Member States.
2. No one shall be obliged to disclose his religious or ideological views.
3. If a citizen of the Union is unable to fulfil any obligations imposed on him by a public authority because they conflict with his conscience, the community may, as far as it is able, substitute other obligations of equal value. This does not apply to taxes and similar charges.

Reasons:

The proposed amendment repeats, in a slightly amended form, the proposed amendment I submitted on 28 March (Contrib. 60) and clarifies my original draft for discussion (submitted on 6 January; Contrib. 2).

The first sentence of paragraph 1 follows the Praesidium's proposal (Convent 28) and the identically worded first sentence of Article 9(1) of the ECHR.

The second sentence makes it clear that the rights mentioned constitute freedoms in the sense that no one may be compelled to take part in ideological, religious or ritual acts. There are comparable rules in the Constitutions of Belgium (Article 20), Denmark (§ 68), Finland (§ 9), Luxembourg (Article 20), Sweden (Chapter 2 § 2) and Germany (Article 4(1) of the Basic Law). The European Court of Human Rights has also acknowledged a negative freedom of religion in its interpretation of the first sentence of Article 9(1) ¹ and has spoken of protection for atheists, agnostics, sceptics and indifferent persons. ²

The third sentence of paragraph 1 incorporates a rule corresponding to Declaration no 11, which was adopted by the Intergovernmental Conference during the Amsterdam Summit.

Paragraph 2 is based on corresponding rules in the Constitutions of Portugal (Article 41(3)), Sweden (Chapter 2 § 2), Spain (Article 16(2)), Slovakia (Article 41(2)), Poland (Article 53(7)) and Brandenburg (Article 13(2)). Article 136 of the Weimar Constitution which, under Article 140 of the Basic Law, is an integral part of that Law, also contains the right not to express one's religious convictions. Such a right can also be deduced from Article 5(1) of the Basic Law. ³

Paragraph 3 gives substance to freedom of conscience. Since as a result of the Common Foreign and Security Policy a common defence policy (Article 17(1) TEU), which also includes combat forces (Article 17(2) TEU), will in future fall within the Union's sphere of competence, observance

¹ See in: Frowein, Jochen Abr./Peukert, Wolfgang: European Convention on Human Rights. Strasbourg inter alia, 1996, p. 371.

² Ibid., p. 368.

³ Maunz/Dürig/Herzog et al: Basic Law Commentary. Munich, 1991, Volume 1, (instalments 1-29), Article 5, NO 40.

of moral distress as a basic right must be incorporated in the Charter.

The right to conscientious objection as a possible, but not binding form of freedom of conscience, is recognised in the Constitutions of Germany (Article 4(3) of the Basic Law) and Portugal (Article 41(6)). Although the right to conscientious objection is not explicitly guaranteed in the ECHR (see Article 4(3)(b)), nevertheless Frowein/Peukert write in their ECHR comments on freedom of religion and conscience: "However, to expect that the State should take account of religion when determining obligations is an established right." ¹ To this extent the proposed wording would lead to affirmation of this right.

However, the restrictive wording "as far as it is able" and "this does not apply to taxes and similar charges" in paragraph 3 avoids a situation involving an arbitrary and excessive assertion of moral distress. The European Court of Human Rights has also consistently rejected corresponding attempts. ²

¹ Ibid., p. 378.

² Ibid., p. 376 et seq.

AMENDMENT 258

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Freedom of religion includes the manifestation of faith in public and private, individually and in community with others and the right of churches and religious communities to order and manage their affairs in accordance with the laws of the Member States.

Reasons:

Inherent in every religion is the shared belief of more than one person. Consequently, every religion feeds on joint observance. The current wording does not reflect that. On the other hand, freedom of thought and conscience are individual matters.

The European Union's action affects not only the individual in his exercise of his fundamental right to freedom of religion, but also religious bodies, in particular churches and established religious communities. The Commission on Human Rights has in principle granted churches and religious communities the automatic right to have recourse to Article 9 of the ECHR. The reference to national legislation in the second sentence is in line with subsidiarity and the diversity of circumstances in which national established churches find themselves. It also follows from the Declaration on the status of churches and non-confessional organisations attached to the Amsterdam Treaty.

If the right of churches could be reflected in a general right relating to legal persons, parts of the second sentence could still be revised.

AMENDMENT 259

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Heinrich NEISSER

Proposed text:

*"Everyone has the right to freedom of thought, conscience and religion. **This right includes the freedom of the individual to change his religion or belief and the freedom, alone or in community with others and in public or private, to practise his religion or belief in worship, teaching, prayer and observance.**"*

in eventu

*"Everyone has the right to freedom of thought and conscience and, **alone or in community with others, religion.**"*

Reasons:

Article 9 of the European Convention on Human Rights, on which this Article is based, contains a right to freedom of religion which is not only individual, but also collective. Under the ECHR, churches and religious communities may therefore also refer to freedom of religion. On the other hand, the CJEC judgment in the Prais case, referred to in the reasons in support of Article 14 of the draft, concerned only the individual's right to freedom of religion and a collective right to freedom of religion cannot be derived therefrom. To guarantee a collective right as well, it therefore seems

necessary to go back to the text of Article 9(1) of the European Convention on Human Rights.

With the second proposed wording, an attempt is made to enshrine this principle in concise terms.

AMENDMENT 260

Proposed amendment to Article: 14

Submitted by: Alvaro Rodriguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Addition of two paragraphs 2 and 3, reading as follows:

"2. The exercise of these rights shall be subject only to such limitations as are prescribed by law and are necessary and proportionate for the protection of public order, health and morals or for the protection of the rights and freedoms recognised in this Charter.

3. No one shall be compelled to make any statement about his ideology, religion or beliefs."

Reasons:

The limitations on this right, laid down in the second paragraph of Article 9 ECHR, which should be included in the Article, are omitted for the reasons already set out in previous amendments and which should be set out here too.

The addition of a new paragraph 3 aims to increase, by means of a general prohibition clause, the scope of this right to freedom, which is of fundamental importance for individual self-determination in a democratic society. This addition is particularly appropriate in view of the future enlargement of the European Union and the incorporation of new Member States with a complex social and religious structure and reality.

AMENDMENT 261

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

- "1. Everyone has the right to freedom of thought, conscience and religion.**

- 2. No one shall be compelled against his conscience to perform military service under arms."**

Reasons:

It seems appropriate to enshrine the right of conscientious objection also in the Charter by means of the proposed paragraph 2. In addition, it should be pointed out here that the freedom of religion granted in paragraph 1 at the same time comprises the exercise of religion in community.

Shortening by any other means the rule set out in Article 9 of the European Convention on Human Rights, on which this Article is based, would not be acceptable.

AMENDMENT 262

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

"1. Everyone has the right to freedom of thought, conscience and religion.

2. Everyone has the right to refuse to do military service."

Reasons:

With reference to the horizontal Article H.1 (Scope of the Charter), the scope of Article 14(2) applies to military operations within the context of the EU crisis forces agreed upon at the Helsinki summit and currently being set up. It does not touch upon national law. The basic right to conscientious objection is a vital component of the freedom of conscience of the individual, constituting freedom from State pressure to kill.

AMENDMENT 263

Proposed amendment to Article: 14

Submitted by: EINEM/HOLOUBEK

Proposed text:

"Everyone has the right to freedom of thought, conscience and religion. *This right includes the freedom of the individual to change his religion or belief and the freedom, alone or in community with others and in public or private, to practise his religion or belief in worship, teaching, prayer and observance.*"

Reasons:

The first sentence corresponds to the text of the draft proposed by the Praesidium. The first sentence reproduces word-for-word the relevant second sentence of Article 9(1) ECHR.

By taking over Article 9(1) ECHR in full, in the first place debate on potential differences between the Charter and the ECHR – for instance, with regard to the right to practice religion publicly – is avoided. Secondly, by describing the guaranteed right more precisely, it is immediately clear to the citizen what rights he can derive from Article 14. The Charter is thus made easier to understand, because the citizen does not first have to look up Article 9(1) ECHR.

AMENDMENT 264

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

Add a second sentence:

“This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and private, to manifest his religion or belief, in worship, teaching, practice and observance.”

Reasons:

This addition, which takes over the wording of Article 9 of the ECHR, is particularly significant in that it enshrines the freedom to manifest religion or belief, as well as the collective dimension of the freedom of religion. These two aspects of religious freedom are of great importance in modern society, which is becoming increasingly multicultural. The addition is also justified by a desire to ensure consistency between Article 14 and Article 15 (Freedom of expression): in the latter, the second sentence of the corresponding Article of the ECHR, explaining the contents of the right (“This right shall include ...”), has been taken over. If the corresponding sentence on the subject of freedom of religion is not used this might give the impression of a weakening in the freedom of religion.

AMENDMENT 265

Proposed amendment to Article: 14

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Everyone has the right to freedom of thought, conscience and religion. **As regards religion, this right also includes public or private, individual or collective manifestations of religious communities.**

Reasons:

It is necessary to supplement the right to freedom of religion by freedom of worship.

AMENDMENT 266

Proposed amendment to Article: 14

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text, as follows:

For Part A, “Proclamation of Rights”

Add: “Limitations can be placed on this right only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 14 is the right guaranteed by Article 9 of the ECHR”

Reasons:

The limitations explicit in the relevant ECHR right are of fundamental importance. I do not believe they can be dealt with satisfactorily in a general horizontal article. They are integral to the right. My amendment also ensures that Article 14 is understood within the meaning of ECHR Article 9 and associated case law.

AMENDMENT 270

Proposed amendments to Article: 14. Freedom of thought, conscience and religion

Submitted by: Daniel TARSCHYS

Proposed text:

Adapt current draft to the language of Article 9 ECHR.

Reasons:

Draft Article 14 is said to reproduce Article 9 of the ECHR but it fails to state what the right includes, nor does it contain a clause on limitations. It is difficult to see why draft Article 14 does not state the content of the right when draft Article 15 does so with respect to freedom of expression. As regards limitations, see my comments on draft Article 12. The complete text of Article 9 ECHR should be confirmed in a part B of the Charter.

AMENDMENT 271

Proposed amendment to Article: 14

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Add the following paragraph:

"2. Freedom of individual and collective practice of religious belief shall be guaranteed."

Reasons:

The proposed paragraph guarantees the specific form of exercise of the religious freedom stipulated in the first paragraph: individually and collectively.

AMENDMENT 272

Proposed amendment to Article: 14

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed addition of a second sentence:

This right includes freedom, either alone or in community with others and in public or private, to manifest a religion or belief, in worship, teaching, practice and observance.

Reasons:

This addition is taken from Article 9 of the ECHR. It is geared in the main to European culture and should not be seen as arising from the horizontal provisions.

AMENDMENT 273

Proposed amendment to Article: 14

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Add the following to the proposed text:

Everyone has the right to freedom of thought, conscience and religion, to the extent that thought, conscience and religion observe the principles of tolerance and democracy.

Reasons:

In an area as delicate and explosive as this, reference to the general limitation clause is not sufficient.

Proposals for Article 14a

AMENDMENT 274**Proposed amendment to Article: 14**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Insert the following after Article 14:

"Article 14a. Freedom of research.

1. There shall be freedom of research.
2. Everyone has the right to be able to benefit from the results of research."

Reasons:

The Article plugs a gap in the text proposed by the Praesidium, by asserting freedom of research as a fundamental right.

Proposals for Article 15

AMENDMENT 275

Proposed amendment to Article: 15 Freedom of expression

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone has the right to freedom of expression **of his opinions and** freedom to receive and impart information (...).

These rights shall be exercised within the framework of any moral duties and responsibilities which the law may prescribe in accordance with the European Convention on Human Rights and Fundamental Freedoms.

Reasons:

The text of the basic Article has been shortened. A reference has been added to the limitations which already exist in the ECHR as the wording as it stands might give the false impression of conferring an absolute right.

AMENDMENT 276

Proposed amendment to Article: 15

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 15. Freedom of expression

1 (new). Everyone has the right to freedom of expression and to receive, hold and impart ideas and information. (Delete: 25 words)

2 (new). Expressions of cultural, national and regional diversity as well as plurality of opinion shall be respected.

Reasons:

This Article incorporates the principles of Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Paragraph 2 has not been included but it is applicable under Union law by virtue of the horizontal clause relating to the Convention. The Court of Justice has endorsed the principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (judgment of 18 June 1991, Case C-260/89, ECR I-5485).

Paragraph 2 is intended to reflect Article 151 of the Treaty establishing the European Community and its Protocol on the System of Public Broadcasting in the Member States of the Treaty of Amsterdam.

AMENDMENT 277

Proposed amendment to Article: 15. FREEDOM OF EXPRESSION

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.”

Reasons:

No change in meaning but better Spanish syntax.

AMENDMENT 278**Proposed amendment to Article: 15****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

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

Reasons:

It is better to include the whole of the ECHR Article 10.1 for the avoidance of doubt on the licensing issue.

AMENDMENT 279

Proposed amendment to Article: 15

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Freedom of the press and reporting freedom shall be guaranteed. The bodies of the Union shall be under an obligation to provide the press with information.**
3. ***Diversity of opinion shall be safeguarded.***
3. **Art, science, research and teaching shall be free of constraint.**

(Basic text = Meyer, addition in italics = Voggenhuber)

Reasons:

AMENDMENT 280**Proposed amendment to Article: 15**

Submitted by: Prof. Dr Jürgen MEYER/Jo LEINEN/Hans–Peter MARTIN/Ieke VAN DEN BURG

Proposed text:**Article 15. Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Freedom of the press and broadcasting and reporting freedom shall be guaranteed. The bodies of the Union shall be under an obligation to provide the press and broadcasting services with information.**
3. **Art, science, research and teaching shall be free of constraint.**
4. **The powers of the Member States to ensure public broadcasting services shall not be affected.**

Reasons:

This proposed amendment repeats, in a slightly altered form, the proposal I submitted on 28 March (Contribution 60) and clarifies my original discussion draft (submitted on 6 January; Contribution 2).

Paragraph 1 retains the wording proposed by the Praesidium.

Paragraph 2 adds a new right not hitherto covered. It is, however, an undoubted fact that press and broadcasting freedom is one of the most important rights in a democratic policy governed by the rule of law. Such freedom forms part of the lifeblood of democracy. That is the reason for its inclusion in nearly all the Constitutions of the Member States.

The obligation to provide information covered in the second sentence is guaranteed in the Federal Republic of Germany by straightforward laws in the individual Länder. Although no State obligation on the press to provide information can be derived from Article 5(1), second sentence, of the German Basic Law, Maunz/Dürig/Herzog conclude in their commentary on the Basic Law that any Government or administration which has demonstrably laid itself open to the charge of hostility to the press must inevitably expect to be asked whether its behaviour is prompted exclusively by a quite acceptable circumspection vis-à-vis the press or whether it rather constitutes a general aversion to publicity, which runs counter to the principle of democracy.¹ It is particularly important for the Union to respect this principle since only now can a spirit of openness be said to be emerging.

Paragraph 3 adds a new right to the Praesidium proposal which was included in the previous Presidency proposal (CONVENT 13) and supplemented at the time by the word “teaching” at my suggestion.

Since the right expressed in paragraph 3 is included in nearly all the Constitutions of the Member States and applicant countries, it is difficult to understand why this paragraph has been removed from the present Presidency proposal (CONVENT 28). This right is, for example, included in Article 5(3), first sentence, of the German Basic Law, Section 13(3) of the Finnish, Article 16(1) of the Greek, Article 33(1), first sentence, of the Italian, Article 42(1) of the Portuguese, Article 20(1) of the Spanish, Article 59 of the Slovenian, Article 73 of the Polish and Article 70G(1) of the Hungarian Constitutions. It is also included in the Constitutions of Brandenburg (Article 31(1)), Mecklenburg-Western Pomerania (Article 7(1)) and Saxony (Article 21).

Freedom of research and teaching is an undisputed human right, which is to be found inter alia in Article 15 of the International Covenant on Economic, Social and Cultural Rights.

¹ Maunz/Dürig/Herzog et al.: Grundgesetz Kommentar [Basic-Law Commentary]. Munich, 1991, Volume 1 (Parts 1-29), Article 5, No 138.

Paragraph 4 provides a permanent guarantee for public broadcasting. This paragraph is in line with Protocol 23 to the Amsterdam Treaty and is moreover included as a principle in individual Constitutions of the Member States (Article 38(5) Portugal) and in some of the Constitutions of the East German Länder (Article 19(4), Article 20(2)).

The whole of Article 15 is accompanied by a limitation clause in many Constitutions and Human Rights Agreements. Given the stage reached in the Convention's discussions, such a limitation is not yet being formulated here since we must first be clear on the rights being included before considering limitations. It can however already be said that there could be a general limitation clause based on Article 20(2) of the International Covenant on Civil and Political Rights.²

² “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

AMENDMENT 281**Proposed amendment to Article: 15****Submitted by:** Pervenche BERÈS**Proposed text:**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

This freedom does not authorise racist or xenophobic propaganda. It does not prevent public authorities from putting in place licensing schemes for radio, television and cinema, or machinery to guarantee the pluralism of information.

Reasons:

Pluralism must be guaranteed if there is to be freedom of expression.

AMENDMENT 282

Proposed amendment to Article: 15 Freedom of expression

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Article 15. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the press, broadcasting, cinema and other public media is guaranteed.
3. Art, science, research and teaching shall be free of constraint.

Reasons:

Title:

Freedom of information should be mentioned in the title.

Paragraph 2:

The right formulated in par. 1 may be interpreted as including freedom of the press, broadcasting and cinema.

However, for the sake of clarity, it is important to mention media freedom specifically, on the understanding that this does not mean any new powers for the EU, but recognition of Member States' powers, and that the dual system of public/private broadcasting services will continue. Express mention of freedom of the media would not only serve to show that the lessons of Germany's past have been learnt, but would also be a gesture towards the applicant countries, which were likewise deprived of media freedom for a long time.

Paragraph 3:

Express safeguards for art, science, research and teaching should be incorporated.

AMENDMENT 283**Proposed Amendment to Article: 15****Submitted by:** Heinrich NEISSER**Proposed text:***Article 15. Freedom of expression*

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

Reasons:

The new sentence reproduces the 3rd sentence of Article 10(1) of the ECHR. The European Court of Human Rights has ruled that this sentence allows Contracting States to use licensing procedures to pursue goals relating specifically to broadcasting policy that are not included among the grounds for intervention listed in Article 10(2) of the ECHR, such as pluralism, objectivity, quality and balanced programming. During discussion of this draft Article it was argued, broadly speaking, that this sentence has no individual significance any more, not least owing to the "Television without frontiers Directive", which guarantees the freedom to broadcast across borders. However, it might be countered that the Directive covers only advertising, sponsorship, protection of young people and basic programme requirements (e.g. no violence), thus leaving areas in which there is no Community harmonisation. Member States' power to pursue specifically broadcasting-policy goals should not be minimised here. However, under no circumstances should these state licensing procedures call into question the core of this right to freedom of expression.

AMENDMENT 284**Proposed amendment to Article: 15**

Submitted by: Guy BRAIBANT, personal representative of the President of the Republic and of the French Prime Minister

Proposed text:

Add, at the end of the Article "*it shall be exercised with due regard for the principles of financial transparency and political pluralism*".

Reasons:

This addition is in keeping with proposals from a number of Convention members. It spells out the scope of the right to freedom of expression and brings it up to date.

AMENDMENT 285

Proposed amendment to Article: 15

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

In Portuguese, “*ideais*” (ideals) should be replaced by “*ideias*” (ideas) (English unaffected).

AMENDMENT 286

Proposed amendment to Article: 15

Submitted by: R. VAN DAM, MEP

Proposed text:

Add the following new paragraph:

2. This right shall not be subject to any limitations beyond those possible under Article 10(2) of the European Convention on Human Rights.

Reasons:

The text would thus reflect the ECHR more closely.

AMENDMENT 287**Proposed amendment to Article: 15****Submitted by:** Piero MELOGRANI**Proposed text** *:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to **seek**, receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. **Art, science and research shall be free of constraint.**

Reasons: The proposal is to specify that freedom of expression includes freedom to seek information. Furthermore, it is deemed necessary to insert a second paragraph confirming the freedom of art, science and research which, moreover, was contained in Article 15 of working document CONVENT 13.

* Proposed amendments are in bold.

AMENDMENT 288

Proposed amendment to Article: 15

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add a paragraph 2, reading as follows:

2. The exercise of these rights shall be limited by observance of those rights recognised in this Charter, those established by the laws implementing them, those deriving from public safety, and in particular, the right to a good name, privacy and protection of children and young people.

Reasons:

In this case, perhaps more clearly than in any other case, there is a need to refer expressly to the limits of these rights, in accordance with the wording of previous amendments concerning this question.

AMENDMENT 289

Proposed amendment to Article: 15. Freedom of expression

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

- “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. *Freedom of the press and of broadcasting shall be guaranteed.*
2. *Art, science, research and teaching shall be free of constraint.*”

Reasons:

Although, in some Member States, the right to freedom of expression does cover freedom of the press and of broadcasting, a corresponding passage should be inserted into the Charter in order to make it clear that these fundamental rights are protected throughout Europe. Press and radio/television serve the purposes of information by comprehensive and truthful reporting and by disseminating ideas. They contribute to education and entertainment and are both a medium and a factor in the free formation of opinions. They take account of cultural diversity in Europe and promote European integration.

Member States' right to guarantee the continuing existence and development of public broadcasting services remain unaffected.

In addition, the German Länder think it essential that the Charter should include specific safeguards for art, science, research and teaching. This is also broadly in line with previously submitted suggestions for Article 15 in CONVENT 13.

AMENDMENT 290**Proposed amendment to Article: 15**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

The text of the Article should be replaced by the following:

- "1. Everyone has the right to freedom of expression.*
- 2. This right shall include freedom to hold opinions and to seek, receive and impart information and ideas without interference by public authority, regardless of frontiers, and without conditioning resulting from large media conglomerates.*
- 3. The cultural and political pluralism of the mass media shall be guaranteed."*

Reasons:

Given the invasive power of modern mass media, the Article should be redrafted in terms which offer the citizen an effective guarantee against manipulation and conditioning.

AMENDMENT 291

Proposed amendment to Article: 15. Freedom of expression

Submitted by: Daniel TARCHYS

Proposed text:

Adapt the current draft to the language of Article 10 ECHR.

Reasons:

The draft purports to reiterate the principles of Article 10 ECHR. In fact the draft Article 11, para. 1 has omitted the last sentence of the ECHR, namely: “This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.

Draft Article 15 may create the impression that no limitations are permitted. It is important to reproduce the limitations in the ECHR here and not in a horizontal article (cf. comments under Art. 12).

AMENDMENT 292

Proposed amendment to Article: 15

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed text for a new title:

Freedom of expression and information

1. In the second sentence the term "**interference by public authority**" should be replaced by "**ensorship**".
2. The following two sentences should be added to the Article:

Everyone shall have the right to obtain information, without hindrance, from generally accessible sources. The freedom of dissemination of information shall be guaranteed.

Reasons:

The right to obtain information freely is the logical counterpart to freedom of expression and a basis for civic electoral choice.

The freedom of information logically also requires the dissemination of information to be protected as a fundamental right, not only by press, radio and film but by all possible technical media both present and future. This is why the general term "dissemination of information" should be used.

AMENDMENT 293**Proposed amendment to Article: 15**

Submitted by: Frits KORTHALS ALTES

Proposed text:

The following new paragraph 2 should be added:

2. The right referred to in paragraph 1 may be limited only in accordance with the conditions laid down in Article 10(2) of the European Convention on Human Rights.

Reasons:

In view of the system proposed as regards limitations, the article should include a separate paragraph referring to Article 10(2) of the ECHR.

AMENDMENT 294

Proposed amendment to Article: 15

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend text to produce two-part text, as follows:

For Part A, “Proclamation of Rights”

Add to existing text: “Formalities, restrictions, conditions or penalties can be placed on this right only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 15 is the right guaranteed by Article 10 of the ECHR”

Reasons:

My amendment would ensure that Article 15 is understood within the meaning of the relevant ECHR right and its case law. I am also proposing a reference to the limitations in Part A, for much the same reasons I offered in relation to Article 14. In both cases I think it important to reflect the different wording of the limitations in the individual ECHR right. This could not be achieved in a single horizontal article as is proposed by the Praesidium.

AMENDMENT 295

Proposed amendment to Article: 15

Submitted by: Jean-Maurice DEBOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. The following should be added to the existing text after the phrase "interference by public authority":

... except in order to protect democracy, fundamental rights and the young.

2. The text as amended above becomes §1, with insertion of the following paragraphs:

. § 2: Freedom of expression implies the right to speak one's own language.

. § 3: Where one or more administrative languages have to be chosen for the sake of an efficiently functioning society, the choice must be made by law.

. §4 : Where an indigenous language is not an administrative language, it shall nevertheless remain a fundamental cultural feature contributing to Europe's rich cultural heritage.

. §5 : By this token, any indigenous language which is a regional language within the meaning of the European Charter of Regional or Minority Languages deserves respect, protection and aid. The detailed rules for implementing this principle shall be determined by law, whereby the requirements of efficiency must not be allowed to infringe fundamental rights and freedoms.

3. Insertion of a new Article 15a, reading as follows

The press, radio and television are part of freedom of expression. However, this freedom must take account of the essential need to protect the young, the general ban on any apology for violence and any statement of opinion capable of infringing human dignity. No other restriction may be formulated other than by law.

Reasons:

Re 1: In an area as difficult as this, giving rise to such strong emotions, it is no longer enough merely to refer to the general limitations clause.

Re 2: Problems in this regard are bad enough in the existing Member States, but it is well known that most of the applicants for enlargement have much more serious problems and many more of them too. The Convention cannot neglect the problem, either in principle or in practice.

Re 3 : With the press so essential in a democratic society, and with the growing social impact of television, it is necessary both to affirm a fundamental liberty and to define its limits.

Proposals for Article 16 as a whole

AMENDMENT 296

Proposed amendment to Article: 16

Submitted by: R. VAN DAM, MEP

Proposed text:

Delete Article 16.

Reasons:

This Article has no bearing on the powers of the Union's institutions or bodies.

Moreover, the organisation and funding of schools are matters closely bound up with national identity.

AMENDMENT 297

Proposed amendments to Article: 16. Right to education.

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the whole Article or align it with the ECHR (First Protocol Article 2)

Reasons:

Since the right to education can be assured only by Member States my first preference is to delete the draft Article.

If a revised text is nevertheless kept, I have the following suggestions: In draft paragraph 1 the link between the first and second sentence is weak. Vocational and continuing education are not compulsory.

Concerning draft paragraph 2: The establishment of schools is not limited under Swedish law but if a school seeks financial aid or the right to award degrees/certificates, certain conditions apply. Similar rules probably apply in other Member States. The present draft may be misinterpreted to imply changes in this respect.

Finally, concerning draft paragraph 3, I would suggest a closer alignment with the text of Article 2 of the first additional Protocol to the ECHR which has been ratified by most EU Member States, albeit with reservations/declarations. Attention should also be given to the right of adolescents to influence their own education.

AMENDMENT 298

Proposed amendment to Article: 16 - Right to education

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Deletion of this Article.

Reasons:

This provision would breach the current division of responsibilities between the Union and the Member States. Pursuant to Article 149 of the TEC, "the Community..." fully respects "the responsibility of the Member States for the content of teaching and the organisation of education systems".

AMENDMENT 299

Proposed amendment to Article: 16

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 16. Right to education and training

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.**
- 2. The (delete: 1 word) independence of educational establishments shall be (delete: 2 words) respected.**
- 3. The right of parents to have their children (delete: 2 words) taught in accordance with their own religious and philosophical convictions shall be respected.**

Statement of reasons

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

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

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an

establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. (Delete: 16 words)

The competence of the European Union in education policy is established under Article 149 of the Treaty establishing the European Community, and in vocational training under Article 150. The Union must respect the practice of free compulsory education (delete: 9 words).

The principle of academic freedom is not included in the Charter, but it constitutes both a structural principle of academic organisation and the guarantee of the freedom of expression in this area. The Charter in no way infringes this principle.

AMENDMENT 300

Proposed amendment to Article: 16. Right to education

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. No person shall be denied the right to education (16 words deleted). This right includes the right to receive free compulsory education.
2. (new) There shall be equal access to state education facilities.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.

Reasons:

Paragraph 1:

The wording has been taken from Article 2(1) of the Additional Protocol to the ECHR. The Union has neither the power nor the budgetary resources to grant a subjective right to education or a right of access to vocational and continuing training. Setting the state a goal of this type seems inappropriate, and would anyway belong in the field of social rights.

Re paragraph 2:

The current paragraph 2 is now covered by Article 15(3) (freedom of teaching).

The new wording of paragraph 2 makes clear that the most that can be guaranteed is equal access to state educational institutions, not any more far-reaching subjective right.

AMENDMENT 301

Proposal for amendment to Article: 16

Submitted by: Pervenche BERÈS

Proposed text:

Title : [change affecting French text only]

1. Everyone has the right to education [change affecting French text only] and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.
2. The founding of educational establishments shall be free of constraint.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected, unless these are prejudicial to the child's development or socialisation.
4. State education must respect the principle of secularism.

Reasons:

In the French text, the word "education" should be replaced by "instruction" in order to establish a right/claim requiring positive action by the State.

AMENDMENT 302

Proposed amendment to Article: 16

Submitted by: Win GRIFFITHS, MP

Proposed text:

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

Reasons:

I prefer the brevity of Article 2 of the Additional Protocol to the ECHR.

AMENDMENT 303

Proposed amendment to Article: 16. Right to education

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 16. Right to education

1. Everyone has the right of access to existing educational establishments. This right includes the right to receive free compulsory education.
2. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected."

Reasons:

The new wording of the first sentence of Article 16(1) makes clear that the duty on Member States to guarantee fair and equal access to educational institutions refers only to the capacity available. There is no question of any obligation to create new, additional capacity.

The objections to par. 2 are so serious as to require deletion. As currently worded, it would mean taking the founding of educational establishments out of all State control. However, this could not apply to private higher-education institutions, for example, where state authorisation will continue to be needed in order to guarantee that the education provided and the degrees awarded come up to minimum standards.

This makes the current paragraph 3 into paragraph 2. It is regarded as important that there must be no abuse of parental rights.

AMENDMENT 304

Proposed amendment to Article: 16. Right to education

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.
2. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.

Reasons:

To keep the text of the Charter as close as possible to the text of Article 2 of the First Protocol to the European Convention on Human Rights, the second paragraph of the version in CONVENT 28 ["2. *The founding of educational establishments shall be free of constraint.*"] should be deleted.

AMENDMENT 305**Proposed amendment to Article: 16****Submitted by:** François LONCLE**Proposed text:***Article 16:*

Word paragraph 1 of this Article as follows:

Everyone has the right to education. This right includes the right to receive free compulsory education.

Reasons:

The reference to vocational training belongs with economic and social rights.

II. Proposed text:

Delete paragraph 2 of this Article.

Reasons:

In the interests of readability, it seems preferable that this Article should concentrate on the child's right to education, without any interference from questions relating to the founding of educational establishments. In any case, the founding of such establishments is not an absolute right.

AMENDMENT 306

Proposed amendment to Article: 16

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

- “1. Every child has the right to free compulsory basic education within age limits set by national legislation.
2. There shall be freedom of choice of educational establishment.
3. The right of parents or legal guardians to have their children educated in accordance with their religious or philosophical convictions shall be respected.”

Reasons:

This form of words reflects individual Member States' educational systems more closely. Given the potential restrictions on persons residing unlawfully in a country, universal entitlement to education ceases above the compulsory school age. Regarding paragraph 2, it should be noted that freedom of choice does not imply any right to be admitted.

AMENDMENT 307

Proposed amendment to Article: 16

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“No one shall be denied the right to education”

For Part B, “Definition of Rights”:

“The right in Article 16 is the right guaranteed by Article 2 of the First Protocol to the ECHR, read with any reservation made in respect of it”

Reasons:

The Praesidium draft contains provisions not found in the relevant ECHR right. In my opinion these accretions are unnecessary and I am told that they would have potentially very significant financial and other implications for EU institutions and for the Member States when acting as their agents.

The UK maintains an important reservation to the ECHR right: “The principle affirmed in the second sentence of Article 2 ECHR is accepted by the UK only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.” Other Member States have similar reservations.

My version ensures that Article 16 is understood within the meaning of Article 2 to Protocol 1 of the ECHR, associated case law, and any national reservations. The latter consideration reflects the principles of subsidiarity and national diversity. These seem highly appropriate in this area. It also ensures that parents’ rights, as so understood, are covered.

Community competence on vocational training is limited to supporting and supplementing Member States’ action (Article 140 and 150 TEC).

AMENDMENT 308**Proposed amendment to Article: 16****Submitted by:** Heinrich NEISSER**Proposed text** (relates solely to the statement of reasons):*Article 16. Right to education*

1. *Everyone has the right to education ... [unchanged]*

Statement of reasons

This Article is based [...]

It was considered useful [...]

The principle of free education relates only to the attendance of classes; any additional services (textbooks, accommodation, etc.) may be provided in return for payment. Moreover, this Article does not in any way provide a basis for entitlement to the payment of an educational grant or scholarship. The principle of academic freedom [...]

Reasons:

The addition of these two sentences to the statement of reasons for Article 16 clarifies that not all services connected with compulsory education have to be free of charge - only the provision of education itself.

AMENDMENT 309

Proposed amendment to Article: 16. Right to education

Submitted by: Ben FAYOT

Proposed text:

1. Everyone has the right to education and the right to initial and continuing training. These rights include the right to receive compulsory education.
2. (to be deleted).
3. The right of parents to have their children educated in accordance with their philosophical convictions and in compliance with the laws of the country shall be respected.

Reasons:

Re 1. The first amendment is a matter of wording (dropping access to and adding initial).

Re 2. The Luxembourg Constitution does not proclaim freedom to dispense education. As it stands, the proposed text thus runs counter to our constitutional tradition and cannot be accepted.

Re 3. It would be useful to specify that this concerns the education of children in a general sense rather than teaching; thus and taught should be deleted.

This right should be respected but it is important to stress the significance of national laws in protecting children.

AMENDMENT 310**Proposed amendment to Article: 16**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:**Replace as follows:**

1. Everyone has the right to equal and free access to schools providing compulsory education, which means that the public authorities must ensure that such schools exist in sufficient number.
2. The right of parents and subsequently of children to a free choice of school shall be respected.
3. It follows that the founding of educational establishments shall be free of constraint.
4. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be exercised while respecting the principle of tolerance and the principle of democracy, which include the setting out by the public authority of programmes leading to approved diplomas which may be recognised as equivalent throughout the European Union.
5. The existence and future development of the Union, on the one hand, and the interest of each child considered individually, on the other, are combined factors making necessary the systematic and progressive teaching of three languages which shall commence as soon as possible.

Reasons:

Re 1. Freedom of access to education and even more so the obligation to provide free education will remain mere wishful thinking unless someone takes care of the necessary expenditure.

Re 2. At a time when considerable pressure is being exercised for a return to separate education for girls and boys or to urge that each school of thought (and in practice every sect) be guaranteed respect for its beliefs, to the extent of undermining the child's right to health, it is essential that a distinction be made between the free choice of educational establishment and the necessary compliance with basic programmes.

Re 4. The requirements for the equivalence of diplomas also strengthens the need to guarantee the quality of such diplomas.

Re 5. Insofar as the diversity of languages should be considered a crucial component

of the European cultural heritage, which includes endogenous languages, the multicultural reality of Europe requires an effort to bring people closer.

Benjamin FRANKLIN wrote a little over two centuries ago that knowing and understanding ourselves better was the price we pay for peace.

This reflection remains entirely relevant and in today's Europe finds a particularly fertile field of application.

AMENDMENT 311

Proposed amendment to Article: 16

Submitted by: Simone BEISSEL

Proposed text:

The founding of educational establishments shall be subject to approval by the competent authority of the Member State on whose territory they are situated.

Reasons:

In order to avoid the setting up of establishments under the direction and/or management of sects or similar associations which represent a risk to the moral and psychological balance of young people.

Proposals for Article 16(1) and (1a)

AMENDMENT 312

Proposed amendment to Article: 16(1) and (2)

Submitted by: Alvaro Rodríguez BEREJO, personal representative of the Spanish Prime Minister

Proposed text:

- 1. Everyone has the right to education. This right includes the right to receive free compulsory education.**

Reasons:

The wording of the rule must be expressed positively in the Spanish version, as in the French version of the text. On the other hand, the reference to "vocational and continuing training" should be deleted since that is a social right, unlike the right to education. The fact that the right to education and to compulsory schooling includes the right to formal vocational training is a different matter since that is training which forms part of the educational system as an alternative to secondary education to minimum school-leaving age.

AMENDMENT 313**Proposed amendment to Article: 16**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

At the end of the first paragraph, add: "*the neutrality of which is guaranteed*".

Reasons:

It is essential to balance recognition of freedom to found educational establishments against assertion of the duty of neutrality of free and compulsory education.

AMENDMENT 314

Blank

AMENDMENT 315

Proposed amendment to Article: 16

Submitted by: Ieke VAN DEN BURG

Proposed text:

Article 16(1):

Everyone has the right to education and the right of access to vocational training throughout his working life (instead of "and continuing training") etc.

Reasons:

This addition flows from the right proposed in Article X in CONVENT 18. The French and English versions speak of "vocational and continuing". In Dutch, following on from the wording used in the earlier text, this is better expressed by "gedurende het gehele beroepsleven".

AMENDMENT 316

Proposed amendment to Article: 16

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

After the first paragraph, add the following:

"1a. Education aims not only to diffuse knowledge, but also to foster understanding between different cultures".

Reasons:

This amendment is based on the fundamental requirement within the Union for coexistence and mutual understanding between different cultures.

Proposals for Article 16(2)

AMENDMENT 317

Proposed amendment to Article: 16(1) and (2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. The founding of educational establishments shall be free of constraint, whilst respecting democratic principles and complying with national law.

Reasons:

It seems advisable to assert respect for democratic principles in the exercise of the right to found educational establishments, and to refer to the legislation of each Member State.

AMENDMENT 318**Proposed amendment to Article: 16**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

At the beginning of the second paragraph, add: "within the scope of the laws regulating the question".

Reasons:

It is essential to balance recognition of freedom to found educational establishments against assertion of the duty of neutrality of free and compulsory education.

In the second paragraph, a reference to the scope of the law is necessary in the name of the principle of subsidiarity.

AMENDMENT 319

Proposed amendment to Article: 16

Submitted by: Erling OLSEN

Proposed text:

Paragraph 2 should be deleted.

Reasons:

Paragraph 2 is not sufficiently precise to constitute a right. It could moreover lead to misunderstanding about the scope of paragraph 3.

AMENDMENT 320**Proposed amendment to Article: 16**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Paragraph 2 should be replaced by: "The freedom to found educational establishments shall be guaranteed".

Reasons:

The wording "free of constraint" is too vague. The proposed wording makes it clear that this is an obligation on the authorities.

AMENDMENT 321

Proposed amendment to Article: 16(2)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

The right to found educational establishments and to academic freedom shall be recognised.

Reasons:

Academic freedom is an essential element of educational freedom.

Proposals for Article 16(3)

AMENDMENT 322

Proposed amendment to Article: 16

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace paragraph 3 by the following:

"3. Parents have the right to educate and teach their children in accordance with their own convictions and respect for the persons of minors".

Reasons:

This is intended to take account of the rights of minors.

AMENDMENT 323

Proposed amendment to Article: 16

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:

Article 16. Right to education

3. The right of parents to have their children educated in accordance with their religious and philosophical convictions shall be respected. *Children's views should be taken into account in accordance with their age and level of development.*

Reasons:

The parents' right to decide their children's education and teaching is not absolute, but includes their obligation to take into account children's own views on any decisions taken concerning them, in accordance with the children's level of intellectual development. Article 16 in its proposed new form is most in line with Article 23 – relating to children's rights – of the Charter of Fundamental Rights and Articles 12 and 14 of the Convention on the Rights of the Child.

Proposals for Article 17

AMENDMENT 324

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association (remainder deleted).

Reasons:

The explicit reference to political parties in a Charter intended to be applied to the European Institutions could mean the recognition of European political parties. This would amount to an amendment to the Treaties, which goes beyond the instructions given by the Cologne Council.

AMENDMENT 325

Proposed amendment to Article: 17

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 17: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly (delete: 3 words) and association (delete: 2 words), including the right to form and to join trade unions, professional or voluntary organisations, (delete: 1 word) and political parties.

Statement of reasons

This Article is based on Article 11 of the European Convention on Human Rights:

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

The question of restrictions will be covered by the horizontal clause relating to the European Convention on Human Rights.

Title VIII of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, recognises the formal role of management and labour in the conduct of social policy, including the representation and collective defence of workers and employers. Moreover, the Economic and Social Committee has been officially comprised of representatives of the various categories of economic and social activity since its foundation in 1958 (Article 257).

AMENDMENT 326**Proposed amendment to Article:** 17. FREEDOM OF ASSEMBLY AND ASSOCIATION**Submitted by:** Jordi SOLÉ TURA**Proposed text:**

“Everyone has the right to freedom of peaceful assembly and to freedom of association for civic or political purposes or in trade unions.”

Reasons:

This Article overlaps with Article 24 and gives rise to confusion. For example, Article 24 states that “Every citizen has the right to form a political party at the level of the Union ...”, whereas Article 17 recognises that “everyone” has this right, which may be interpreted as “everyone at any level”, extending beyond the Union and the citizens and countries constituting it. Furthermore, it makes no sense for the same concept – forming political parties – to be recognised in two Articles of the Convention.

AMENDMENT 327

Proposed amendment to Article: 17

Submitted by: Win GRIFFITHS, MP

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.

Reasons:

It is not necessary to add political parties to the ECHR Article 11 text as political parties are a classic expression of the right to freedom of association and the issue of political parties organised at the European Union level is dealt with in Article 24.

AMENDMENT 328

Proposed amendment to Article: 17

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to freedom of peaceful assembly, (4 words deleted) cultural expression and association with others, including the right to form and to join trade unions or political parties.

Reasons:

AMENDMENT 329

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions (*next three words to be deleted*) and coalitions.

Reasons:

Separate Article concerning political parties – see Article 24.

Article 34 also refers to employers and employees.

AMENDMENT 330

Proposed amendment to Article: 17

Submitted by: Heinrich NEISSER

Proposed text:

Article 17. Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions [~~or political parties~~].

Reasons:

The right to form and to join political parties is already included in Article 24 of the draft, which did not yet exist when the present Article was being discussed. The reference to political parties in Article 17 is therefore unnecessary.

AMENDMENT 331

Proposed amendment to Articles: 17 and 24

Submitted by: Ben FAYOT

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right *at both national and European level* to form and to join trade unions or political parties. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

It seems pointless to make a distinction between national level in Article 17 and European level in Article 24.

It also seems pedantic to make a distinction at European level between a citizen (having the right to form a party) and a simple resident (having the right to join one). Existing European parties do not in any case have individual membership but only party membership, i.e. parties of parties.

AMENDMENT 332**Proposed amendment to Article:**

Submitted by: R. VAN DAM, MEP

Proposed text:

Add the following new paragraph:

2. This right shall not be subject to any limitations beyond those possible under Article 11(2) of the European Convention on Human Rights.

Reasons:

The article would thus reflect the ECHR more closely.

AMENDMENT 333

Proposed amendment to Article : 17 Freedom of assembly and association

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right **to form, to join or not to join** trade unions or political parties.

Reasons:

Even though the freedom to refrain from doing something is implicit in “freedom”, that negative freedom should be expressly included in order to avoid any misunderstanding.

AMENDMENT 334

Proposed amendment to Article: 17

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to freedom of peaceful assembly and demonstration without prejudice to the restrictions imposed to safeguard public order.
2. Everyone has the right to form and to join associations or trade unions, except where they pursue unlawful aims or use unlawful means. This right may be subject to restrictions for members of the armed forces, armed corps or civil service.

Reasons:

The extension of the right to form political parties in Spain to those not possessing Spanish nationality does not comply with the internal system of Spanish law as such persons do not have the right to vote or to stand as candidates. This rule contradicts Article 24, which limits this right, at the level of the Union, to "citizens" of its Member States.

On the other hand, the omission of the limits of this right requires that, in accordance with Article 11 of the ECHR, express provision be made therefor in the Charter.

AMENDMENT 335

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"17. Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and association with others, including the right to form and join trade unions. Associations must respect the rights and freedoms guaranteed by this Charter."

Reasons:

The current wording, granting the right to freedom of peaceful association but merely to freedom of association without mentioning that it should be "peaceful", could lead to misunderstandings. It is surely not intended that association should not be peaceful.

Furthermore, all provisions on political parties should be concentrated in Article 24. In addition, the right of parties to decide themselves on the admission of new members must remain unaffected. Any claim to admission should be rejected.

Finally, it would seem useful to incorporate an anti-abuse clause here too. Extremist associations can generate the same threats as extremist parties.

AMENDMENT 336

Proposed amendment to Article: 17

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Delete “or political parties” and add “for the protection of his or her interests. These rights may be restricted only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 17 is the right guaranteed by Article 11 of the ECHR”

Reasons:

The right to form and to be free to join political parties is contained within the relevant ECHR right. Referring to it in Article 17 may have the undesirable effect of casting doubt on other features of the ECHR right which are not specified in the Article itself. I am also concerned that CONVENT 28 drafting implies that the state should guarantee the right for everyone to join any political party. I consider that this could interfere with the ability of political parties to determine qualifications for entry. My version ensures that Article 17 is understood within the meaning of ECHR Article 11 and the case law. Consistent with my general approach I consider that specific reference to restrictions must be made in the proclamation of the right itself.

AMENDMENT 337

Proposed amendment to Article: 17

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association.

Reasons:

The proposal to delete the final clause referring to political parties is because it is also in Article 24.

AMENDMENT 338

Proposed amendment to Article: 17

Submitted by: RODOTA' and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

"Everyone has the right to assemble peacefully, associate with others, form parties and trade unions and join them or not".

Reasons:

More precise and effective terms are used in this Article in order to assert a fundamental right which, in our view, renders Article 24 superfluous.

AMENDMENT 339

Proposed amendment to Article: 17

Submitted by: Ieke VAN DEN BURG

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions, political parties or non-governmental organisations. The European Union shall foster dialogue with social partners and non-governmental organisations.

Reasons:

The words "with others" should be included in the first part of the sentence (as in other language versions).

Non-governmental organisations have been added because of the increasingly important part they play in European policy-making.

The Social Dialogue with social partners and the Civil Dialogue with NGOs are an essential instrument of EU policy and should therefore be mentioned in the Charter.

AMENDMENT 340**Proposed amendment to Article: 17**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Everyone has the right to freedom of assembly and to freedom of association with others, including the right to form and to join trade unions or political parties. *This right may be limited only in accordance with the conditions laid down in Article 11(2) of the European Convention on Human Rights.*

Reasons:

As in the ECHR, it is preferable to specify for each right the conditions under which that right may be limited. The article has therefore been supplemented with a reference to the limitations listed in Article 11(2) of the ECHR. See also the reasons given for the amendment to Article 3.

AMENDMENT 341**Proposed amendment to Article: 17****Submitted by:** José BARROS MOURA and Maria Eduarda AZEVEDO**Proposed text:**

1. ... (identical to the form of words proposed for the article as a whole).
2. **Any Union citizen residing in a Member State other than that of which he is a national shall enjoy the rights referred to in paragraph 1 under the same conditions as nationals of that other Member State.**

AMENDMENT 342

Proposed amendment to Article: 17

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

In the second line of the text, insert "democratic" before "parties".

Reasons:

The Charter cannot encourage the formation of anti-democratic institutions.

Proposals for Article 18

AMENDMENT 343

Proposed amendment to Article: 18. Right of access to documents

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Delete.

Reasons:

Access to documents is not traditionally a fundamental right.

Article 255(1) of the EC Treaty adequately covers access to documents.

AMENDMENT 344**Proposed amendment to Article: 18****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 18. Right of access to documents**

Everyone (delete: 10 words) **has a right of access to the documents of the institutions of the European Union and of subsidiary bodies and agencies established by the institutions and by the Treaty on European Union.** (delete: 8 words)

Statement of reasons

This Article is based on Article 255 of the EC Treaty, but ends the anomaly whereby only the Commission, Council and Parliament are specified. The reference to the TEU is intended to include any bodies created under the second or third pillars. The conditions and limits described in the remainder of Article 255 are still extant, and, for the other institutions, agencies and bodies, where relevant codes of conduct exist they will be respected.

Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, says that "... decisions are taken as openly as possible ..".

AMENDMENT 345

Proposed amendment to Article: 18

Submitted by: Erling OLSEN

Proposed text:

The following new paragraph should be added: "This right shall be exercised subject to the conditions and limitations laid down in the EC Treaty".

Reasons:

AMENDMENT 346**Proposed amendment to Article: 18**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace the present text by: "Everyone has a right of access to documents and information from the institutions and other bodies of the Union in all areas for which the Union has competence. That right may be limited in accordance with the limitations applicable to it in Community law and Union law".

Reasons:

There is no justification for limiting the right of access to documents to citizens of the Union or persons residing in the Union or to specific institutions of the Union. The proposed amendment refers, moreover, to the possibility of limitations being applicable in Community law (Article 255 of the EC Treaty) and in Union law. Such limitations are to be laid down in Community law and Union law.

AMENDMENT 347**Proposed amendment to Article: 18**

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

“Everyone has a right of access to the information held by the institutions and bodies of the European Union.”

Reasons:

The scope of the fundamental rights should not be restricted needlessly as regards the persons covered. This was rightly not done in the case of Article 27 (Relations with the administration). Persons outside the Union, too, may have an interest in access to the European Union’s information.

“Information” is preferable to “documents”, because it also includes items such as databases.

The force of Article 1 of the TEU, which states that decisions are to be taken as openly as possible and as closely as possible to the citizen, is not confined to the European Parliament, the Council and the Commission. In order to ensure that the other EU institutions and bodies also heed this principle, it would be desirable for the Charter to show some ambition and widen the right of access to information to cover all EU institutions and bodies. Thanks to the European Ombudsman’s efforts, most of those institutions and bodies already have a procedure for access to their information.

The proposed amendment improves the article’s readability.

(This amendment obviously also involves a change to Article 48, as set out in CHARTE 4316/00 CONVENT 34, which should be converted from a non-progression clause into a non-regression clause.)

AMENDMENT 348**Proposed amendment to Article: 18**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add at the end: “This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community”.

Reasons:

Without prejudice to any references made in the horizontal clause, there is a need to make express reference here to the Article of the Treaty establishing the European Community which regulates the right in question; that reference was also included in earlier drafts (see Article 14 in CONVENT 8).

AMENDMENT 349

Proposed amendment to Article: 18. Right of access to documents

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"Every citizen of the Union or anyone residing in the Union has a right of access to the documents held by the European Parliament, the Council and the Commission."

Reasons:

This clarification is in line with the proposal for a Regulation forwarded by the Commission to the Council on 28 January 2000 on the basis of Article 255 of the EC Treaty.

AMENDMENT 350

Proposed amendment to Article: 18

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Retain proposed text

For Part B, “Definition of Rights”:

“The right in Article 18 is the right guaranteed by Article 255 of the Treaty establishing the European Community and shall be exercised in accordance with the conditions and subject to any limitations made under and in accordance with that Treaty provision”

Reasons:

I am happy with the Praesidium draft text so far as proclaiming the right is concerned. The proposed part B ensures that Article 18 is understood within the meaning of the relevant treaty provision. The conditions and limitations described in Article 255 cannot be covered appropriately by a horizontal clause, as proposed by the Praesidium.

AMENDMENT 351

Proposed amendment to Article: 18

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

"Everyone has a right of access to the documents of the European Institutions".

Reasons:

The right of access to documents has been confirmed at length, with reference to both the subject-matter covered and the Institutions involved, in the Community regulations and case law which preceded the Treaty of Amsterdam.

AMENDMENT 352**Proposed amendment to Article: 18**

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

"Every citizen of the Union has a right of access to information available from the bodies and other Institutions of the European Union".

Reasons:

The possibility of asserting the right of access to information should not be confined to the European Parliament, the Council and the Commission. The obligation to allow access to information should rather apply to every department of all bodies of the European Union and all other EU Institutions, e.g. the European Environment Agency, the Committee of the Regions, etc.

The object of this right should be based on a comprehensive definition of information, which is not adequately provided by the term "document" given developments in information technology. This should rather be a right which covers information not only in written form but also in the form of pictures, sound, EDP, etc., i.e. in all conceivable types of information storage, in order to preclude any circumvention of the provision through use of a means of information storage that is not covered and also to allow for future technological developments.

A limitation on persons enjoying this right should only come into play where the need for information is no longer justified by the democratic basis of citizenship of the Union. If there were plans to make this a universal right applicable not only to citizens of the Union but also to all non-EU citizens residing or legal persons having their registered offices in a Member State of the European Union, such a solution would run counter to the justification of a right of access to information on the basis of democratic principles. Non-EU citizens should not therefore enjoy this right of access. Nor should legal persons unless they are involved in or monitoring the democratic process as a group of citizens of the Union, e.g. citizen's initiatives and the like.

AMENDMENT 353**Proposed amendment to Article: 18**

Submitted by: Mr Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Everyone has a right of access to the documents and information of the institutions and other bodies of the Union in all areas falling within the competence of the Union. This right may be limited in accordance with the relevant restrictions applicable under Community law.

Reasons:

There is no reason to restrict the right of access to documents to Union citizens or persons residing in the Union, or in relation to certain Union institutions. The proposal further refers to the possibility of imposing restrictions applicable under Community law (see also Article 255 EC). Such restrictions need to be laid down in Community law.

AMENDMENT 354

Proposed amendment to Article: 18

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every citizen of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, the Council and the Commission **and of the Member States where implementing Community legislation.**

AMENDMENT 355

Proposed amendment to Article: 18

Submitted by: Jean-Maurice DEBOUSSE, MEP, Alternate Member of the Convention

Proposed text:

- Incorporate Article 18 (Right of access to documents) into Article 27 (Relations with the administration).
- Alternative amendment: convert Article 18 into Article 27a.

Reasons:

To improve the Charter's readability and bring together in the same section two articles both dealing with relations between citizens and the Union's bodies.

AMENDMENT 356**Proposed amendment to Article:** 18**Submitted by:** Simone BEISSEL**Proposed text:**

“... a right of access to the **official** documents of the European Parliament, of the Council and of the Commission.”

Reasons:

There is a risk that the confidentiality of communications and of internal documents might be breached, thereby causing major damage to the proper conduct of the European Union’s affairs.

Proposals for Article 19

AMENDMENT 357

Proposed amendments to Article: 19. Data protection

Submitted by: Daniel TARSCHYS

Proposed text:

Rephrase this Article completely.

Reasons:

Personal data protection is a very sensitive field where the rights of the individual need to be balanced, i.a. against the freedom of expression, the need for transparency in public affairs and the need to protect public health and public order. The careful considerations contained in the Council of Europe's Convention on the protection of personal data and in national legislation is not adequately reflected in the draft Article.

Finally, the heading is too broad and should read "Personal data protection".

AMENDMENT 358**Proposed amendment to Article: 19. Data protection**

Submitted by: Ingo FRIEDRICH

Proposed text:

Delete.

Reasons:

The text of this Article should be added to Article 12 as paragraph 2, on substantive and systematic grounds.

AMENDMENT 359**Proposed amendment to Article: 19****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 19. Data protection**

Everyone has the right to determine the use and disclosure of (delete: 4 words) personal data (delete: 9 words).

Statement of reasons

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy.

AMENDMENT 360

Proposed amendment to Article: 19

Submitted by: Erling OLSEN

Proposed text:

The following words should be added to this provision: "subject to the conditions laid down in Community legal acts pursuant to Article 286 of the EC Treaty".

Reasons:

AMENDMENT 361

Proposed amendment to Article: 19. Data protection

Submitted by: Jordi SOLÉ TURA

Proposed text:

"Everyone has the right to have his personal data protected and to determine for himself whether they may be disclosed and how they may be used".

Reasons:

The first part of the sentence reverts to the original thrust of this Article and is added to the existing text, where the words "his personal data" are replaced by "they" in order not to repeat the phrase.

AMENDMENT 362

Proposed amendment to Article: 19

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Add "... without prejudice to the powers of law-enforcement agencies to compile and use data in the cases provided for by law".

Reasons:

The right of everyone to determine for himself whether his personal data may be disclosed and how they may be used is not an absolute right.

AMENDMENT 363

Proposed amendment to Article: 19

Submitted by: Win GRIFFITSH, MP

Proposed text:

Everyone has the right to determine for himself/herself whether his/her personal data may be disclosed and how they may be used except in circumstances prescribed by law in connection with established infringements of the law.

Reasons:

On its own the original text would appear to give convicted criminals the right to decide whether their personal data ought to be published in the public interest.

AMENDMENT 364**Proposed amendment to Article: 19**

Submitted by: Piero MELOGRANI, who wishes to endorse the amendment replacing Article 19 submitted by Professor RODOTA'

Proposed text:

(Text proposed by Professor Rodota':

1. Everyone has the right to respect for the confidentiality of personal data as part of their own identity.
2. Personal data may be collected only for legitimate purposes and subject to the principle of proportionality.
3. Everyone has the right to determine freely whether their personal data may be collected, used and transmitted, to be informed about the purposes and methods of processing, to have access to the information collected and to seek independent verification.
4. No one shall be subjected to checks by surveillance technologies which may be prejudicial to human dignity, rights or freedoms.)

AMENDMENT 365

Proposed amendment to Article: 19

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Everyone has the right to determine for himself whether his personal data may be compiled and disclosed and how they may be used.

Reasons:

In order to ensure completeness.

AMENDMENT 366**Proposed amendment to Article: 19**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. **Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.**
2. **Everyone has the right to know the data collected on him and, where appropriate, to request that corrections be made.**

Reasons:

AMENDMENT 367

Proposed amendment to Article: 19

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to authorise the disclosure and use of data concerning himself.

Reasons:

AMENDMENT 368

Proposed amendment to Article: 19. Data protection

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Everyone has the right to determine for himself/herself whether his/her personal data may be disclosed and how they may be used, **including proprietary information and business secrets.**

Reasons:

The owner of the information should be able to decide whether to restrict its use, or to disclose it to third parties.

AMENDMENT 369**Proposed amendment to Article: 19****Submitted by:** Heinrich NEISSER**Proposed text:***Article 19. Data protection*

*Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used, **insofar as he has an interest therein which should be protected.***

Reasons:

In the current version, the basic right to data protection seems to be worded in terms that are too absolute. It is also possible to conceive of situations in which the data subject should not have full freedom of decision-making. This manner of looking at such situations in relative terms is expressed by the second half of the sentence, which has also, for the past 20 years or so, formed part of the Austrian constitutional acquis (Section 1(1) of the Austrian Data Protection Act states that everyone is entitled to the confidentiality of the personal data concerning him, insofar as he has an interest therein that is worth protecting, particularly with regard to respect for his private and family life).

AMENDMENT 370**Proposed amendment to Article: 19**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Every natural person shall have a right to protection for his personal data.

Reasons:

1. Entitlement to this right, which forms part of the right to privacy, refers to natural persons.
2. It is not admissible for the disclosure and use of personal data to be in all cases subject to the consent of the data subject. Even if that is generally the case, in cases where data are obtained by the public administration for the performance of its duties, the use of the data in its possession cannot be subject to the consent of the data subject. Examples are the computerised records for tax, police and judicial purposes, etc. Respect for privacy and data confidentiality are a separate issue.
3. It is therefore proposed to revert to the wording of the previous text (CONVENT 8, Article 15).

AMENDMENT 371

Proposed amendment to Article: 19. Data protection

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 19. Data protection

Everyone has the right to determine for himself whether his personal data may be collected or disclosed and how they may be used."

Reasons:

From the point of view of the German *Länder*, it is imperative that the citizen should be thoroughly protected as early as the data collection stage.

Furthermore, on terminological grounds the German term "personenbezogen" would be preferable.

AMENDMENT 372

Proposed amendment to Article: 19. Data protection

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"Everyone has the right to determine for himself whether personal data *concerning him* may be *collected* and disclosed and how they may be used."

Reasons:

It is important to make clear that this provision applies from the time of collection of data by third parties. It should also be made clear that it applies to data concerning the person.

AMENDMENT 373**Proposed amendment to Article: 19****Submitted by:** RODOTA', MANZELLA and PACIOTTI**Proposed text:**

Replace the text of the Article by the following:

- "1. Everyone has the right to respect fro the confidentiality of personal data as part of their own identity.
2. Personal data may be collected only for lawful purposes and in compliance with the principle of proportionality.
3. Everyone has the right to determine freely whether personal data may be collected, used and transmitted, to be informed about the purposes and methods of processing, to have access to the information collected and to seek independent verification.
4. No one shall be subjected to checks by surveillance technologies which may be prejudicial to human dignity, rights or freedoms."

Reasons:

In accordance with the criteria laid down in European Directives (in particular 95/46/EC), this proposal makes clearer the scope of the protection necessary to safeguard the fundamental right to confidentiality.

AMENDMENT 374

Proposed amendment to Article: 19. Data protection

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Respect for the rights and freedoms laid down by this Charter, in particular the right to privacy, shall be guaranteed with regard to the processing, by whatever means, of any information concerning an identified or identifiable natural person. The information must be processed fairly and for specified purposes, and subject to the data subject's consent or to any other legitimate basis specified by law.

Reasons:

The alternative text proposed in the statement of reasons (CONVENT 8 version) is preferable. The text of the CONVENT 28 version is in any case too generally worded and does not allow for exceptions. The alternative text states the essence of the basic right and thus offers more effective protection of personal data.

AMENDMENT 375

Proposed amendment to Article: 19

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 19 to be deleted.

Reasons:

See the amendment to Article 12, which regulates data protection as part of the protection of privacy.

AMENDMENT 376

Proposed amendment to Article: 19

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone, **including legal persons**, has a right

AMENDMENT 377

Proposed amendment to Article: 19

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every natural person has a right to protection for his or her personal data”

For Part B, “Definition of Rights”:

“The right in Article 19 is the right under Article 286 TEC and Community Directives on data protection and is subject to the conditions and limitations laid down in them”

Reasons:

I do not consider that the “general rule” proposed by the Praesidium is justified by the relevant treaty provisions or the ECHR or as a result of the common constitutional positions of the member states. My version ensures that Article 19 is understood within the meaning of the relevant Council of Europe provision and Community Directives. To the extent that this right is “an aspect of respect for privacy”, it is already covered by Article 12 above.

AMENDMENT 378**Proposed amendment to Article: 19**

Submitted by: Jean-Maurice DEBOUSSE, Alternate Member of the Convention

Proposed text:**The proposed text should be replaced by the following:**

1. Everyone has the right to establish what data concerning him/her are held on any data file of which he/she is aware.
2. Everyone has the right to have errors in data concerning him/her rectified.
3. No personal data may be made public without the authorisation of the data subject.

Reasons:

With all due respect for the authors of the proposed Article, I feel that a provision of this type is pointless in an age when it is well known that personal data files (for example on people's buying, travelling, transport and reading habits, etc.) are bought and sold.

Furthermore, the proposed Article does not contain two rights whose usefulness seems beyond dispute, viz., the right to establish the existence of a data file and to rectification of any errors it may contain.

Lastly, the proposal that publication should be subject to authorisation seems more realistic than others, given the highly public nature of publication, if I may put it in those terms.

Proposals for Article 19a

AMENDMENT 379

Proposed amendment to Article: Insertion of a new Article after Article 19

Submitted by: Peter ALTMEIER, Member of the German Bundestag

Proposed text:

Article 20/Primacy of private action

"The European Union shall abide by the principle that private action must take precedence. In the areas within its competence, it shall take action only if and in so far as the objectives of the proposed action cannot be achieved, or cannot be sufficiently achieved, by private action.

Reasons:

The principle of the primacy of private action is a development of the general principle of subsidiarity and also of the principle of the protection of human dignity; the intention is that the scope for private action and enterprise should not be unduly restricted by European rules. It is also designed to prevent national efforts to expand the private sector through privatisation and deregulation from being frustrated at European level.

Proposals for Article 20

AMENDMENT 380

Proposed amendment to Article: 20. Right to property

Submitted by: Georges BERTHU, MEP

Proposed text:

Every person has the right to own, use, dispose of **and bequeath** lawfully acquired possessions. No one may be deprived of his possessions, **nor of a basic right of use**, except in the public interest and in the cases and under the conditions provided for by the law, **subject to fair and prior compensation.**

Reasons:

The right to property normally comes under national law. However, as it may be affected or even truncated by many Community measures, its inclusion in the Charter is acceptable.

We would therefore propose three amendments to the basic article:

- an explicit reference to the right to bequeath appears necessary, to avoid the right being undermined by indirect measures at the time of death;
- the reminder that the withdrawal of the right of use is tantamount to the withdrawal of the right to property; this aspect seems particularly significant in relation to Community activities;
- the specification that compensation must be paid before the expropriation takes place (not just a promise of compensation).

AMENDMENT 381**Proposed amendment to Article 20**

Submitted by: Erling OLSEN

Proposed text:

The provision should be worded in accordance with Article 1 of the Additional Protocol to the ECHR. The words “a prior guarantee of” should in any case be deleted.

Reasons:

The wording proposed by the Praesidium leaves its interpretation open to doubt in a not insignificant way (for example the words “prior guarantee of fair compensation”), and may also give rise to uncertainty as to the scope of the obligation. I therefore prefer the wording in the Additional Protocol. Moreover, the question of fair compensation in the case of deprivation of property is included in the Court of Human Rights’ evaluation of whether the deprivation may be seen as a proportionate action. Part B should refer to the practice of the Court of Human Rights in this area.

AMENDMENT 382

Proposed amendment to Article: 20. Right to property

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his property except in the public interest and in the cases and subject to the conditions provided for by law and subject to a fair compensation.”

Reasons:

The word “poseer” in the Spanish text is replaced by “propiedad” so as not to confuse the legal concepts of possession and ownership. At the end of the second sentence, the word “prior” is deleted because it imposes a constraint which not all EU Member States are in a position to accept. For instance, Article 33(3) of the Spanish Constitution refers to “compensation”, leaving it to the legislation to determine whether it is prior or subsequent.

AMENDMENT 383**Proposed amendment to Article: 20****Submitted by:** Piero MELOGRANI**Proposed text** * :

Every *natural or legal person* has the right ***to the enjoyment of his possessions, and to use and dispose of them within the limits and under the conditions laid down in national and Community law in accordance with the general interest.*** No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law ***or Community law*** and subject to a prior guarantee of compensation ***commensurate with the presumed trade value of the possessions.***

Reasons:

The right to property should be extended to legal persons and not be limited to individuals. The deletion of “*lawfully acquired*” is proposed (as it seems pleonastic, since the concept of property implies a lawful situation) as is the replacement of the expression “*enjoyment of his possessions*” used in Article 1 of the Additional Protocol to the ECHR. This offers the advantage of covering every type of violation of the freedom enjoy one’s possessions. It should also be noted that the wording proposed by the Presidency makes no mention of limitations to the right to property, taken into account in Article 1(2) of the Additional Protocol to the ECHR, which refers to the many cases where state intervention does not involve the loss of that right, but rather restricts the owner’s powers in such a way as substantially to reduce the enjoyment of the possessions. It is therefore proposed to refer to the power to use and dispose of the possessions, while making it clear that it may be restricted by law and by Community law only in accordance with the general interest. Finally, the concept of “*fair compensation*” should be replaced by that of “*compensation commensurate with the presumed trade value of the possessions*”, an expression which, without obliging to a *restitutio ad integrum*, has the advantage of anchoring the compensation for the loss of property to an objective parameter.

* The proposed amendments are shown in boldface.

AMENDMENT 384**Proposed amendment to Article: 20****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

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

Reasons:

I prefer to keep to Article 1 of the Additional Protocol to the ECHR.

AMENDMENT 385

Proposed amendment to Article: 20

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The present text should be deleted and replaced with the verbatim text of the ECHR.

Reasons:

Unnecessary departures from the ECHR should be avoided.

AMENDMENT 386

Proposed amendment to Article: 20

Submitted by: Pervenche BERÈS

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions. Use of these possessions must not conflict with the public interest. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Reasons:

AMENDMENT 387

Proposed amendment to Article: 20. Right to property

Submitted by: Dr. Ingo FRIEDRICH

Proposed text:

First sentence: Every person has the right to own, use, inherit and dispose of lawfully acquired possessions. Use of these possessions must not conflict with the public interest. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Reasons:

The incorporation of the law of succession in the guarantee laid down in the first sentence of the first paragraph serves to ensure that Article 1 of the Additional Protocol to the ECHR is unanimously regarded as also protecting the entitlement of the heir testamentary or legal heir to universal succession.

AMENDMENT 388

Proposed amendment to Article: 20. Right to property

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions, **including intellectual and industrial property**. No one may be deprived of **his/her** possessions **except in essential public interest** and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

AMENDMENT 389

Proposed amendment to Article: 20

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

The right to property is guaranteed (or, alternatively, every person has the right to enjoy his possessions), in accordance with its (their) social function and the general interest. No one may be deprived of their property except in the public interest and in the cases and subject to the conditions provided for by law and in return for fair compensation.

Reasons:

The first sentence in Spanish is technically unsound as it confuses the right to property with the right to possession, two different concepts which are not interchangeable. The reference to “lawfully acquired” possessions raises problems of interpretation for countries where the statute of limitation exists. The cases where property is acquired by criminal means must be dealt with under the Criminal Codes.

On the other hand, it is essential, as is done in the ECHR, to mention the limitations to the right to property derived from its social function, since the absolute right of Roman Law (“*ius utendi, fruendi et abutendi*”) has now been replaced by a right to property defined by its social function and its subordination to the general interest or common good.

Finally, the requirement that the compensation be calculated or be paid **prior** to the occupation of the expropriated possession is not compatible with Article 33 of the Spanish Constitution. Such a wording would make the Spanish Constitution incompatible with the Charter, requiring a constitutional amendment. Furthermore, as became clear at the meetings of the Convention, the prior character of compensation for expropriation is not a principle common to all Member States according to their constitutional traditions.

The somewhat clumsy wording proposed in the Praesidium’s text to overcome this objection [“subject to a prior guarantee of fair compensation”] does nothing to change our minds about rejecting the text, since it still requires that fair compensation be guaranteed prior to the beginning of the expropriation proceedings, which comes down to the same thing in the end.

It is worth noting that the ECHR says nothing about the prior nature of compensation.

AMENDMENT 390

Proposed amendment to Article: 20. Right to property

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 20. Right to property

1. Possessions and the law of succession shall be respected. Substance and limits shall be determined in accordance with national law. Possessions that derive from serious infringements of tax liability or from criminal offences or which are to be used for such purposes shall not be protected.
2. Use of these possessions must not conflict with the public interest.
3. Expropriation or a similar measure is permissible only if it is in the public interest and subject to compensation and only in the cases and subject to the conditions provided for by law. In order to protect the person concerned, provisions governing the nature and the degree of compensation should be laid down in this Charter. The compensation must be fair.”

Reasons:

The incorporation of the law of succession in the guarantee laid down in the first sentence of the first paragraph serves to ensure that Article 1 of the Additional Protocol to the ECHR is unanimously regarded as also protecting the entitlement of the heir testamentary or legal heir to universal succession, even if Article 1 of the Additional Protocol does not explicitly refer to the law of succession. The verbs “respect” and “guarantee” both ensure that the Charter contains a fundamental decision regarding property and the law of succession. However, it follows the wording of Article 1 of the Additional Protocol to the ECHR, thus making the proposal more acceptable.

Paragraph 1, second sentence contains two statements. Firstly, the provision leaves it to the Member States to determine the substance and the limits of the law. Secondly, it states that substance and limits with regard to property and the law of succession shall be laid down by law.

Paragraph 1, sentence 3 contains a clarification and sends a signal a barrier at European level against drugs trafficking and other forms of organised crime. This addition to the text stems from

the SPS parliamentary party's draft legislation of 4 February 1994 relating to Article 14 GG (BT-Drucks. 12/6784; see also Jürgen Meyer/Wolfgang Hetzer ZRP 1997, 13; and Jürgen Meyer in Article 10 of his discussion draft of 6 January 2000 which was submitted to the Convention – CHARTE 4102/00).

Paragraph 2 is the basis of the social cohesion demanded by all Convention members. As the Charter of Fundamental Rights contains no value judgement regarding the social state principle (which under Germany's Basic law forms the antithesis of the existing system of property ownership), the emphasis on social cohesion is of particular importance.

Paragraph 3 does not adopt the distinction between “deprived of his possessions” and “control the use of property” contained in Article 1 of the Additional Protocol to the ECHR. Rather, it takes the terminology of the Basic Law and makes the qualitative assessment of a measure such as expropriation (subject to compensation) or the determination of substance and limits dependent on the way in which the law is applied. For the purposes of the ECHR, “deprived of his possessions” essentially means formal deprivation. This (and this alone) involves obligatory compensation. This is not without problems, since restriction of the rights of property owners that involves deprivation can also take place outside the framework of formal expropriation proceedings. Moreover, the term “deprivation of property” (as defined by the Federal Constitutional Court) extends only to loss of property as the severest form of expropriation. Below this threshold, however, further restrictions on the rights of property owners that involve deprivation are possible.

Paragraph 3, first sentence also mentions a measure similar to expropriation (“a similar measure”). Rather than follow the Praesidium's proposal and cause confusion by introducing a second expression (“aus Gründen des öffentlichen Interesses”), the provision follows on from paragraph 2 by repeating the phrase “in the public interest” (“zum Wohl der Allgemeinheit”)¹. The proposed text (“by law”) ensures that administrative as well as legal expropriation is permissible. This obviates the need to supplement the provision with the phrase “or pursuant to a law”.

Paragraph 3, second sentence should replace the text proposed by the Praesidium, which requires expropriation to be preceded by an undertaking to pay compensation. Admittedly, this proposal moderates the first version of the draft, which required prior compensation. However, it still falls short of practical needs. In many Member States it is possible to go to law to contest the amount at which compensation is fixed. Promises cannot be given here, least of all before expropriation. Paragraph 3, second sentence emphasises (as a point against) the protection of the individual because it compels national law to be clear about whether the seizure of property itself is an act which constitutes expropriation and what compensation (paid from the public purse) it considers fair.

¹ Not applicable in the English version

AMENDMENT 391

Proposed amendment to Article: 20

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Everyone is entitled to the peaceful enjoyment of his or her possessions. Public bodies may interfere with possessions or the way they are used only in specified, limited circumstances”

For Part B, “Definition of Rights”:

“The right in Article 20 is the right in Article 1 of the Additional Protocol to the ECHR”.

Reasons:

I am not in favour of an approach which seeks to “update the wording of the Convention”. The Convention is a living document and kept up to date by the jurisprudence of the Strasbourg Court. I consider that unnecessary and likely to produce new and uncertain obligations, potentially inconsistent with the ECHR, for the EU institutions and Member States acting on their behalf. My version ensures that Article 20 is understood within the meaning of the relevant ECHR right and associated case law.

AMENDMENT 392

Proposed amendment to Article: 20

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be deprived of the property of lawfully acquired possessions, except in the public interest and in the cases and subject to the conditions provided for by law and in return for fair compensation.

Reasons:

To eliminate the confusion in the draft between property and possession.

To remove the reference to “prior” compensation.

AMENDMENT 393

Proposed amendment to Article : 20

Submitted by: Daniel TARCHYS

Proposed text:

Delete “prior”.

Reason:

There is no such provision in the national legislation of many Member States, including Sweden.

AMENDMENT 394**Proposed amendment to Article : 20**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace Article 20 by the following :

- “1. Every person has the right to own lawfully acquired possessions.
2. The right to property may be restricted by law in the general interest and in order to ensure the social function of property.
3. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation, without prejudice to the exceptions laid down by criminal law.”

Reasons:

This text aligns the rules on the right to property on those in the Member States' Constitutions.

AMENDMENT 395

Proposed amendment to Article: 20. Right to property

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Reasons:

The first sentence takes over the text of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

AMENDMENT 396**Proposed amendment to Article: 20**

Submitted by: Paul-Henri MEYERS, representative of the Luxembourg Government

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to the prior granting of fair compensation.

Reasons:

The term "guarantee" leaves open the amount of compensation to be awarded in the case of expropriation. Replacing "guarantee" by "granting" makes it clear that the expropriated person must have a decision on the amount of the compensation and the deadline for its payment.

AMENDMENT 397

Proposed amendment to Article: 20

Submitted by: Ieke VAN DEN BURG

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions within the limitations that may be imposed by the authorities in the general interest, etc.

Reasons:

The second paragraph of Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedom states that an authority must also be able to enforce laws in the general interest which may limit the exercise of property rights. This is made clear in the statement of reasons but in the text the general interest is mentioned only in connection with possible expropriation. In (national and European) practice, legal conflicts arise more frequently in connection with this limitation of the exercise and utilisation of property rights.

It is therefore important to include that element explicitly in the text of Article 20.

AMENDMENT 398**Proposed amendment to Article: 20****Submitted by:** Frits KORTHALS ALTES, representative of the Netherlands Government**Proposed text:**

Every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the cases referred to in Article 1 of the First Protocol to the ECHR. The preceding provisions shall not in any way impair the right of the Union to enforce those provisions of Community law which are necessary within the Union to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Reasons:

This Article is based on Article 1 of the First Protocol to the ECHR. It concerns a fundamental principle shared by all national constitutions. In order to avoid misunderstandings, it is advisable - partly in view of the case law of the European Court of Human Rights – to follow the wording of Article 1 of the First Protocol as closely as possible.

AMENDMENT 399

Proposed amendment to Article: 20

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions **subject to the restrictions imposed by the general interest.** No one may be (rest unchanged).

AMENDMENT 400

Proposed amendment to Article: 20

Submitted by: Simone BEISSEL

Proposed text:

delete "... subject to a prior guarantee of fair compensation" or possibly "provided for by law and subject to compensation".

Reasons:

In the current system, the prior guarantee of fair compensation would block all expiry procedures, and in any event for the expropriated party the compensation is never fair.

Proposals for Article 20a

AMENDMENT 401

Proposed amendment to Article: insertion of two new Articles after Article 20

Submitted by: Peter ALTMAYER, Member of the German Bundestag

Proposed text:

Article 21/ Prohibition on expulsion

“Every person is entitled to live peace, security and dignity in his place of residence, home and country. No one may be driven from his home by force or coercion, or compelled to flee. Displaced persons and refugees are entitled to return to their traditional homes.”

Article 22/ Rights of minorities

“The identity and the rights of minorities and their members, as well as linguistic and cultural diversity in the European Union, shall be respected and protected.”

Reasons:

The 20th century saw millions of people driven from their traditional homes by totalitarian regimes in Europe and other parts of the world. Even very recently, in the spring of 1999, the expulsion of several hundred thousand people from Kosovo led to NATO military intervention against the criminal regime of the Serbian dictator Milosevic. At the same time, the rights of minorities were and are repeatedly violated. Expulsion and contempt for minority rights are among the most serious and most common human rights violations in Europe. It would therefore seem essential for these rights to be expressly laid down in the Charter.

Proposals for Article 21

AMENDMENT 402**Proposed amendment to Article: 21****Submitted by:** Lord GOLDSMITH, QC**Proposed text:**

Delete this article entirely

Reasons:

The Praesidium text shows the great difficulty of formulating the relevant provisions concerning this sensitive subject in an acceptable way. Protocol 4 to the ECHR has not been accepted by all the Member States. Moreover the text is confined to non-EC citizens, which is understandable but incompatible with the Refugee Convention. Article 63 TEC quotes the title of the 1951 Convention and the 1967 Protocol; but it does not assert a right to asylum. Neither is it true to say that Article 63 incorporates the 1951 Convention into Community law; in fact it provides for new First Pillar legislation in accordance with the 1951 Convention. I consider that development of an acceptable text on asylum rights is beyond the reach of the Convention and that, in the time available, the matter should be reserved for separate consideration by the Member States.

AMENDMENT 403

Proposed amendment to Article: 21

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 21. Right to asylum and expulsion

1. Nationals of third countries shall have the right to asylum in the European Union when in justified fear of political persecution or inhumane punishment, and in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

2 (new). Asylum seekers shall have access to fair and efficient determination procedures, including reasoned decisions and the right to an appeal with suspensive effect.

3 (ex 2). Collective expulsion of (delete: 1 word) third country nationals is prohibited.

Reasons:

The right of asylum is a universal right under the terms of Article 14 of the Universal Declaration of Human Rights. The text of paragraph 1 is based on Article 63 TEC which incorporates the Convention on Refugees into Community law.

Paragraph 2 of this Article is based on best practice within the Member States of the European Union, which itself is in the process of developing a common asylum policy according to the Treaty of Amsterdam.

Paragraph 3 is based on Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a

specific examination and that no single measure can be taken to expel all persons with particular characteristics. (delete: 20 words) The provisions of Article 1 of Protocol No 7 to the ECHR concerning procedural safeguards in the event of expulsion have not been incorporated as most Member States have not signed or ratified that Protocol. In any event the Geneva Convention contains guarantees in that respect.

AMENDMENT 404**Proposed amendment to Article: 21**

Submitted by: Erling OLSEN

Proposed text:

The expression “nationals of third countries” must be changed to “everyone”. Moreover, it must be specified that there is a right to seek asylum “in any Member State of the European Union”.

Reasons:

Under the Geneva Convention on the legal status of refugees, everyone has the right to seek asylum. The comments on the article might refer to Protocol 29 on asylum for citizens in the Member States of the European Union.

AMENDMENT 404**Proposed amendment to Article: 21****Submitted by: Piero MELOGRANI****Proposed text***:Right to asylum and *prohibition on collective expulsion*

1. *Everyone* shall have the right to asylum in the European Union in accordance with the rules of *international asylum law as laid down, in particular, in* the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

The first proposed amendment concerns the title of this Article: the use of “*right*” in connection with “expulsion” is infelicitous. Moreover, to prevent baseless discrimination, the right to asylum should – as laid down in Article 3 of the Geneva Convention relating to the Status of Refugees – cover everyone, including stateless persons, and not just “*nationals of third countries*”; this is also the position argued by Amnesty International in its submissions to the Convention.

Lastly, it should be made clear that the Geneva Convention, albeit central, is not the only international instrument for the protection of refugees. The proposed wording would mean that relevant future agreements would be automatically incorporated.

* Proposed amendments are in bold.

AMENDMENT 405**Proposed amendment to Article: 21****Submitted by:** Win GRIFFITHS, MP**Proposed Text:**

1. Nationals of third countries shall have the right to seek asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

The right to asylum is not automatic but anyone does have the right to seek asylum.

AMENDMENT 406**Proposed amendment to Article: 21**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Any person who has a justified fear of persecution shall have the right to asylum in the European Union pursuant to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees. Grounds for asylum specific to women shall be taken into consideration.
2. No one may be expelled to a State if there are valid reasons for assuming that the measures referred to in paragraph 1 are likely to be carried out.
3. Collective expulsions of aliens are not permitted.
4. Any person who applies for asylum shall be entitled to admittance, protection and support.
5. Any person who is granted asylum shall be entitled to reunion with their family.

Reasons:

AMENDMENT 407**Proposed amendment to Article: 21**

Submitted by: Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN/Ieke VAN DEN BURG

Proposed amendment:

Article 21 Asylum and expulsion

1. Any person who faces political persecution or inhuman or degrading punishment or treatment shall have the right to asylum. Grounds for asylum specific to women shall be taken into consideration.
2. Collective expulsions of aliens are prohibited.

Reasons:

The amendment restates – in slightly amended form – the proposed amendment which I submitted on 29 March (Contrib. 76) and clarifies my original discussion draft (submitted on 6 January; Contrib. 2).

The fundamental right to asylum is also considered in the proposal of the Praesidium. This is expressly welcomed as the Union will in the future acquire powers in this area pursuant to Article 63 of the EC Treaty.

The right to asylum is laid down inter alia in Article 14 of the Universal Declaration of Human Rights, in the constitutions of the Federal Republic of Germany (Article 16a), France (the preamble

to the 1946 constitution which is still in force), Italy (Article 10), Portugal (Article 33(6), Spain (Article 13(4), Slovakia (Article 53) and Poland (Article 56).

The inclusion in paragraph 1, second sentence of grounds for asylum specific to women is based on a realisation that is gaining in international acceptance, namely that women as a sociological group frequently face particular forms of persecution. In this connection the systematic rape of Muslim women during the armed conflict in former Yugoslavia, together with the fact that rape is regarded as a specific war crime by the UN, should be noted.

By incorporating such a clarification of persecution, the Union would be contributing towards the affirmation of a modern fundamental right that is already recognised in specific cases.¹ The wording proposed here is expressly welcomed by *Amnesty International*, PRO ASYL and *Terre des Femmes*.

Protection from expulsion as laid down in the amendment proposed previously (Contrib. 76) in the cases referred to in paragraph 1 has therefore been removed from this amendment because it has now been incorporated by the Praesidium in the second sentence of Article 4. This is expressly welcomed and is in keeping with the constitutions of many Member States (Finland, France, Greece, Italy, Portugal, Spain) and with Article 3 of the UN Convention against torture or other Cruel, Inhuman or Degrading Treatment or Punishment and Article 33(1) of the Geneva Convention relating to the Status of Refugees.

Paragraph 2 incorporates the wording proposed by the Praesidium.

¹ Magdeburg Administrative Court on 20 July 1996, coalition agreement of the Green/SPD Federal Government of 20 October 1998.

AMENDMENT 408

Proposed amendment to Article: 21

Submitted by : Pervenche BERÈS

Proposed text:

Any person not resident in a Member State, or resident in a Member State the rights of which have been suspended in the Union, shall have the right to asylum in the European Union in accordance with international rules.

Reasons:

The right to asylum should be opened to stateless persons.

The reference to the Geneva Convention makes the wording cumbersome and makes the Charter dependent on the assessment of a text over which the Union has no control.

AMENDMENT 409

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by : Dr Ingo FRIEDRICH

1. (new) Politically persecuted persons who do not belong to the Union shall be protected in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. (new) No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.
3. Collective expulsion of aliens is prohibited.

Reasons:

The Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 already offer sufficient international minimum standards for the treatment of refugees which are binding on Member States.

However, the Geneva Convention does not guarantee a right to asylum but only rights in the context of asylum. A reference to the Geneva Convention in a catalogue of fundamental rights might give the impression that Member States wanted to elevate the legal status of the Geneva Convention to the level of an individual fundamental right. This, however, is not the case.

Paragraph 2 is taken from former Article 4, second sentence.

AMENDMENT 410**Proposed amendment to Article: 21****Submitted by:** Heinrich NEISSER**Proposed text:**

Article 21. The right to asylum and expulsion.

1. Everyone shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

In order not to fall below the level of protection of the Geneva Convention the right to asylum should basically be guaranteed to everyone and not only nationals of third countries. However, the *acquis* in accordance with the Protocol to the EC Treaty on asylum for nationals of the Member States of the EU (added by the Amsterdam Treaty) remains unchanged.

AMENDMENT 411**Proposed amendment to Article: 21**

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:**Article 21. Right to asylum and expulsion**

- 1. *Everyone shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.***
- 2. *Collective expulsion of aliens is prohibited. The expulsion order shall guarantee the right of the individual to present reasons against his expulsion before a court or any other independent body.***

Statement of reasons:

The right to asylum should be guaranteed to anyone applying for asylum in the territory of the European Union, not only to nationals of third countries. This wording is taken from the Convention on the Status of Refugees, to which there is also a reference in the text of this Article.

The right of the individual to have an expulsion order examined before an impartial body is in line with Article 13 of the UN Covenant on Civil and Political Rights which has been ratified by all the Member States.

AMENDMENT 412

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 21. Right to asylum and expulsion

1. The protection of politically persecuted persons who do not belong to the Union shall be guaranteed in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to status of refugees.
2. Collective expulsion of aliens is prohibited.
3. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment."

Reasons:

The wording proposed by the Presidency, i.e. "Nationals of third countries" makes no distinction at all between types of asylum seekers. It does not distinguish between politically persecuted persons and those seeking to enter for other reasons. Limiting the group of beneficiaries to politically persecuted persons takes account of the idea of the need for protection which lies at the heart of asylum.

The wording proposed by the Presidency i.e. "... shall have the right to asylum" suggests that the norm should be interpreted as an individual right under public law. Given Member States' heterogeneous legal position this concept appears to be too narrow. In view of the binding force of the Charter for EU bodies, it is important that a wording be found that also covers constitutions which merely provide for institutional guarantees relating to asylum. If an individual right were laid down EU bodies would be forced to act against those Member States whose constitution only provides for institutional guarantees. The wording proposed by the German Länder offers sufficient leeway here.

The ban on expulsion and extradition has been added to Article 21, which logically speaking is its rightful place, and not Article 4 as in CONVENT 28.

AMENDMENT 413

Proposed amendment to Article: 21

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Article 21. Right to asylum and expulsion.

1. Anyone who is politically persecuted or exposed to inhuman or degrading treatment shall have a right to asylum. Account shall be taken of grounds for asylum relating specifically to women.
2. No one may be expelled to a State if there are valid reasons to assume that the acts described in paragraph 1 are a threat after expulsion. This also applies in particular to conscientious objectors from third countries in which there is no right to refuse to serve in a war.
3. Collective expulsion of aliens, male or female, is prohibited.

Reasons:

This proposed amendment basically draws on Professor Meyer's proposed amendment of 24 March 2000. The addition of the right to protection from expulsion for conscientious objectors goes beyond that proposal. The reference in the Presidency's proposal to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees belongs in the statement of reasons relating to Article 21. It must be ensured that the fundamental right to asylum is individually enforceable through legal action and that it does not degenerate into an act of mercy by the State.

AMENDMENT 414**Proposed amendment to Article: 21**

Submitted by: VITORINO, Commission representative at the Convention

Proposed text:

The article could be split into two separate articles, one to deal with the right to asylum and the other with expulsion (Article 21(2) is not altered in substance):

“Article 21. Right to asylum

The right to asylum is guaranteed in compliance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and with other relevant treaties.

Article 21a. Expulsion

Collective expulsion is prohibited.”

Reasons:

1. Grouping asylum and the ban on expulsion in the same article is incompatible with the spirit of the conclusions of the Tampere European Council, which made a clear distinction between the problems of asylum and those of aliens' residence.
2. For a person who has the right of asylum, a neutral wording should be adopted, in compliance with the Treaties and in particular the Protocol on asylum for nationals of Member States of the European Union.

AMENDMENT 415**Proposed amendment to Article: 21**

Submitted by: François LONCLE

Proposed text:

Word paragraph 1 of this Article as follows:

“Persons covered by the Geneva Convention of 28 July 1951 and by the Protocol of 31 January 1967 relating to the status of refugees shall be granted refugee status in the European Union, under the conditions laid down in those texts.”

Reasons:

This amendment is intended to remove two ambiguities in the present text:

- the first is the implication that the benefit of the Geneva Convention is limited to certain categories of persons, whereas in fact that text applies universally;
- the second is that this text mixes up the right of asylum, that is admission to the territory, which comes under the jurisdiction of each State, with refugee status, which is regulated by the Geneva Convention.

AMENDMENT 416

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone has the right to asylum in a Member State of the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

In accordance with the obligations of Member States under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, every application for asylum must be treated individually, whether made by a citizen of the Union or a person who is not a citizen of the Union. Hence the proposed extension *ratione personae* of the right to asylum.

In the absence of a genuine European right to asylum, it is technically more correct to speak of a right to asylum in accordance with the law of the EU Member States.

AMENDMENT 417

Proposed amendment to Article: 21(a) (new): Prohibition of expulsion

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

21(a) (new): Prohibition of expulsion

(New) The citizens of the European Union have a right to their home country. No one may by force of compulsion be expelled from his ancestral home, his place of residence or his country or be forced to flee. Displaced persons or refugees shall have the right to return to their ancestral home country.

Reasons:

In the 20th century millions of people were expelled by totalitarian regimes from their home countries in Europe and throughout the world. Only recently in the spring of 1999 the expulsion of several hundreds of thousands of people from Kosovo led to the military intervention by Nato against the criminal regime of Serbia's dictator Milosević.

The draft of Article 21(2) provides that the collective expulsion of aliens is prohibited. However, it is important that not only aliens, especially nationals from third countries, are protected by this right but also citizens of the European Union.

AMENDMENT 418

Proposed amendment to Article: 21b (new): Protection of minorities

Submitted by: Dr. Ingo FRIEDRICH

Proposed text:

21b (new): Protection of minorities

(New) The identity and the rights of historically-rooted and long-established minorities and their members, as well as linguistic and cultural diversity in the European Union, shall be respected and protected.

Reasons:

The rights of minorities are continuously violated even today. Expulsion and disregard for minority rights are among the most serious and the most frequent human rights violations in Europe.

AMENDMENT 419

Proposed amendment to Article: 21

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

- Convert Article 21(2) into Article 4(3) in order to combine issues relating to expulsion.
- Change the title of Article 21 as it now concerns only the right of asylum.
- Replace the proposed version of Article 21 with the following text:
 1. The European Union shall grant the right of asylum to any third-country national whose life is threatened or who is exposed to inhuman or degrading treatment. However, persons enjoying this right shall undertake to observe and observe in practice both the principles of tolerance and democracy and the fundamental laws of the Union and its Member States.
 2. When the reasons for the application are reviewed, grounds relating specifically to women may be taken into account.
 3. Collective expulsions of refugees or other aliens or expulsions aimed specifically at one nationality or religious or ideological group are prohibited.

Reasons:

A Union of 400 million people cannot guarantee the right of asylum to a global population outside the Union of over 5 billion human beings without fundamentally impugning the well-being of its inhabitants.

Moreover, the right of asylum has from time immemorial been regarded primarily as a personal right (which justifies references to it as such both in this section and elsewhere in the Charter). If there is a desire to treat it as a collective right, it should be dealt with in the relevant section.

Furthermore, good reasons have been found for not quoting legal sources thus far in the Charter, and this rule should not be modified for this one Article.

Lastly, it must be emphasised that the right of asylum is not conceived of as simply involving residence but as an act of adherence to the fundamental values of the Union as reflected moreover in the Charter.

The other changes are aimed at improving the form and do not alter the substance.

Proposals for Article 21(1) and (1a)

AMENDMENT 420

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

1. Nationals of third countries shall have the right to asylum in the **Member States of the** European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

Although there is a common asylum policy, it remains the fact that pursuant to Article 63 of the TEC it is the Member States which grant or refuse asylum to persecuted individuals. Article 21 should not present any ambiguity on this point.

AMENDMENT 421

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 1a

Submitted by: Georges BERTHU, MEP

Proposed text:

Aliens may be expelled from the territory of Member States, subject to the guarantees recognised by international law, if they have entered that territory illegally, if they have violated the laws of that State, or if they endanger public order and public safety.

Reasons:

It would be bizarre for an Article entitled “Right to asylum and expulsion” to have a first paragraph defining the right to asylum without the following paragraph defining cases where expulsion is permitted.

AMENDMENT 422

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 21

1. Nationals of third countries shall have the right to seek and enjoy asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

It is suggested to include "seek and enjoy" as there is no right to "asylum" in international law. To "seek and enjoy" is in conformity with Article 14 of the Universal Declaration of Human Rights.

AMENDMENT 423

Proposed amendment to Article: 21

Submitted by: E.M H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

In paragraph 1 the phrase “Nationals of third countries” should be replaced with “Any person”.

Reasons:

Stateless persons also have the right of asylum.

AMENDMENT 424

Proposed amendment to Article: 21(1)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Nationals of third countries shall have the right to apply for asylum in the European Union.”

Add to Article 21(1) a reference to the Treaty establishing the European Community.

Reasons:

The internationally recognised right is to “apply for asylum”. The wording is incorrect and may be dangerously broad.

A reference needs to be made to the Community powers laid down in Articles 61 and following of the EC Treaty and Protocol No 29.

AMENDMENT 425

Proposed amendment to Article: 21(1)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Nationals of third countries shall have the **right to apply for asylum** in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

The right to asylum cannot be considered to be absolute. It is subject to compliance with established requirements.

AMENDMENT 426

Proposed amendment to Article: 21(1)

Submitted by: Peter ALTMAIER, Member of the German Bundestag

Proposed text:

“Persons from third countries who are persecuted on political grounds shall be granted asylum in the European Union pursuant to the Geneva Convention of 28 July 1951 and the Protocol of 11 January 1967 relating to the Status of Refugees”.

Reasons:

This wording should prevent Article 21(1) of the Charter being invoked as justification for individual rights of asylum that go beyond the legal provisions in force in the Member States of the European Union.

AMENDMENT 427**Proposed amendment to Article: 21****Submitted by:** François LONCLE**Proposed text:**

Word paragraph 1 of this Article as follows:

"Persons covered by the Geneva Convention of 28 July 1951 and by the Protocol of 31 January 1967 relating to the status of refugees shall be granted refugee status in the European Union, under the conditions laid down in those texts."

Reasons:

This proposed amendment is intended to remove two ambiguities in the present text:

- the first is the implication that the benefit of the Geneva Convention is limited to certain categories of persons, whereas in fact the text applies universally;
- the second is that this text confuses the right of asylum, i.e. permission to reside in sovereign territory, which falls within the jurisdiction of each individual State, with refugee status which is regulated by the Geneva Convention.

AMENDMENT 428

Proposed amendment to Article: 21(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. *The right to apply for asylum shall be guaranteed in the European Union*, in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

The proposed amendment to paragraph 1 is more in line with the obligations ensuing from the Geneva Convention.

AMENDMENT 429

Proposed amendment to Article: 21

Submitted by : RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1 replace “Nationals of third countries shall have the right to asylum” with “Everyone shall have the right to asylum”.

Reasons:

The proposed wording for paragraph 1 includes stateless persons and all persons without citizenship.

Proposals for Article 21(2)

AMENDMENT 430

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 2

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete the paragraph (“Collective expulsion of aliens is prohibited”).

Reasons:

Paragraph 2 as presented here is deceptive because, although it is indeed based on Article 4 of Protocol No 4 to the European Convention on Human Rights, that Article is part of a legal instrument which provides for derogation, particularly “in time of war or other public emergency threatening the life of the nation” (Article 15 of ECHR).

In those circumstances, it is inappropriate to adopt a draft which could lead the non-specialist reader to believe that the collective expulsion of aliens is prohibited at all times and in all circumstances. The sentence should either be deleted or be qualified by the addition of “except in time of war or other public emergency, in accordance with international provisions in force”.

AMENDMENT 431

Proposed amendment to Article: 21(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Delete the paragraph.

Reasons:

Paragraph 2 comes from Protocol No. 4, which has not been ratified by Spain. The problem arises from the term “collective expulsions”: at what stage is an expulsion deemed to be collective? Can this prohibition be applied to the expulsion of several separate individuals who illegally enter a State? In the case of Spain, it is worth keeping in mind the well-known events arising from the nature of its borders. Such problems are also shared by other Member States of the Union.

AMENDMENT 432

Proposed amendment to Article: 21(2)

Submitted by: Peter Michael MOMBAUR, MEP

Proposed text:

“Collective expulsion is prohibited”.

Reasons:

The right of protection also concerns minorities within the present or, where appropriate, future territorial extent of the European Union.

Proposals for Article 21(3)

AMENDMENT 433

Proposed amendment to Article : 21

Submitted by : RODOTA', PACIOTTI and MANZELLA

Proposed text :

Add a new paragraph 3 as follows:

“3. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.”

Reasons :

Paragraph 3 incorporates the wording of Article 4, transferred here for reasons of logic.

Proposals for Article 22 as a whole

AMENDMENT 434

Proposed amendment to Article: 22

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national, regional or cultural minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.**
- 3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.**

Reasons:

Paragraph 1 is based on the European Convention on Human Rights. The ECHR limits the application of the principle to guaranteed rights, but Community law goes further following the adoption of the Amsterdam Treaty. The list combines that in Article 13 of the Community Treaty with that in Article 14 of the ECHR. The principle of non-discrimination set out in paragraph 2 is enshrined in Article 12 of the EC Treaty. Protection of regional and cultural minorities is included in recognition of the diversity of the peoples of the European Union and of the need for solidarity between them. It also draws on the 1995 Council of Europe Framework Convention on the Protection of National Minorities.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

The wording of paragraph 3 is intended to authorise positive action as provided for in the Treaty.

AMENDMENT 435**Proposed amendment to Article: 22****Submitted by:** Win GRIFFITHS, MP**Proposed Text:**

1. Any discrimination based on sex, nationality, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Men and Women shall have the right to equal treatment, and in particular when setting pay and working conditions and measures or social protection.
3. Persons belonging to minorities shall have the right to maintain and develop their own language and culture.

Reasons:

Article 22.2 can be deleted as it is covered by the inclusion of "nationality" and "association with a national minority" in Article 22.1.

New Article 2 is expressed in a way more consistent with the language and approach of the Charter without losing any of the context of the existing 3.

New paragraph 3 states in an overt and positive fashion what is only implied in paragraph 1. The legal base is Article 151 of the Consolidated Version of the Treaty establishing the European Union.

AMENDMENT 436

Proposed amendment to Article: 22 – Equality and non-discrimination

Submitted by: Ben FAYOT

Proposed text:

General principle of equality between men and women in all areas

1. The unconditional and fundamental principle of the equality of the sexes in all areas shall be ensured by the Union.
2. Any discrimination on grounds of sex is prohibited.
3. Positive measures shall be implemented to put the principle of equality into effect.

Reasons:

AMENDMENT 437**Proposed amendment to Article: 22****Submitted by:** Pervenche BERÈS**Proposed text:**

Any arbitrary discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, genetic characteristics, health, disability, age or sexual orientation shall be prohibited.

Reasons:

The concept of “arbitrary discrimination” allows for the prospect of positive discrimination (or measures) aimed at restoring equality.

Genetic characteristics constitute a major discriminatory threat of the future: the Charter must ensure that they are kept confidential.

AMENDMENT 438

Proposed amendments to Article: 22 Equality and non-discrimination

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

- (1) Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- (2) Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.
- (3) The Union shall seek to eliminate unequal treatment (delete one word) and to promote equality between men and women. Equal treatment of (delete two words ¹) the sexes shall be ensured in particular when setting pay and other working conditions.

Reasons:

The wording chosen in paragraph 3 - “Inequalities” and “equality between the sexes” - was not entirely felicitous.

¹ Delete one word in the German version.

AMENDMENT 439**Proposed amendment to Article: 22**

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:**Article 22. Equality and non-discrimination**

- 1. Any discrimination based on sex, (...), colour or ethnic or social origin, language, religion or belief, political opinion or *association with an ethnic, religious or linguistic minority*, property, birth, disability, age or sexual orientation or *another personal reason* shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination *between nationals of the European Union* on grounds of nationality shall be prohibited.**

Reasons:

The reference to race may be deleted since it is in fact contained in other discrimination grounds. Furthermore, its deletion is consistent with current linguistic usage.

The reason for replacing “national minority” as grounds for discrimination with a more explanatory version is that the reference to different kinds of minority provides a more comprehensive picture of the kinds of minority which actually exist and of which factors are most often the reason for discrimination. The example of different kinds of minority also specifically underlines the importance of prohibiting discrimination aimed at minorities. The proposed amendment is in line with the wording of Article 27 of the UN Convention on Civil and Political Rights.

The list of grounds for discrimination should be left open so that it might also cover grounds for discrimination previously specified. In this case, the Article is also closest in line with Article 14 of the European Convention on Human Rights.

In paragraph 2 Union nationality is also worthy of mention in connection with discrimination based on nationality, since otherwise the Article would acquire a wider meaning in this connection than is intended.

AMENDMENT 440

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

1. In paragraph 1 add "or other opinion" before "political opinion" and "genetic characteristics" after "birth".
2. Paragraph 2 should be amended as follows:

"Within the scope of application of the Treaty establishing the European Community and the Treaty of the European Union, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."
3. The second part of paragraph 3 should be deleted ("in particular equality between the sexes shall be ensured when setting ...").
4. The Commission representative proposes submitting an amendment inserting an Article on equality between men and women in social affairs (CONVENT 34).

Reasons:

1. The addition proposed for the first paragraph is necessary in order to take over a form of discrimination prohibited by Article 14 of the ECHR; the second addition takes account of the new bio-ethical challenges and is based on a suggestion by the European Ethics Committee.
2. The second paragraph takes over the first paragraph of Article 12 TEC. In order to avoid any legal uncertainty the wording must be identical to Article 12 TEC, with the sole exception of the principle of non-discrimination being henceforth explicitly extended to cover the scope of the TEU.
3. The current third paragraph is legally erroneous and contradictory: the first sentence enshrines the general principle of positive action in promoting *de facto* equality between men and women. The second sentence refers by way of example to equality in setting pay, which principle should however be interpreted in the strict sense and specifically does not allow for

positive action in favour of women. Payment of a higher salary to women than to men for the same work would disregard the basic principle enshrined in Article 141(1) TEC. The second part of the paragraph as currently proposed thus provides a wrong example for the principle set out in the first part and should accordingly be deleted.

AMENDMENT 441

Proposed amendment to Article: 22

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

- 1. Discrimination between citizens of Member States of the European Union on grounds of nationality shall be prohibited*
- 2. The rights and freedoms in [ECHR-based rights] shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

For Part B, “Definition of Rights”:

Paragraph 1 is the prohibition of discrimination on grounds of nationality in Article 12 of the Treaty establishing the European Community. The prohibition applies within the scope of application of, and without prejudice to special provisions contained in, that Treaty.

Paragraph 2 is the right in Article 14 of the ECHR

Reasons:

The Praesidium draft conflates the relevant ECHR provision (which applies only to the ECHR rights) with TEC Article 13 and TEC Article 12. TEC Article 13 is not a right. It is the basis on which the Council can take action. Such action is under current negotiation and it is not yet possible to determine the outcome with sufficient confidence to justify reference in the Charter at this time. I believe that much the same is true of the negotiations within the Council of Europe regarding the proposal to extend the right in Article 14 of the ECHR.

Article 14 of the ECHR says: “The enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status.” The Charter should not provide for a free-standing non-discrimination right but like the ECHR the article should be “parasitic” on other provisions.

AMENDMENT 442

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. **Any discrimination shall be prohibited, for example discrimination** based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.
3. **Delete**

Reasons:

The grounds on which discrimination might be based should be presented as examples, so that any other discrimination which might arise is also covered. Listing particular grounds for discrimination equates to expressly permitting anything which is not specifically mentioned.

In CHARTE 4284/00 CONVENT 28, Article 22(3) states that the Union shall seek to “eliminate inequalities”. However, to eliminate inequalities would mean a demand for one hundred percent equal distribution of all available resources between the citizens of the Union. As the whole Charter has arisen in order to promote equality in various areas, this aim does not need to be repeated in Article 22(3). Every Article of the Charter constitutes an attempt to ensure equality in various areas.

Equality between the sexes is ensured by Article 22(1), which prohibits all discrimination, amongst other things on the grounds of sex.

The Charter should contain absolute rights and should therefore not also contain provisions defining aims of the type in Article 22(3). If two paragraphs of an Article lay down absolute rights but a third paragraph of the same Article contains relative rights, there is a risk of weakening the absolute rights in the same Article.

AMENDMENT 443

Proposed amendment to Article: 22

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text :

Delete Article.

Reasons:

Taken over into the proposed Article 1a.

AMENDMENT 444**Proposed amendment to Article: 22**

Submitted by : Rocco BUTTIGLIONE MEP, on the authority of the Chairman of the European Parliament delegation

Proposed text:

Article 22. Equality and non-discrimination

2. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability or age shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.

3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.

Reasons:

No change.

AMENDMENT 445

Proposed amendment to Article: 22(3)

Submitted by: Hanja MAIJ-WEGGEN

Proposed text:

The Union shall seek to eliminate inequalities and to promote the equal treatment of men and women.

The equal treatment of men and women shall in particular be ensured with regard to pay, social security, taxation, access to vocational training and other working conditions.

Reasons:

Re 1st paragraph: There are certain biological differences between men and women. The term "equal treatment" is therefore preferable to "equality".

Re 2nd paragraph: Numerous studies show that equal pay for the same work cannot be guaranteed or is undermined if there are differences between men and women in social security (contributions and benefits), taxation (breadwinner arrangements), access to vocational training and other working conditions. These should therefore all be specified in this Article.

AMENDMENT 446**Proposed amendment to Article: 22**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

“1. The enjoyment of any right set forth by law shall be secured without discrimination. Any discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or on any grounds whatsoever, shall be prohibited.

2. Any discrimination on grounds of nationality shall be prohibited in accordance with Article 12 of the Treaty establishing the European Community.

3. With a view to ensuring full equality within the Union, the principle of equal treatment shall not prevent measures from being maintained or adopted in order to prevent or compensate for disadvantages arising from the unequal position of persons of a particular sex, of a particular racial or ethnic origin, with a disability, or of a particular age or sexual orientation.”

Reasons:

To replace Article 1(2), paragraph 1 of this Article regarding the principle of equality is based on the wording of the draft twelfth Protocol to the ECHR.

The second sentence of paragraph 1 states that discrimination on “any grounds whatsoever” is prohibited. The non-discrimination grounds specifically given in that sentence are based on Article 13 of the EC Treaty.

As far as nationality is concerned, the prohibition of discrimination in paragraph 2 is confined to a reference to Article 12 of the EC Treaty.

Paragraph 3 lays the basis for positive action, and is based on Article 141(4) of the EC Treaty and the draft directives implementing Article 13 of the EC Treaty. In the light of Article 13 of the EC Treaty, it is not desirable to refer exclusively to difference in sex in paragraph 3. The wording of the draft text, containing “the promotion of equality between men and women”, was also considered to be less felicitous.

AMENDMENT 447**Proposed amendment to Article: 22**

Submitted by: Erling OLSEN

Proposed text:

Paragraph 1 should instead use the wording of Article 14 of the ECHR, which should apply as regards Articles coming from similar provisions in the ECHR.

Paragraph 2 should instead fully reflect the first paragraph of Article 12 of the EC Treaty: “Within the scope of application of the Treaty establishing the European Community, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”.

Paragraph 3 should be deleted.

Reasons:

Article 13 of the EC Treaty, on which the Praesidium’s current draft is based, does not issue any directly applicable prohibitions, but merely provides authority for the Council to take measures to combat discrimination based on certain criteria. Paragraph 3 expresses an aim, not a right.

Proposals for Article 22(1)

AMENDMENT 448**Article 22. Equality and non-discrimination**Proposal:

Rephrase paragraph 1 completely.

Reasons:

Paragraph 1.

The scope of this paragraph is far too wide.

An instrument with elaborate and precise provisions aimed at combating discrimination in those sectors of society where it is most frequent and serious might be more effective. Such provisions are now being negotiated in a Council working group within the EU.

Further, there is no mention in Article 22.1 of positive measures. In several areas where our governments, or the EU institutions, are involved in compensating for injustices or supporting underprivileged groups to improve their position in society, those negatively affected by such action may raise the issue of discrimination. An Article on this delicate matter must therefore be based on a thorough analysis of such problems.

Thirdly, the wide scope of the Article would not necessarily create problems if we had reason to believe that it would apply only in relations between the individual and public authorities, in other words in the classic human rights sense. But this is not clear, nor is it clear to what extent Member States will be held liable for conduct of individuals, such as landlords, restaurant owners, employers, etc. This is not to say that discriminatory behaviour on their part should not be met with sanctions and perhaps be criminalised. But States should not be held liable for human rights violations as a result of conduct of third parties.

Finally, in the explanation for the proposal, one gets the impression that after the entry into force of the Amsterdam Treaty, community law on ethnic discrimination has been widened to include a total ban on all ethnic discrimination in all the areas enumerated in the proposed Article. On the contrary, Article 13 in the Treaty has no direct effect as it only provides an opportunity for Member States to decide in unanimity on proposals in this area. In fact, draft Article 22.1 goes much further than the Commission's own proposal on a directive against ethnic discrimination now being negotiated in a Council working group.

AMENDMENT 449

Proposed amendment to Article: 21(1) and 22(3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

1. **Everyone is equal before the law. All forms of discrimination shall be prohibited.**

Reasons:

1. Developments in society make it impossible to establish an exhaustive list of types of discrimination. The proposed wording allows for such developments, respects the Community's legal framework and is consistent with Article 26 of the UN International Covenant on Civil and Political Rights.

AMENDMENT 450

Proposed amendment to Article: 22(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, *nationality*, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

AMENDMENT 451**Proposed amendment to Article: 22**

Submitted by: Alvaro Rodríguez BEREIJO, Personal Representative of the Spanish Prime Minister

Proposed text:

In paragraph 2, insert the words “between citizens of the Union” between “any discrimination” and “on grounds of nationality”.

Reasons:

The wording of paragraph 2 is contradictory, since it is obvious that the Charter contains rights which apply to persons or to citizens of the Union. For certain rights there is a distinction between European citizens and citizens of third countries. In order to avoid the absurd situation where the Charter prohibits a discrimination that it has itself introduced, it is suggested that the expression “between citizens of the Union” be inserted in the clause prohibiting any discrimination on grounds of nationality. Furthermore, it should be noted that Article 12 of the EC Treaty applies in principle to the citizens of the fifteen Member States. The cases in which it applies to citizens of third countries are rare and are laid down explicitly.

AMENDMENT 452

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Georges BERTHU, MEP

Proposed text:

1. The Union shall combat any inequality of treatment between persons, subject to the conditions and powers laid down by the Treaties and with due regard for the constraints of the public good.

Reasons:

Article 22(1) and (2) of the Charter, in the wording proposed by the Praesidium, go much further than Article 13 of the EC Treaty:

- in matters of substance: new areas of non-discrimination are added to those in the Treaty. Some are self-evident (property, birth), some should be categorically rejected (nationality ¹) and others require extensive clarification at the very least (national minorities);
- in matters of procedure, the draft of Article 22 of the Charter would absolutely prohibit all discrimination, whereas Article 13 TEC is more cautious and promises only to “combat” discrimination and then only “within the limits of the powers conferred upon the Community” and after a unanimous decision by the Council. Those safeguards would completely disappear with the Charter.

Hence the preference in this amendment for more general wording, referring to the existing provisions in the Treaties.

¹ It should be pointed out that the current Article 12 TEC, which prohibits any discrimination within the Union on grounds of nationality, allows for exceptions, particularly for the public service.

AMENDMENT 453

Proposed amendment to Article: 22(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation, **or any other personal or social condition** shall be prohibited.

Reasons:

The addition of the phrase "or any other personal or social condition" makes it clear that this list of prohibited grounds for discrimination is open; not exhaustive.

* Proposed amendments are in bold.

AMENDMENT 454

Proposed amendment to Article: 22

Submitted by: Kathalijne BUITENWEG

Proposed text:

Amend paragraph 1:

1. Any discrimination on whatever grounds, such as sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation, marital or other status shall be prohibited.

Reasons:

The additions “on whatever grounds” and “or other status” ensure that the non-restrictive character of Article 14 of the ECHR is retained.

The addition “marital status” is in line with social trends, whereby the distinction between married and unmarried persons, particularly in the context of EU law, is losing its relevance.

AMENDMENT 455**Proposed amendment to Article: 22**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

Amend paragraph 1:

1. Any discrimination on any ground such as sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation or other status shall be prohibited.

Reasons:

The insertion of “on whatever ground” and “or other status” reflects the non-exhaustive character of Article 14 of the EHCR.

AMENDMENT 456

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Hubert HAENEL

Proposed text:

1. *Everyone is equal before the law. Any discrimination shall be prohibited.*

Reasons:

The text proposed in Article 22 lists a series of areas in which discrimination is prohibited.

A list of that kind is not conducive to a clear and concise text.

Moreover, as with any list, there is a serious risk of omissions.

It would therefore seem preferable to set out the principle of equality before the law in simpler terms and to prohibit any discrimination.

Proposals for Article 22(2)

AMENDMENT 457

Proposed amendment to Article: 22(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

(2) Delete paragraph 2 altogether.

Reasons:

Paragraph 2 duplicates the scope of Article H.1.

AMENDMENT 458

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Georges BERTHU, MEP

Proposed text:

2. The Union shall seek to eliminate inequalities **between men and women** and to promote equality between them (rest deleted).

Reasons:

Article 22(1) and (2) of the Charter, in the wording proposed by the Praesidium, go much further than Article 13 of the EC Treaty:

- in matters of substance: new areas of non-discrimination are added to those in the Treaty. Some are self-evident (property, birth), some should be categorically rejected (nationality ¹) and others require extensive clarification at the very least (national minorities);
- in matters of procedure, the draft of Article 22 of the Charter would absolutely prohibit all discrimination, whereas Article 13 TEC is more cautious and promises only to “combat” discrimination and then only “within the limits of the powers conferred upon the Community” and after a unanimous decision by the Council. Those safeguards would completely disappear with the Charter.

Hence the preference in this amendment for more general wording, referring to the existing provisions in the Treaties.

¹ It should be pointed out that the current Article 12 TEC, which prohibits any discrimination within the Union on grounds of nationality, allows for exceptions, particularly for the public service.

AMENDMENT 459

Blank.

Proposals for Article 22(3)

AMENDMENT 460**Proposed amendment to Article: 22**

Submitted by: Alvaro Rodríguez BEREIJO, Personal Representative of the Spanish Prime Minister

Proposed text:

Delete the last part of paragraph 3 regarding equality between the sexes in the employment field.

Reasons:

We believe that the wording of the paragraph is not precise (what is meant by “setting pay”?) and above all that it belongs in social rights, and that the wording used should be the same as in the EC Treaty.

AMENDMENT 461

Proposed amendments to Article: 22. Equality and non-discrimination

Proposed text:

The topic dealt within paragraph 3 could be dealt with in the preambular text of the Charter.

Reasons:

Paragraph 3 is an objective and would be better placed in the preamble.

AMENDMENT 462

Proposed amendment to Article: 22(1) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

3. (Last sentence). Equality between the sexes shall be ensured **in the field of pay and other working conditions.**

Reasons:

3. Technical improvement

AMENDMENT 463**Proposed amendments to Article: 22****Submitted by:** José BARROS MOURA and Maria Eduarda AZEVEDO

1.
2.
3. The Union shall seek to eliminate inequalities and to promote **equalities** between men and women. In particular equality between the sexes shall be ensured **in access to employment**, when setting pay and other working conditions **and in social security**.

AMENDMENT 464

Proposed amendment to Article: 22. EQUALITY AND NON-DISCRIMINATION

Submitted by: Jordi SOLÉ TURA

Proposed text:

- 3: **“The primary objective of the Union shall be to eliminate inequalities and to promote equality between men and women. Equality between the sexes shall be ensured when setting pay and other working conditions.”** (this phrase changed in Spanish only)

Reasons:

It is not sufficient to say that the Union “shall seek to eliminate inequalities”. Eliminating them must be a “primary objective”. The last phrase in Spanish is syntactically more specific than the one in the existing text.

AMENDMENT 465**Proposed amendment to Article: 22**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The first sentence of paragraph 3 should be deleted.

Reasons:

For a prescriptive provision, the first sentence of paragraph 3 is drafted in terms which are too broad.

AMENDMENT 466

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 22. Equality and non-discrimination

(1)....

(2)....

(3) Men and women are equal. The Union shall seek to eliminate inequalities and to promote equality between men and women. Equality between the sexes shall be ensured in particular when setting pay and other working conditions.”

Reasons:

The fundamental point that men and women are equal ought to be explicitly stated at the beginning of paragraph 3, i.e. given prominence.

As for the rest, it is suggested that if no gender-neutral alternative can be found, the feminine form should be added in the wording of all Charter provisions.

AMENDMENT 467

Proposed amendment to Article: 22

Submitted by: EINEM/HOLOUBEK

Proposed text:

Delete paragraph 3 in Article 22

Reasons:

Paragraph 3 should be divided into two separate articles and amplified (cf. proposed amendment 2 to Article 22).

AMENDMENT 468

Proposed amendment to Article: 22(3)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

The word "**inequalities**" should be replaced by "**unequal treatment**".

Reasons:

The proposal refers to the EU's possibilities for action. It corresponds to the proposal made by the German Federal Government in CONTRIB 154 and to the proposal made by the German Federal States in CONTRIB 142.

AMENDMENT 469**Proposed amendment to Article: 22**

Submitted by: Simone BEISSEL

Proposed text:

3.(a) Delete “to eliminate inequalities and”.

3.(b) Delete “in particular equality between the sexes working conditions”.

Reasons:

3.(a) The wording should be positive.

3.(b) Pay and working conditions should be covered by the section on social rights.

Proposals for Article 22a and b

AMENDMENT 470

Proposed amendment 2 to Article: 22**Submitted by:** EINEM/HOLOUBEK**Proposed text:** the following new Articles should be inserted after Article 22 (new):“Article XX *Equality between men and women*

- (1) The Union shall seek to eliminate inequalities and to promote equality between men and women. *In order to bring about real equality, positive discrimination measures shall be permitted.*
- (2) Gender equality shall be ensured in particular when setting pay and other working conditions.

Article YY *Equality of minorities*

- (1) **Persons who belong to linguistic or ethnic minorities shall be entitled collectively and publicly to use their own language and preserve their own culture.**
- (2) **The Union shall strive to eliminate inequalities or discrimination.”**

Reasons:

In order to highlight the importance of individual rights, it is proposed that the general right to equality be enshrined in a separate Article in the same way as equality between men and women. In view of the vital importance of the right of minorities to equality, we also suggest that it be removed from the general ban on discrimination and dealt with in a separate Article.

The proposed Article XX on equality between men and women corresponds to the text of the draft proposed by the Praesidium. As a purely drafting proposal, we suggest that the duty of the Union to promote equality and the right to equal pay for the same work as provided for in the EC Treaty be covered in separate paragraphs.

The new second sentence of paragraph 1 of the proposed Article XX is intended to make it clear that measures involving “positive discrimination” are permissible in order to bring about real equality.

Article YY sets down in explicit terms a right which is particularly important if linguistic and ethnic minorities are to achieve equality; the right to use their own language and preserve their own culture. Paragraph 2 is intended to oblige the Union to eliminate inequalities or discrimination suffered by minorities.

Proposals for Article 23

AMENDMENT 471

Proposed amendment to Article: 23

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this Article.

Reasons:

This Article has no clear basis in the ECHR, the Treaties, nor has it been shown to be in the constitutional traditions common to all the Member States. Accordingly, it should not be included in the Charter.

As drafted the Article could be read as stating that children had to be treated as equal to adults which would clearly be inappropriate. This concept is expressed in the Convention on the Rights of the Child in terms of non-discrimination. The second half of the proposed Article is vague. The concept of a child “influencing” matters “pertaining to their person” could be interpreted in a way that goes much further than the Convention. I also see problems with the term “maturity” since – in social care terms – children can be “mature” in some respects beyond their years.

AMENDMENT 472

Proposed amendment to Article: 23. Children's rights

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

Although the content of the article is worthy of interest, it does not appear to correspond to any existing European competence nor to be in the interests of the Charter as a whole, which runs the risk of becoming a list of the rights of many specific categories. If reference is made to children's rights, why not refer to the rights of the elderly or the sick, etc.

AMENDMENT 473

Proposed amendment to Article: 23

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 23. Children's rights

Children must be (delete: 7 words) allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Reasons:

This Article is in response to various requests and is based on the Convention on the Rights of the Child.

AMENDMENT 474

Proposed amendment to Article: 23. Children's rights

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"1. Children shall have the right to such protection and care as is necessary to their well-being. They must be allowed to express their views freely in all matters affecting them, their views being given due weight in accordance with their age and maturity.

2. In all actions concerning children, whether undertaken by public institutions or bodies or by private social welfare institutions, the best interest of the child shall be a primary consideration."

Reasons:

The present amendment is designed to add to the current draft two most fundamental principles of the Convention on the Rights of the Child, these being the right to protection and care, and the principle of the best interest of the children. The wording of the second sentence follows that of Article 12(1) of the Convention on the rights of the child.

AMENDMENT 475**Proposed amendment to Article: 23**

Submitted by: Erling OLSEN

Proposed text:

“Every child has, without any discrimination, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. The best interests of the child shall always be a primary consideration.”

Reasons:

The Praesidium’s text does not present childrens’ rights, as described in the heading of this Article, but rather expresses a political aim. One solution might be to use the main part of the wording in Article 24 of the International Covenant on Civil and Political Rights and refer in the statement of reasons to the full text and to the UN Convention on the Rights of the Child.

AMENDMENT 476**Proposed amendment to Article: 23****Submitted by:** Maria Pia VALETTO and Piero MELOGRANI**Proposed text** *:

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity. ***When decisions on such matters are taken, the interests of the child must be the primary consideration.***

Reasons:

The addition of the second sentence is intended to confirm the principle of the best interests of children, a principle established by a vast body of case-law of the Court of Human Rights on the custody of children.

* Proposed amendments are in bold.

AMENDMENT 477**Proposed amendment to Article: 23****Submitted by:** Win GRIFFITSH, MP**Proposed text:**

All children in the European Union shall have the right for their interests to be respected by the institutions of the European Union.

Reasons:

Member States have committed themselves to the UN Convention on the Rights of the Child and although there are no specific references to children in the European Union treaties the Consolidated Version of the Treaty Establishing the European Union in Article 13 does clearly refer to age discrimination.

AMENDMENT 478

Proposed amendment to Article: 23. Children's rights

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 23

~~Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.~~

In all cases concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

Reasons:

It is suggested that Article 23 be deleted and replaced with language from Article 3.1 of the UN Convention of the Rights of the Child.

The text as originally drafted appears to be drawn from Article 12.1 of the Convention on the Rights of the Child, although it does not accurately reflect that provision which, moreover, is just one of several provisions setting out detailed rights. A single Article in the Charter should more appropriately reflect a general principle, particularly the predominance of the best interests of the child. The amended provision proposed does so with the language of Article 3.1 of the Convention.

AMENDMENT 479**Proposed amendment to Article: 23**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The Union shall respect the rights of the child in accordance with the provisions of the Convention on the Rights of the Child. More particularly, children should be guaranteed protection of their family environment and the care required for their welfare and should be given the opportunity to form their own views and have the right to express those views freely in all matters affecting them, the views of the child being given due weight in accordance with their age and evolving capacities.

Reasons:

This provision expresses more clearly the fact that children are equal individuals and brings it more expressly into line with the Convention on the Rights of the Child, and in particular Article 12 thereof. It also ties in with the right to family life as laid down in Article 13 of the draft Charter.

AMENDMENT 480

Proposed amendment to Article: 23

Submitted by: Pervenche BERÈS

Proposed text:

Children shall enjoy all the rights recognised in respect of persons. The exercise and protection of those rights shall take into account the age and the ability of the child.

Reasons:

The expression “equal individual” should be clarified.

AMENDMENT 481**Proposed amendment to Article: 23**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Children shall enjoy the protection laid down in international agreements safeguarding their rights.

Reasons:

The wording of the provision is too detailed and raises many problems of interpretation yet does not set out a general principle of child protection.

AMENDMENT 482

Proposed amendment to Article: 23 Children's rights

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 23. Children's rights

1. Children must be treated as equal individuals; they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.
2. Every child has the right to the protection and care of the community.”

Reasons:

Children - like mothers – are particularly in need of protection. The German Federal States therefore advocate that Article 23 be supplemented by the proposed provision on protection.

AMENDMENT 483

Proposed amendment to Article: 23

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Children must be treated as independent *human beings*; they must be allowed to influence matters pertaining to themselves person to a degree corresponding to their maturity.”

Reasons:

“Human beings”, rather than “persons”, should be used for natural persons.

AMENDMENT 484

Proposed amendment to Article: 23. Children's rights

Submitted by: Marie-Thérèse HERMANGE (Cornillet)

Proposed text:

- “1. In all actions concerning children, the best interests of the child shall be a primary consideration.
2. Every child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, and to influence, depending on their degree of maturity, the issues affecting him or her personally.”

Reasons:

The International Convention on the Rights of the Child constitutes the universal reference and a minimum in terms of recognition of civil rights in respect of persons under 18 years of age.

This amendment therefore borrows heavily from Articles 2, 3, 6 and 12 of the International Convention on the Rights of the Child.

It emphasises the principle of the best interests of the child, which must apply to all the European Union's actions.

AMENDMENT 485**Proposed amendment to Article: 23**

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity, **and their best interests must be safeguarded in all cases.**

Children's right to adequate protection in a family environment shall be respected.

Reasons:

This wording is closer to the content of the Convention on the Rights of the Child, which is the essential point of reference.

AMENDMENT 486

Proposed amendment to Article: 23. Children's rights

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the current text and replace with the following:

In all actions concerning children the best interests of the child shall be a primary consideration and the rights of the child shall be respected and ensured without discrimination of any kind. The child shall be assured the right to express its views freely in all matters affecting the child, the views of the child being given due weight.

Reasons:

This text is inspired by the wording in the UN Convention for the Rights of the Child (CRC) (Article 2, 3 and 12).

AMENDMENT 487

Proposed amendment to Article: 23. Children's rights.

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the Article by the following:

- “1. Children must be treated as equal individuals, they must be allowed to express their views on matters pertaining to their person to a degree corresponding to their maturity.**
- 2. Children must be protected against all threats to their intellectual development and their psychological and sexual integrity.”**

Reasons:

In paragraph 1 “influence” has been replaced by “express their views on”, which is far more appropriate to the child’s stage of development.

Paragraph 2 addresses the matter of threats to children (including through the use of information technology) and imposes an obligation to protect them on the public authorities.

AMENDMENT 488

Proposed amendment to Article: 23 (addition)

Submitted by: Hanja MAIJ-WEGGEN

Proposed text:

Article 23. Children's rights

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

The European Union shall ensure that all EU activities are fully compatible with the principle of the best interests of the child as expressed in the UN Convention on the Rights of the Child.

Reasons:

An explicit reference to the Convention on the Rights of the Child is desirable since this is the most comprehensive statement of children's rights and has almost universal ratification.

AMENDMENT 489**Proposed amendment to Article: 23****Submitted by:** François LONCLE**Proposed text:**

Use the following wording for this Article:

“Children who are capable of forming their own views have the right to express those views freely in all matters affecting them. Their views shall be given due weight in accordance with the children’s age and maturity”.

Reasons:

Drafting amendment, inspired by the wording of Article 12(1) of the international Convention on the Rights of the Child.

AMENDMENT 490

Proposed amendment to Article: 23(1) - Children's rights

Submitted by: Hubert HAENEL

Proposed text:

Article 23: The rights of the child

1. A child must be treated as an equal individual, he/she must be allowed to influence matters pertaining to his/her person to a degree corresponding to his/her maturity, while taking his/her best interests into consideration.

Reasons:

As stated in the Convention on the Rights of the Child, in all decisions concerning a child, the child's best interests must be a primary consideration. Reference should be made to this consideration in the Charter of Fundamental Rights.

Moreover, as the Charter deals with the rights of "everyone" and not the rights of "all people", it seems preferable to deal here with the rights of "the child" and not "children's" rights

Proposed amendment to Article: 23 (inserting a paragraph 2) - Children's rights

Proposed text:

The child must not be separated from his/her parents against his/her wishes unless that separation is in his/her best interests.

Reasons:

As far as possible the child must be allowed to grow up in his/her family environment.

This should be stated in a provision based on the Convention on the Rights of the Child.

AMENDMENT 491

Proposed amendment to Article: 23. Children's rights

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Every child has the right to respect for his or her moral, physical, mental and sexual integrity.
2. Children must be treated as equal individuals; they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.

Reasons:

The proposed insertion (as a new paragraph 1) of the right of the child to respect for his or her moral, physical, mental and sexual integrity is based on the UN Convention on the Rights of the Child and on the Belgian Constitution. This provision, together with paragraph 2 (version in CONVENT 28), spells out the importance attached by the Member States of the European Union to children's rights.

AMENDMENT 492

Proposed amendment to Article: 23

Submitted by: Ieke VAN DEN BURG

Proposed text:

Addition: Children must be protected against harmful and exploitative forms of child labour

Reasons:

Children's rights should also include protection against harmful and exploitative forms of child labour. Reference may be made here to the broad consensus reached within the International Labour Organisation in 1999 on a new Convention against child labour (ILO Convention 182).

AMENDMENT 493**Proposed amendment to Article: 23****Submitted by:** Frits KORTHALS ALTES, representative of the Netherlands Government**Proposed text:**

The Union respects the rights of the child in accordance with the provisions of the Convention on the Rights of the Child. More particularly, children should be guaranteed the protection and care required for their welfare and should be given the opportunity to form their own views, have the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with his or her age and consistent with the evolving capacities of the child.

Reasons:

This provision expresses more clearly the fact that children are equal individuals and brings it more into line with the Convention on the Rights of the Child, and in particular Article 12 thereof.

AMENDMENT 494**Proposed amendment to Article: 23**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. Turn Article 23 (Childrens' rights) into Article 13a, where it follows on naturally from family life.
2. Change the title, replacing "Childrens' rights" by "Rights of the child".

Reasons:

Amd 1: Improved structure for the Charter.

Amd 2: Sounds more natural.

Proposals for Article 23a

AMENDMENT 495

Proposed amendment to Article: 23a

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 23a. Principle of democracy

1. Everyone has the right to a democratic form of government
2. **The Union and its institutions are founded on the principles of liberty, democracy, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.**

Reasons:

Democracy is the one unarguable foundation stone of the European Union and an essential precondition for both accession and continued membership. This Article is intended to underscore that, and is drawn from Articles 2 and 6 of the Treaty on European Union, as well as from the Preambles of the Treaties.

Article 6(1) says: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."

Article 2 sets out the Union's objectives to include the "promotion of economic and social progress" and the "strengthening of economic and social cohesion".'

AMENDMENT 496

Proposed amendment to Article: 23a (new)

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1. The Union shall guarantee respect of the national and regional identities of Member States and of their cultural and linguistic diversity, including the right to address institutions and receive replies from them in one of the official languages of the Union.
2. The Union shall support minority languages.

NOTE: These proposals are made without prejudice to other aspects to be included as horizontal clauses, and of future suggestions for a better systematisation.

AMENDMENT 497**Proposed amendment to Article: 23**

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Insert the following after Article 23:

“Article 23a Right to nationality

- 1. Everyone has the right to a nationality.**
- 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. “**

Reasons:

This Article reproduces Article 15 of the Universal Declaration of Human Rights; it is an important precondition for establishing citizens' rights.

Proposals for six new articles after Article 24

AMENDMENT 518

Proposed amendment to Article: 24 (new) Principle of democracy

Article 24(1) National identity

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

- 1. Every citizen has the right to respect for his national identity.**
- 2. In exercising its powers, both internally and externally, the Union shall defend the national identities of its Member States.**

Reasons:

Paragraph 1 takes up the principle already incorporated in Article 6(3) of the TEU, with different wording. This principle seems so important that it should not be lost in the overall text of the Treaty, but raised to the level of the Charter of Fundamental Rights.

Paragraph 2 is a reminder that the Member States created the Union in order jointly to defend their respective identities, not to abolish them.

AMENDMENT 519

Proposed amendment to Article 24 (new) Principle of democracy
Article 24(2) Democratic expression

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Citizens have the right to respect for their democratic expression at national level.

Reasons:

Respect for democratic expression at national level is so self-evident that the Treaties have not to date explicitly mentioned it. However, we have reached a stage in the development of the Union where the need for clarification is being felt.

This principle is so important that the right place for it to be included is in the Charter (without prejudice to the preamble, which should point out in particular that all public authority stems from the people).

AMENDMENT 520

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(3) - Right of withdrawal

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of each country decide freely on the accession of their State to the European Union. Similarly, they may democratically choose to withdraw.

Reasons:

The right to secede is not mentioned in the Treaty but, in a democratic context, it is implicit. The suggestion here is to make it explicit in the Charter.

AMENDMENT 521

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(4) - Right to adopt safeguard measures

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the fundamental right to adopt democratically national safeguard measures where compelling circumstances so require. In any event, these measures shall remain within the limits recognised by international law as permissible where the survival of the nation is threatened.

Reasons:

Here again, the right to national safeguard measures should be implicit. However, it is observed that it has been challenged by the Union's institutions in a number of recent cases, particularly those linked with public health. It should be noted here, at the formal level of the Charter, that , whatever form Community law takes in any particular field, no-one may remove a people's right to adopt the measures it deems essential to its survival.

AMENDMENT 522

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(5) - States' right of organisation

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the right to decide freely how their State shall be organised and in particular the limits and the operation of their public services.

Reasons:

Over recent years the Member countries and the institutions of the Union have become aware of certain undesirable effects of the principle of competition when applied indiscriminately to public services. To remove any ambiguity, the Charter provides the opportunity to note that the citizens of each Member country have the right to determine how their public services are to be organised.

AMENDMENT 523

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(6) - Freedom of choice

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the right to decide democratically not to take part in a particular form of cooperation at European level or to choose for themselves rules that are more protective than those of a cooperation arrangement in which they are taking part.

Reasons:

By explicitly recognising the democratic freedom of choice of the citizens of the Member countries, the Charter could demonstrate the possibility of a more flexible conception of the European institutions.

Proposals for Article 24

AMENDMENT 498

Proposed amendment to Article: 24

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 24 should be deleted.

Reasons:

The added value of this Article is not clear, given that the right to freedom of association and political parties are both referred to in Article 17.

AMENDMENT 499

Proposed amendment for Article: 24. Political parties

Submitted by: Daniel TARCHYS

Proposal:

Delete

Reasons:

The rights guaranteed in draft Article 17 provide sufficient protection.

AMENDMENT 500

Proposed amendment to Article: 24(1)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Delete

Reasons:

Doubts about the suitability of such a declaration in the Community context.

AMENDMENT 501

Proposed amendment to Article: 24

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this article

Reasons:

The fundamental right stated in this Article is entirely covered by the guarantee of freedom of assembly and association in Article 17. Political parties are a classic example of associations. The proposed accretions to the relevant ECHR rights in Article 24 have no clear basis in the Treaties or elsewhere. They raise serious technical and other difficulties which would affect other Member States and would need to be the subject of separate substantive consideration.

In any case, it is unclear why only Union citizens should be able to found a party. Under Article 17 and ECHR Article 11) anyone has that right. The limitations in Article 11 ECHR are important. All Member States restrict this freedom to exclude extremist parties e.g. those aiming to overthrow the constitution or who preach racism. The proposed Article appears to give an unqualified right.

AMENDMENT 502

Proposed amendment to Article: 24

Submitted by: Sylvia Yvonne KAUFMANN

Proposed text:

Delete Article 24 and do not replace

Reasons:

Article 24 is a duplication of the freedom of association guaranteed in Article 7.

AMENDMENT 503**Proposed amendment to Article: 24**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Article 24 should be deleted.

Reasons:

The rights referred to in the first sentence are already covered by Article 17 (freedom of assembly and of association). With regard to the second sentence, it is unclear who ought to ascertain whether a political party is abiding by this obligation and what the consequences are if it does not.

AMENDMENT 504

Proposed amendment to Article: 24

Submitted by: R. VAN DAM, MEP

Proposed text:

Delete Article 24.

Reasons:

The content of this Article is already guaranteed in Article 17 of the Charter. Its inclusion is superfluous.

AMENDMENT 505

Proposed amendment to Article: 24. Political parties

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

This Article probably adds nothing to what has already been said in the preceding Article 17 (Freedom of assembly and association). If it is admitted that it adds something, this can only be the idea of "European political parties", which goes beyond the current text of the Treaty (Article 191 TEC). In both cases the proposed text ought therefore to be deleted.

AMENDMENT 506**Proposed amendment to Article: 24****Submitted by: EINEM/HOLOUBEK****Proposed text:****Reasons:**

According to the text proposed by the Praesidium, "everyone" has the right to join a political party at the level of the Union. It is indicated in the statement of reasons that this right should only be open to "anyone living in a Member State". This limitation is not expressed in the text and that raises the question of whether it is intended or even useful.

AMENDMENT 507

Proposed amendment to Article: 24

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

Every Union citizen is guaranteed the right to found a political party, and the right to join such a party is open to anyone living in a Member State. The possibility of limiting the exercise of these rights will derive from the horizontal article concerning limitations.

The existence of political parties at the EU level is recognised in Article 191 of the TEC.

AMENDMENT 508

Proposed amendment to Article: 24

Submitted by: Erling OLSEN

Proposed text:

The text should be reworded as follows: “Everyone has the right to form a political party and everyone has the right to join such a party”. The second sentence should be deleted.

Reasons:

Article 191 of the EC Treaty does not provide any basis for the Praesidium’s proposed Article. In its way, the right to form a political party and to join one is already covered by the Article on the freedom of association (Article 17) and so Article 24 could be deleted.

AMENDMENT 509**Proposed amendment to Article: 24****Submitted by ::** Piero MELOGRANI**Proposed text** *:

Every citizen of the Union has the right to contribute to shaping the will of the European Institutions through political parties at Union level. The rules governing those parties shall respect the fundamental principles of democracy.

Reasons:

The text of CONVENT 28 merely confirms, at Union level, a right that Article 17 already generally recognises “everyone” as having. It should therefore be replaced by a text that clarifies the role of such parties at Union level.

The second sentence has been amended, so that it does not prevent a lawful, democratic party from supporting a programme that seeks to abolish or limit some of the rights guaranteed by the Charter.

* Proposed amendments are in bold

AMENDMENT 510

Proposed amendment to Article: 24. Political parties

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

*“Every **Union** citizen has the right to form a political party at the level of the Union. **The right of parties to decide on the admission of members shall be guaranteed** (last sentence deleted).”*

Reasons:

If someone wishes to join an existing party, this should be left to the discretion of the party itself. There should be no automatic entitlement to admission.

The second sentence obliges political parties to respect the Charter of Fundamental Rights. In terms of the system followed, there are a number of considerable objections to this.

First, parties are not State bodies and are therefore not among those to whom fundamental rights are addressed. This is presumably also the thinking behind the Charter (see Article 46).

Also, the provision envisaged is a matter of conventional constitutional law. The legal status of political parties is amongst the issues that may have to be settled in any EU constitution, not in a charter of fundamental rights.

The suggested provision would further seem inadequate. Any attempt at setting standards for the conduct of parties should first and foremost focus on the observance of specific objective legal principles, such as upholding the basic democratic system, not on individual rights. What would also be needed are appropriate penalties and procedures for enforcement; none of this is the task of a charter of fundamental rights.

Article 50 of the latest draft of the Charter, moreover, affords protection against abuse of their position.

AMENDMENT 511

Proposed amendment to Article: 24. Political parties

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Every citizen of the Union has the right...”

Reasons:

To make it clear that this right, like the other citizenship rights recognised in the Charter, is reserved for citizens of the European Union and is not available to citizens of other States. A citizen of the Union is defined in Article 17 of the EC Treaty as “every person holding the nationality of a Member State”. This is a logical consequence of the fact that the EU is a political entity formed by the political grouping of the fifteen States which constitute it.

AMENDMENT 512

Proposed amendment to Article: 24. Political parties

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 24. Political parties

Every citizen has the right also to form a political party at the level of the Union. The right of parties to decide on the admission of members shall be guaranteed. Political parties must respect the rights and freedoms guaranteed by this Charter.”

Reasons:

The word “also” makes it clear that the right to form a political party applies both at Member State and European Union level.

If someone wishes to join an existing party, this should be left to the discretion of the party itself. There should be no automatic entitlement to admission.

AMENDMENT 513

Proposed amendment to Article: 24

Submitted by: MANZANELLA

Proposed text:

Replace the text with the following:

- 1. Every citizen of the Union has the right to form, on the conditions laid down by the Treaties, political parties at the level of the Union, and every citizen of the Union has the right to join such parties in order to contribute, by democratic means, to building a genuine “European public area” and to the expression of the political will of its citizens .**

- 2. Aliens resident in the Union may join Union-level parties on the conditions laid down in their statutes.”**

Reasons:

In our proposal the purpose of forming political parties, which is the prerogative of citizens of the Union, is the creation of a “Union public area”. Aliens residing in the Union may join Union-level parties, which they are already entitled to do.

AMENDMENT 514**Proposed amendment to Article: 24****Submitted by:** François LONCLE**Proposed text:***Article 24:*

At the beginning of the first sentence, after "Every citizen" insert "of the European Union".

Reasons:

This amendment is intended to remove an ambiguity in the wording.

AMENDMENT 515

Proposed amendment to Article: 24

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

The word "**citizen**" should be replaced by "**citizen of the Union**".

Reasons:

For the same reasons as adduced for the proposed Article 24.

AMENDMENT 516

Proposed amendment to Article: 24. Political parties

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Everyone has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

The aim of the proposed text is to grant "everyone" the right to form a political party, so that this provision is brought fully into line with Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – which operates as a minimum standard in drawing up the Charter – and with Article 17 (CONVENT 28 version), in which the right to form a political party is explicitly granted to "everyone".

AMENDMENT 517

Proposed amendment to Article: 24

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every citizen of the Union has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must **have a democratic internal structure** and respect ... (no changes).

Proposals for Article 25 as a whole

AMENDMENT 524

Proposed amendment to Article: 25

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 25. Right to vote and to stand as a candidate for the European Parliament

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

Reasons:

Paragraph 1 follows Article 190(1) TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage".

(Delete: 2 words) Paragraph 2 follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal article.

AMENDMENT 525

Proposed amendment to Articles: 25 and 26

Submitted by: Jürgen MEYER/Pervenche BERES/Jo LEINEN/Hans-Peter MARTIN/Ieke VAN DEN BURG

Proposed text:

Article 25 Right to vote and to stand as a candidate

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.**
- 2. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament and municipal elections in the Member State in which he resides under the same conditions as nationals of that State.**
- 3. All citizens of third countries shall enjoy the rights referred to in paragraph 2 to the same extent if they have been legally resident in the territory of the Member States for five years.**

Reasons:

Paragraph 1 takes over the Presidency's wording of Article 25(1) (Convention 28).

Paragraph 2 merges Article 25(2) and Article 26 since they are worded identically, the first referring to European elections and the second to municipal elections.

Drafting two separate Articles runs counter to the Convention's requirement that the Charter be as concise as possible. The rewording does not in any way affect the substance of the Presidency's proposal.

Paragraph 3 reflects my original discussion text (submitted on 6 January: Contrib. 2). The underlying idea is to afford the possibility of democratic participation, as expressed through elections, to citizens who are legally resident in a Member State but are not citizens of the Union or of that State. One of the most important principles of democracy is that those who share in the financing of communal life must have a right to have a say in matters and to participate in elections. The requirement of five years' legal residence in a Member State attaching to participation in elections indicates that the third-country nationals concerned have decided to shift their centre of interests to the State in question.

AMENDMENT 526

Proposed amendment to Article: 25

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State”

For Part B, “Definition of Rights”:

“The rights in Article 25 are the rights in Article 19(2) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article”

Reasons:

To avoid any misunderstanding I am also proposing wording which is closer to the terms of TEC Article 19(2). My “B” text ensures that these rights will be understood within the meaning of the relevant Treaty provisions, including the conditions and ability to arrange for derogations. The reference in the proposed text to “specified rules and arrangements” picks up the requirement in Article 19 that the Member States agree specific rules for the exercise of these rights (which they have done). I disagree that such matters can effectively be dealt with in a single horizontal article. Finally I have omitted the reference to the manner of election for MEPs, which does not seem to fit here since it does not state a right.

AMENDMENT 527

Proposed amendment to Article: 25

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

In the Dutch title of Article 25, "stemrecht" must be replaced by "kiesrecht" (not applicable to the English version).

Reasons:

The Dutch title of the Article erroneously refers to "stemrecht" instead of "kiesrecht".

Proposals for Article 25(1)

AMENDMENT 528

Proposed amendment to Article: 25 - Right to vote and to stand as a candidate for the European Parliament

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

- 1. Members of the European Parliament shall be elected by direct, equal universal suffrage by free and secret ballot.**

Reasons:

Only an equal weighting of votes reflects the vote of the electors.

AMENDMENT 529

Proposed amendment to Article: 25(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Members of the European Parliament shall be ***periodically*** elected by direct universal suffrage by free and secret ballot.

Reasons:

Adding the word “*periodically*” makes it clear, in accordance with the Treaty, that the European Parliament has to be elected at regular intervals.

* Amendments are given in bold.

AMENDMENT 530

Proposed amendment to Article: 25(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free, *equal* and secret ballot.**

Reasons:

The “equal” right to vote, in the sense that each vote basically counts equally, is one of the fundamental voting rights recognised in a democratic society and should also apply in the case of elections to the European Parliament. The remainder of the text proposed by the Presidency is accepted.

AMENDMENT 531**Proposed amendment to Article: 25**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace paragraph 1 with the following:

“1. The citizens of the Union have the right to take part in the exercise of public authority at Union level through a representative assembly elected by direct universal suffrage by free and secret ballot.”

Reasons:

This alternative version of paragraph 1 makes as its subject the actual holders of the right, as in all the Articles of the Charter: in this case “the peoples of Europe” in their electoral manifestation. The wording comes from the case law of the Court of Justice (in particular the Roquette and Maizena judgment).

Proposals for Article 25(2)

AMENDMENT 532

Proposed amendment to Article: 25 – Right to vote and to stand as a candidate for the European Parliament

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

2. Every citizen of the Union has the right to vote and to stand as a candidate for the European Parliament in the Member State in which he resides under the same conditions as nationals of that State.

Reasons:

This makes it clear that Article 25 applies only to European Parliament elections.

AMENDMENT 533

Proposed amendment to Article: 25. Right to vote and to stand as a candidate for the European Parliament

Submitted by: Ben FAYOT

Proposed text:

“2. Every citizen of the Union has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State, subject to derogations where warranted by problems specific to a Member State.”

Reasons:

The Treaty (Article 19(1)) provides that the right to vote and the right to stand for election may be subject to derogations.

Reference needs to be made to that, otherwise the text will state an absolute right that is not put into perspective by the horizontal clauses.

AMENDMENT 534

Proposed amendment to Articles: 25 and 26

Submitted by: Johannes VOGGENHUBER/Kathalijne BUITENWEG

Proposed text:

For paragraph 2 (taken over from Prof. Meyer's proposal)

2. All nationals of third countries shall also enjoy these rights to the same extent if they have been legally resident for five years in the territory of the Union.

Reasons:

AMENDMENT 535

Proposed amendment to Article: 25(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. Every citizen of the Union "**residing in a Member State of which he is not a national**" has the right to vote and to stand as a candidate (rest unchanged).

Reasons:

Primarily to conform to the text of Article 19(2) of the EC Treaty which includes the proposed paragraph. The text of the Treaty should be transcribed literally as in CONVENT 17. If streamlining the text is preferred, an alternative is to copy Article 190(1) of the TEC which states "The representatives in the European Parliament of the people of the States brought together in the Community shall be elected by direct universal suffrage".

This amendment is very important, just after the discussions provoked by the judgment of the European Court of Human Rights (in the Matthews case) on the right of Gibraltarians to participate in the European elections.

And it is essential to mention this here, in the definition of the right to vote and to stand as a candidate for the European Parliament, irrespective of the fact that in the horizontal clauses general limitations are established to which the rights contained in the Charter may be subject.

AMENDMENT 536

Proposed amendment to Article: 25(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. ***Every person resident in the EU* has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State.**

Reasons:

(Translator's note: proposal affects the German text only, removing the inherent gender differentiation).

This wording should also be taken up in future regulations, such as that on the extension of the electorate.

Proposals for Article 25(3)

AMENDMENT 537**Proposed amendment to Article: 25****Submitted by:** R. VAN DAM, MEP**Proposed text:**Add a new paragraph:

3. Article 19(2) of the EC Treaty sets out the conditions under which this right may be exercised.

Reasons:

The content of the right is defined more precisely.

Proposals for Article 26

AMENDMENT 538

Proposed amendment to Article: 26

Submitted by: R. VAN DAM, MEP

Proposed text:

Add a new paragraph:

2. Article 19(1) of the EC Treaty sets out the conditions under which this right may be exercised.

Reasons:

The content of the right is defined more precisely.

AMENDMENT 539

Proposed amendment to Article: 26. Right to vote and to stand as a candidate at municipal elections

Submitted by: Ben FAYOT

Proposed text:

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State, subject to derogations where warranted by problems specific to a Member State.

Reasons:

Same as for Article 25.

AMENDMENT 540**Proposed amendment to Article: 26**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.

Reasons:

Ensuring conformity with Article 19(1) of the EC Treaty.

AMENDMENT 541

Proposed amendment to Article: 26

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Every person with citizenship of the Union and every person resident in the EU has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Reasons:

(Translator's note: Proposal affects the German text only, removing the inherent gender differentiation).

The wording should be taken up in future regulations, such as that on municipal voting rights for foreigners.

AMENDMENT 542

Proposed amendment to Article: 26

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State”

For Part B, “Definition of Rights”:

“The rights in Article 26 are the rights in Articles 19(1) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article”

Reasons:

As with the previous Article, I am proposing wording which is closer to the terms of TEC Articles 19(1). My “B” text ensures that these rights will be understood within the meaning of the relevant Treaty provisions, including the conditions and ability to arrange for derogations. The reference in the proposed text to “specified rules and arrangements” picks up the requirement in Article 19 that the Member States agree specific rules for the exercise of these rights (which they have done).

AMENDMENT 543**Proposed amendment to Article: 26**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text: (applies to Dutch text only)

In the Dutch title of the Article, “stemrecht” should be replaced by “kiesrecht” (does not apply to English text).

Reasons:

“Stemrecht” has been used wrongly in place of “kiesrecht” in the Dutch title of the Article.

AMENDMENT 544**Proposed amendment to Article: 26****Submitted by:** MANZELLA**Proposed text:**

Replace the text of the Article with the following:

“Article 26. Right to vote and to stand as a candidate

Every citizen of the Union may also exercise his political rights outside the territory of the Member State of which he is a national, under the conditions and in accordance with the arrangements laid down in the Treaties.”

Article 25(2) would therefore be deleted.

Reasons:

The text combines in a single form of words the entitlement of European citizens to exercise active citizenship rights in Member States other than the one of which they are nationals.

Proposals for Article 26a

AMENDMENT 545

Proposed amendment to Article: 26 bis

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 26 bis. Right to diplomatic protection

Every citizen of the Union shall be entitled to diplomatic and consular protection by any Member State in third countries.

Reasons:

This clause reflects the provisions of Article 20 of the TEC.

Proposals for the whole of Article 27

AMENDMENT 545a

Proposed amendment to Article: 27(2) and (3)

Submitted by: Roman HERZOG

Proposed text:

Article 27. Relations with the administration

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This includes the right of every person:
 - to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - to see his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - to receive from the administration reasons for administrative decisions taken against him;
 - to address the institutions and bodies of the Union in one of the official languages of the Union and to receive an answer in that language.

Reasons:

The proposed amendment is essentially a recasting intended to make the Article more readable. Without prejudice to any further revision of the text as a whole, this proposal for an amendment is being formally submitted since, at least in the third indent of paragraph 2, a restriction is introduced, which constitutes a substantive change.

Proposals for Article 27(1)

AMENDMENT 546

Proposed amendment to Article: 27(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

1. "*Without prejudice to Articles 7 and 8*, every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union."

Reasons:

The addition of "without prejudice to Articles 7 and 8" is intended to indicate that the articles in question are also applicable without restriction with regard to the institutions of the European Union.

Since natural and legal persons are to be covered by this right, it is suggested that "jeder Person" be used in the German text. (*This is already the case in the English text*).

There is otherwise no change to the text of the Praesidium's draft.

AMENDMENT 547

Proposed amendment to Article: 27. Relations with the administration

Submitted by: VITORINO, Commission representative in the Convention

Proposed text:

Replace the words "the institutions and bodies of the Union" by the words "the administration".

Reasons:

The aim of this amendment is to give this article the same scope as the other articles in the Charter. Court of Justice case law already applies the general principles of administrative procedure, as laid down in Article 26, to the authorities of the Member States where they are acting within the scope of Community law (see the judgment in the Heylens case, 222/86, ECR 1987, 4097, on the duty to state reasons). This is a logical step insofar as national authorities are the main enforcers of Community law.

AMENDMENT 548

Proposed amendment to Article: 27(1)

Submitted by: Peter ALTMAIER, Member of the Bundestag

Proposed text:

"Every person who is affected by a measure under European law has the right to have his affairs handled impartially, fairly and within a reasonable time."

Reasons:

Since most of Community law is transposed into national law by the bodies and institutions of the Member States, any limitation of the application of Article 27(1) to the institutions and bodies of the European Union would result in differing levels of protection depending on whether a measure under European law was implemented by European or national authorities.

AMENDMENT 549

Proposed amendment to Article: 27(1)

Submitted by: Dr Sylvia–Yvonne KAUFMANN

Proposed text:

No change to the English text.

In the German text, “Jeder” is replaced by “Jede Person”.

Reasons:

The proposed wordings differ in using or avoiding gender-specific terms.

Proposals for Article 27(2)

AMENDMENT 550

Proposed amendment to Article: 27

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2:

2nd indent should be modified as follows:

the right of every person to have access to his file (12 words deleted in Dutch), while respecting necessary confidentiality and secrecy.

3rd indent should be modified as follows:

the obligation of the institutions and bodies of the Union to give reasons for their decisions.

Reasons:

The amendment of the second indent broadens the meaning. The third indent has been amended because the Charter is addressed not to the Member States but to the institutions and bodies of the Union.

AMENDMENT 551

Proposed amendment to Article: 27. Relations with the administration

Submitted by: Jordi SOLÉ TURA

Proposed text:

Paragraph 2:

- **the right of every person to be heard before any measure is taken which would affect him adversely;**
- **the right of every person to have access to his file, etc.**

Reasons:

The words “in relation to him” are deleted because they are redundant if the measure affects him adversely. “Individual” is deleted because he may be adversely affected by a measure taken against one or more persons. In the second paragraph of the Spanish version “la” should be replaced by “le” (does not affect English text).

AMENDMENT 552

Proposed amendment to Article: 27(2). Relations with the administration

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

This right includes:

- the right of every person to be heard before any individual measure which would affect him/**her** adversely is taken in relation to him/**her**;
- the right of every person to have access to his/**her** file, while respecting the legitimate interests of confidentiality and of business secrecy;
- the obligation of the administration to give reasons for its decisions.

Reasons:

Reference should also be made to women's rights, as otherwise the article would constitute discrimination on grounds of sex.

AMENDMENT 553

Proposed amendment to Article: 27(2), second indent

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

- the right of every person to have access to his file

Reasons:

Grammatical correction of the Spanish version (does not affect English text).

AMENDMENT 554

Proposed amendmens to Article: 27. Relations with the administration

Submitted by: Daniel TARSCHYS

Proposed text:

Redraft paragraph 2.

Reasons:

The scope of the first indent in paragraph 2 appears to be without limits and therefore problematic to accept in the present shape. The second indent is difficult to understand as it is not at all clear who is responsible for what. In the third indent, the word negative should be added to make clear that favourable decisions need not necessarily be explained.

AMENDMENT 555

Proposed amendment to Article: 27

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Delete paragraph 2.

Reasons:

The reason for deleting paragraph 2 is the need for simplification in regard to aspects which are already dealt with elsewhere or which cannot definitely be placed in the category of fundamental rights.

Proposals for Article 27(3)

AMENDMENT 556**Proposed amendments to Article: 27**

Submitted by: Erling OLSEN

Proposed text:

Paragraph 3 could usefully be transferred to become the first paragraph.

Reasons:

Moving paragraph 3 to become the first paragraph would make it clearer for citizens that Article 27 applies to cases which come under EU law.

AMENDMENT 557

Proposed amendment to Article: 27(3)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Every person" should be replaced by "Every citizen of the Union".

Reasons:

The proposed wording is in line with Article 21 TEC.

AMENDMENT 558

Proposed amendment to Article: 27

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 3, the word “may” should be replaced by “has the right to”.

Reasons:

AMENDMENT 559

Proposed amendment to Article: 27(3)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

In the German text, replace "Jeder" by "Jede Person"

Reasons:

The proposed versions differ in using or avoiding a gender-specific term.

Proposals for Article 28

AMENDMENT 560**Proposed amendment to Article: 28****Submitted by:** EINEM/HOLOUBEK**Proposed text:**

Instead of "natural and legal person", simply read "person".

Reasons:

In line with our proposal that the word "individual" should be used when referring to natural persons and "person" when referring to natural and legal persons, it is sufficient in Article 28 to speak of every "person".

AMENDMENT 561

Proposed amendment to Article: 28

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 28. Ombudsman

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and (delete: 1 word) agents of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Reasons:

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21:

"Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

A reference to the Treaty will be made in a horizontal clause.

AMENDMENT 562**Proposed amendment to Article: 28**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace "Every citizen and every natural and legal person residing or having its registered office in a Member State" by "Every person". "Judicial" should also be inserted before "bodies".

Reasons:

This Article contains the principles which arise from Articles 21 and 195 of the EC Treaty. There is no reason why this right should not apply to every person.

AMENDMENT 563

Proposed amendment to Article: 28

Submitted by: R. VAN DAM, MEP

Proposed text:

1. Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of complaint concerning administration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.
2. Article 195 of the EC Treaty lays down the conditions governing the performance of the Ombudsman's duties.

Reasons:

With regard to paragraph 1, this amendment widens access to the Ombudsman in comparison with the original text. Paragraph 2 is intended to render the Article more explicit.

AMENDMENT 564

Proposed amendment to Article: 28

Submitted by: Kathalijne BUITENWEG

Proposed text:

Every person (18 words deleted) has the right to refer to the Ombudsman of the Union cases of administration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Reasons:

The personal scope of the fundamental rights must not be unnecessarily restricted. Article 27 (Relations with the administration) was correct in this respect.

The proposed modification renders the Article more readable.

(This amendment obviously also necessitates amendment of Article 48 in CHARTE 4316/00 CONVENT 34. That Article should become a provision to prevent regression instead of a provision to prevent progress.)

AMENDMENT 565

Proposed amendment to Article: 28. Ombudsman

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

Article 28. Ombudsman

"Every citizen and every person residing in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role."

Reasons:

It would seem that this is the first provision to include legal persons having their registered offices in Member States. Such explicit reference could lead to the converse conclusion that other fundamental rights are not applicable to legal persons. This must however be avoided. The best overall solution would be a specific horizontal provision for legal persons. That could read: "The rights and freedoms guaranteed by this Charter shall also apply to legal persons insofar as they are by their nature applicable to such persons".

AMENDMENT 566

Proposed amendment to Article: 28

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

“Article 28. Ombudsman/*Ombudswoman*”

In the German version, also replace “Jeder Unionsbürger” by “Jede Unionsbürgerin und jeder Unionsbürger” (i.e. specifically referring to both male and female citizens).

Reasons:

The proposed versions differ in using or avoiding gender-specific terms.

AMENDMENT 567**Proposed amendment to Article: 28****Submitted by:** Gabriel CISNEROS LABORDA**Proposed text:**

Every natural person residing in a Member State has the right to refer to the Ombudsman of the Union

Reasons:

In the proposed text the reference to legal persons is deleted as it is not appropriate in a Charter of Fundamental Human Rights.

AMENDMENT 568**Proposed amendment to Article: 28**

Submitted by: Rocco BUTTIGLIONE, MEP, under the authority of the head of the European Parliament delegation

Proposed text:

Article 28. Ombudsman

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the European Parliament, the Court of Justice and Court of First Instance acting in their judicial role and the Court of Auditors.

Reasons:

Remain the same.

AMENDMENT 569

Proposed amendment to Article: 28. Ombudsman

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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

Reasons:

First sentence: The insertion of the words "*of the Union*" in the first part of the sentence (after "every citizen") is more in line with the EU Treaty.

AMENDMENT 570**Proposed amendment to Article: 28**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

The words “Every citizen and every natural and legal person residing or having its registered office in a Member State” should be replaced by “Everyone”.

Reasons:

This Article contains the principles derived from Articles 21 and 195 TEC. There is no reason why this right should not apply to everyone.

AMENDMENT 571**Proposed amendment to Article: 28**

Submitted by: Jean-Maurice DEHOUSSE, MEP, alternate member of the Convention

Proposed text:

1. Add the following to the text of the proposed article:

The same right is granted to nationals of third countries who are established outside the Union and maintain relations of governance with the Union, its bodies or its official representatives.

2. Add the following to the text of the proposed article:

The Ombudsman shall draw up an annual report on the implementation of the Charter. The report shall be the subject of public debate at the European Parliament.

Reasons:

Re 1: It is in the interests of the citizens of the Union to verify how its bodies behave in their relations with the outside world.

Re 2: It is in the interests of both the governing bodies of the Union and its citizens that particular care be taken in supervising the application of the Charter.

Proposals for Article 29

AMENDMENT 572

Proposed amendment to Article: 29

Submitted by: EINEM/HOLOUBEK

Proposed text:

Instead of "natural and legal person", simply read "person".

Reasons:

In line with our proposal that the word "individual" should be used when referring to natural persons and "person" when referring to natural and legal persons, it is sufficient in Article 29 to speak of every "person".

AMENDMENT 573**Proposed amendments to Article: 29****Submitted by:** Erling OLSEN**Proposed text:**

The words "on EU-related matters under the conditions and limitations laid down in Article 194 of the Treaty" should be added after "European Parliament".

Reasons:

Under Article 194 of the EC Treaty a petition can be addressed to the European Parliament on matters which come within the Community's fields of activity; that should be reflected in this provision.

AMENDMENT 574**Proposed amendment to Article: 29**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

The existing text should be replaced by the following:

Every person has the right to petition an institution or body of the Union.

Reasons:

This Article contains the principles which arise from Articles 21 and 194 of the EC Treaty. Every person must have this right (see Article 5 of the Netherlands Constitution). There is also no reason to limit the right to the European Parliament. Incidentally, a right to a reply cannot be inferred from the right of every person to petition.

AMENDMENT 575

Proposed amendment to Article: 29

Submitted by: Kathalijne BUITENWEG

Proposed text:

Every person (18 words deleted) has the right to petition the European Parliament.

Reasons:

The personal scope of the fundamental rights must not be unnecessarily restricted. Article 27 (Relations with the administration) was correct in this respect.

The proposed modification renders the Article more readable.

(This amendment obviously also necessitates amendment of Article 48 in CHARTE 4316/00 CONVENT 34. That Article should become a provision to prevent regression instead of a provision to prevent progress.)

AMENDMENT 576

Proposed amendment to Article: 29. Right to petition

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

"Every citizen and every (delete three words) person residing (delete five words) in a Member State has the right to (delete rest) address a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him/her directly."

Reasons:

A horizontal provision should be introduced on the applicability of rights to legal persons.

It should also be made clear, in accordance with Article 194 of the EC Treaty, that the right to petition only applies within the fields of activity of bodies of the European Union.

AMENDMENT 577

Proposed amendment to Article: 29. Right to petition

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 29. Right to petition

Every citizen of the Union and *anyone residing* in a Member State has the right in matters which come within the Union's fields of activity and which affect him or her directly to address a petition to the European Parliament”.

Reasons:

Here too, one should initially avoid explicit reference to legal persons. As already indicated, there is therefore a need for a horizontal provision: "The rights and freedoms ensured by this Charter shall also apply to legal persons insofar as they are by their nature applicable to such persons".

It should, moreover, in accordance with Article 194 of the EC Treaty, be made clear that the right to petition only applies within the fields of activity of bodies of the European Union. This limitation of competence to deal with a matter could be achieved by inserting the text suggested by the German Länder.

AMENDMENT 578

Proposed amendment to Article: 29

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

In the German version, "Jeder Unionsbürger" should be replaced by "Jede Unionsbürgerin und jeder Unionsbürger".

Reasons:

The two proposed wordings differ in using or avoiding a gender-specific term.

AMENDMENT 579

Proposed amendment to Article: 29

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Every natural person residing in a Member State has the right to petition the European Parliament.

Reason:

In the proposed text the reference to legal persons is deleted as it is not appropriate in a Charter of Fundamental Human Rights.

AMENDMENT 580**Proposed amendment to Article: 29**

Submitted by: Rocco BUTTIGLIONE, MEP, under the authority of the head of the European Parliament delegation

Proposed text:

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament and, accordingly, its Committee on Petitions.

The European Parliament, which elects the Ombudsman, shall, through the Committee on Petitions, exercise supervision of the role of the Ombudsman.

Reasons:

Remain the same.

AMENDMENT 581

Proposed amendment to Article: 29. Right to petition

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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

Reasons:

First sentence: Insertion of the words "*of the Union*" in the first part of the sentence (after "every citizen") is more in line with the EU Treaty.

AMENDMENT 582

Proposed amendment to Article: 29

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Every person has the right to petition an institution or body of the Union.

Reasons:

This Article contains the principles which arise from Articles 21 and 194 of the EC Treaty. Every person must have this right (see Article 5 of the Netherlands Constitution). There is also no reason to limit the right to the European Parliament. Incidentally, a right to a reply cannot be inferred from the right of every person to petition.

Proposed amendment to add a horizontal clause

Proposed text of a horizontal clause:

Insofar as this Charter contains rights corresponding to rights laid down in the European Convention on Human Rights, their meaning and scope are the same as the meaning and scope of the rights under the ECHR, unless this Charter provides greater protection.

Reasons:

This clause makes it clear that the rights in the Charter have the same meaning and scope as the provisions of the ECHR, as interpreted by the CDH, even if the formulation differs. In Article 5 of the ECHR, security is linked to the individual person. The Charter does not therefore explicitly cover a right to security in the general sense, as is expressed for example in Article 2 of the Treaty on European Union which states that one of the objectives of the Union is "to maintain and develop the Union as an area of freedom, security and justice ...". Clearly that Article leaves open the possibility of further protection under the Charter.

Proposals for Article 30

AMENDMENT 583

Proposed amendment to Article: 30

Submitted by: Pervenche BERÈS

Proposed text:

Every citizen of the Union and every person legally resident in the Union has the right to move and reside freely within the territory of the Member States.

Reasons:

AMENDMENT 584

Proposed amendment to Article: 30. Freedom of movement

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Article 30. Freedom of movement

1. *Every citizen of the Union has the right to move and reside freely within the territory of the Member States. Every citizen of a third country shall have the same entitlement to this right if they have been legally resident for five years within the territory of the Member States.*
2. *Every citizen of the Union shall be free to leave and then return to the territory of the Member States”.*

Reasons:

The existing text concerning this right should be extended or clarified in two respects: firstly, third-country nationals should also be given the right to freedom of movement after a specified period of legal residence. Secondly, it is moreover necessary here to draw the conclusions of experience in recent years when whole sections of populations have been repeatedly driven out of their homeland and subsequently prevented from returning there.

AMENDMENT 585

Proposed amendment to Article: 30. Freedom of movement

Submitted by: Georges BERTHU, MEP

Proposed text:

Every citizen of the Union has the right to move and reside freely within the territory of the Member States, **subject to national controls designed to preserve liberty and security of persons, in accordance with Article 6 of the Charter. Such controls must in all cases remain legitimate and proportionate.**

Reasons:

Recent cases (Wijsenbeek) have shown that freedom of movement is sometimes interpreted, wrongly, as automatically signifying the complete abolition of all forms of control. In line with the very spirit of Article 6 of the Charter, it is important to signify that controls may be exercised.

AMENDMENT 586

Proposed amendment to Article: 30

Submitted by: Andrew DUFF, MEP

Proposed text:

BB. Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States whether to live, work, seek work, study or undergo training.

Statement of reasons

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC:

- "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.*
- 2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."*

The Article also acts as a reference point for the citizen in drawing together all the rights of EU citizens with regard to freedom of movement. A reference to the Treaty will be made in a horizontal clause.

AMENDMENT 587

Proposed amendments to Article: 30

Submitted by: Erling OLSEN

Proposed text:

“Subject to the conditions and limitations laid down in the EC Treaty” should be added after “within the territory of the Member States”.

Reasons:

It is important to make clear that this provision does not vary from Article 18 of the EC Treaty. See Court of Justice judgment of 11 April 2000 in Case C-356/98 (Kaba), which indicates that a Member State's citizen's right to reside in the territory of another Member State is not absolute.

AMENDMENT 588**Proposed amendment to Article: 30**

Submitted by: E.M H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

"Every citizen of the Union" should be replaced by "Every person with a lawful residence permit".

Reasons:

The proposed wording is in line with the applicable regulations.

AMENDMENT 589

Proposed amendment to Article: 30

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

"Everyone who has been accorded refugee status or enjoys permanent right of residence in a Member State has the right to move and settle freely within the Union".

Reasons:

AMENDMENT 590

Proposed amendment to Article: 30

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add at the end of the sentence “in accordance with Article 18 of the Treaty establishing the European Community”.

Reasons:

In the text which defines the right, it is necessary to make an explicit reference to the Community Treaty in which this right is set out and limitations and conditions governing its exercise are established. This is without prejudice to the relevant horizontal clause which may be more detailed in setting out those limitations.

AMENDMENT 591**Proposed amendment to Article: 30**

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Every citizen of the Union or anyone residing or having the right to reside in a Member State has the right to move (*one word deleted*), reside *or settle* freely within the territory of the Member States.

In the German version, also replace “Jeder Unionsbürger” by “Jede Unionsbürgerin und jeder Unionsbürger”.

Reasons:

1. In the German version, the two proposed wordings differ in using or avoiding a gender-specific term.
2. The Article should not refer solely to citizens.
3. The right to freedom of movement should not become no more than a right for citizens of the Union to travel freely, but should include the right for all persons living in the Member States to settle freely.

AMENDMENT 592

Blank.

AMENDMENT 593

Proposed amendment to Article: 30

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Retain existing text

For Part B, “Definition of Rights”:

“The right in Article 30 is the right provided for in Article 18(1) of the Treaty establishing the European Community and is subject to the limitations and conditions laid down in that Treaty and by the measures adopted to give it effect”

Reasons:

I am very happy with the Praesidium text for the Proclamation of this right. However, I believe that we must ensure in Part B that Article 30 is understood within the meaning of the relevant Treaty provisions. It also preserves the effect of provisions laid down under as well as in the Treaty.

AMENDMENT 594

Proposed amendments to Article: 30. Freedom of movement

Submitted by: Daniel TARSCHYS

Reasons:

The conditions linked to this right should be explained in a part B.

Proposals for new Articles

AMENDMENT 595

Proposed amendment to Article: insertion of a new Article

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

- Insert in the Charter a new Article 31, worded as follows:

Upon leaving the territory of the Union, all citizens of the Union shall be entitled to diplomatic and consular protection. Such protection shall be afforded them by any official representative of the Union or of any of its Member States.

Reasons:

There is no reason to omit from the Charter the protection provided by Article 20 EC (under the Treaty of Amsterdam).

AMENDMENT 596

Proposed amendment to Article: HH

Submitted by: Andrew DUFF, MEP

Proposed text:

Article HH. European Union citizenship

Any right, privilege or obligation pertaining to citizens of the European Union may be extended in whole or in part to any natural or legal person by decision of the Union, in accordance with the principle of subsidiarity and where the extension of the scope of such rights shall not limit in any way those of EU citizens.

Statement of reasons

A new horizontal clause is required so that the rights falling to EU citizens in the above Articles may be extended to other categories of person. An extension of the right to vote in elections to resident third country nationals would be one such example. The reference to subsidiarity is appropriate in order to allow for a variable treatment of some citizenship rights as between Member States, as already exists in some cases, such as the franchise.

This clause would also allow for the development of the practice of freedom of movement of persons within the area of freedom, security and justice as foreseen by the Treaty of Amsterdam.

AMENDMENT 597**Proposed amendment to Article:**

Proposal for a special Article on protection of minorities

Article xxx Rights of minorities

(to be inserted preferably after Article 17, before Article 21 or after Article 22)

Submitted by: Prof. Reinhard RACK, MEP

Proposed text:

1. Members of any national, ethnic, cultural, linguistic, religious or other minority have the right also to live their traditional distinctiveness collectively and in public, to assemble freely and peacefully with others and associate freely with others and to settle their own internal affairs.
2. The Union shall work to promote the tradition and cultivation of minority rights.

Reasons:

In addition to individual protection for minorities, in accordance with European traditions in the Member States, care should be taken to protect and promote the collective rights of minorities. The above proposal takes on board the main substance of a number of European legal texts already in existence or currently being drawn up. Among others, mention should be made of the framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The fact that the framing of collective minority rights is not without its political difficulties in individual Member States, if anything, brings out the need to include this right in the European Union Charter of Fundamental Rights.

AMENDMENT 598

Proposed amendment to Article: (new Article)

Submitted by: Johannes VOGGENHUBER

Proposed text:

Rights of minorities

1. Anyone belonging to a minority has the right to use their own language and pursue their own culture, collectively and in public, with other members of their group.
2. Members of groups in practice at a disadvantage are entitled to special support.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Brussels, 5 June 2000 (06.06)
(OR. fr,es)

CHARTE 4332/00 ADD 1

CONVENT 35

**ADDENDUM TO
PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Amendments submitted by members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached Amendment 545b submitted by Rodríguez Bereijo, representative of the Spanish Prime Minister.

Amendment 545b

Proposed amendment to Article: 27

Submitted by: Rodríguez Bereijo, personal representative of the Spanish Prime Minister

Proposed text:

Article 27. Relations with the administration

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. Acts and provisions they adopt must respect the principle of legitimate expectations.
2. This right includes inter alia:
 - the right to legal security;
 - the right to have reasons for acts and provisions;
 - the right of the person concerned to have access to his file, while respecting the legitimate interests of confidentiality and of professional secrecy;
 - the right of the person concerned to be heard in all proceedings which affect him personally;
 - the right to legality and the right of defence in proceedings which are punitive or could have an adverse effect. In addition to the guarantees set out above, this right includes:
 - the right not to be the subject of administrative sanction without prior regulatory justification. Sanctions must be proportionate to the gravity of the offence committed;
 - the right to have no sanction imposed without proceedings in which the person concerned may be heard, knowledge of the offences with which he is charged, proof of guilt even if no more than failure to observe a rule, and reasons for the decision taken. Every person shall be presumed innocent until proved guilty and no one may be obliged to admit to the offence with which he is charged.

3. The institutions of the Union must make good any damage resulting from an illegal action wherever there is a causal relationship between the illegal action and the damage incurred, in accordance with the provisions of Article 288 of the Treaty establishing the European Community.
4. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons:

The proposed amendment is intended to list the main rights to which the Court of Justice of the European Community has declared that the individual is entitled in his relations with the Community administration. The scope of the rights laid down in paragraphs 1 and 2 must be limited to the public administration, with the exception of the Court of Justice in its judicial functions.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 June 2000 (13.06)**CHARTE 4332/00 ADD 2****CONVENT 35****ADDENDUM
TO PRAESIDIUM NOTE**

Subject: Draft Charter of fundamental rights of the European Union
– Amendments submitted by the members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached amendments from:

- | | |
|---|-----------------------|
| – Mr Hirsch Ballin, Mr Patijn, Mr Van Oven (Article 27) | Amendment 599 |
| – Messrs Korthals Altes and Patijn (Article 27) | Amendment 600 |
| – Lord Goldsmith, QC (Articles 27-29) | Amendment 601 |
| – Mr Jansson, Ms Brax, Mr Nikula (Article 27) | Amendment 602 |
| – Mr Jens-Peter Bonde (Article 18) | Amendment 603 |
| – Mr Jens-Peter Bonde (new Article on minority rights) | Amendment 604. |

AMENDMENT 599

Proposed amendment to Article: 27

Submitted by: E.M.H. Hirsch Ballin, M. Patijn (and also on behalf of G.J.W. van Oven)

Proposed text:

1. Every person has the right to have his affairs handled properly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. *In preparing a decision the institutions and bodies of the Union shall take account of the following provisions:*
 - *the necessary knowledge shall be gathered about the relevant facts and the interests to be considered;*
 - *the competence to take a decision shall not be used for a purpose other than that for which competence has been granted;*
 - *the adverse effects of a decision on one or more interested parties may not be disproportionate in relation to the aims sought by the decision.*
4. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons:

It is suggested that the term "properly" be used in paragraph 1. This also includes the concepts of impartiality and fairness. In paragraph 2, a choice has been made to include a number of European principles of proper administration as (partly) developed in the case law of the Court of Justice. However, a number of general principles of proper administration, which are included in Netherlands administrative law, are missing. These include the principle of careful preparation, prohibition of the misuse of powers and the principle of proportionality. These principles have been added in paragraph 3.

AMENDMENT 600

Proposed amendment to Article: 27

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

1. Every person has the right to have his affairs handled *properly* and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. *In preparing a decision, the institutions and bodies of the Union shall take into account the following provisions:*
 - *the necessary knowledge shall be gathered about the relevant facts and the interests to be considered;*
 - *the competence to take a decision shall not be used for a purpose other than that for which competence has been granted;*
 - *the adverse effects of a decision on one or more interested parties may not be disproportionate in relation to the aims sought by the decision.*
4. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons:

It is suggested that the term "properly", which also embraces the concepts of impartiality and fairness, be used in paragraph 1.

In the second indent of paragraph 2, it is suggested that the Dutch text be brought more into line with the English text. More generally, we have decided to insert in paragraph 2 a number of European general principles of proper administration, as (partly) developed in the case-law of the Court of Justice. However, a number of general principles of proper administration which are included in Netherlands administrative law are missing. These include the principle of careful preparation, prohibition of the misuse of power and the proportionality principle. These principles have been added in paragraph 3.

AMENDMENT 601

Proposed amendment to Articles: 27-29

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce two-part text as follows:

(i) Part A

1. Every person has the right in his or her dealings with the Institutions of the Union to be treated impartially, fairly and within a reasonable time.
2. In particular,
 - (a) every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right, in accordance with specified conditions and procedures, to refer to the Ombudsman of the Union, cases of maladministration by Union institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.
 - (b) every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament in accordance with specified conditions.
 - (c) every person may write to the institutions of the Union in one of the official languages of the Union and have an answer in that language.

(ii) Part B

The rights set out in Article 27 are the rights guaranteed by Article 21 of the Treaty establishing the European Community read with Articles 195 and 194 TEC and as are contained in general principles of Community law.

— Reasons:

These provisions are, in my view, strengthened by bringing them together into a single Article.

The right given by the TEC contains certain limitations which the Article should acknowledge.

The drafting change to paragraph 1 is to give more precision to what would otherwise be a very wide obligation on the institutions. The drafting changes to CONVENT 28 Article 27(3) are to bring it into line with Article 21 TEC. Paragraph two of CONVENT 28 Article 27 has been deleted as it has no clear basis in the Treaties. The case law of the ECJ sets down related rights in specific situations, eg competition matters, rather than as general principles. An individual's right of access to his or her file is covered by the right of access to documents in Article 18.

The proposed text in CONVENT 28 Article 29 expands the right to petition the EP in categories which do not have it under the TEC. As with access to the Ombudsman, the right is not absolute and text therefore refers to conditions.

AMENDMENT 602

Proposed amendment to Article: 27

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 27. *Right to good governance*

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time [].
2. This right includes *the right of the person concerned*
 - *to be heard before a decision is taken about his rights or obligations*
 - *to obtain the documents relating to his case, taking account of justified confidentiality and secrecy regarding such documents*
 - *to obtain a well-founded decision regarding his or her case*
3. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language

Reasons:

It is proposed that paragraph 1 of this Article be amended so as to highlight the fact that legal persons may also avail themselves of this right. In addition, it is necessary to remove the reference to the institutions of the Union so that the Article will also apply to national authorities when they implement Community legislation.

The changes to paragraph 2 of this Article are of a more technical nature. The proposed wording underlines the rights of the *person concerned*.

There are grounds for removing the link between this right and nationality in the third paragraph as the right to contact the bodies of the European Union should not only be the right of nationals of the Union.

AMENDMENT 603

Proposed amendment to Article: 18

Submitted by: MEP Jens-Peter Bonde

Proposed text:

Right of access to information

Every citizen of the Union and anyone residing in the Union shall have a right of access to the documents possessed by the institutions of the European Union. Everything is open unless there is a decision allowing a derogation from the general principle of openness in public law and administration. Deviations should be followed by a concrete reason which can be appealed to the European Ombudsman. Exceptions from the general rule and implementation of the rules of access to information can be adopted according to Article 255 of the Treaty establishing the European Community.

Reasons:

It is fundamental for the relationship between the individual and the institutions that the individual has access to all files. Exceptions from this rule should therefore be limited and wellfounded. Exceptions should be followed by a concrete reason and it should be possible to complain about a rejection.

AMENDMENT 604

I propose that the following "new" right is included in the Charter in the chapter concerning civil and political rights:

Submitted by: MEP Jens-Peter Bonde

Proposed text:

Minority rights

Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity *inter alia* through effective participation in cultural, religious, social, economic and public life within the Union, as set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992) and other relevant standards.

Reasons:

The *right to the protection and promotion of ethnic, cultural, linguistic and religious identity* of national minorities is one of the basic human rights already guaranteed in Article 27 of the International Covenant on Civil and Political Rights, UN 1966. Almost all of the binding or non-binding international documents addressing the protection of minorities refer to their right to identity protection and promotion, such as Articles 1 and 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 33 of the OSCE Copenhagen Document (1990), Article 5 of the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the spirit enshrined in the preamble of the European Charter for Regional or Minority Languages (1992).

The *right to effective participation in cultural, religious, social, economic and public life* is one of the most important rights of minorities in order to be able to use the generally recognised human rights and minority rights guaranteed in the different international human rights documents. (Article 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraph 35 of the OSCE Copenhagen Document (1990), Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).

In order to meet the needs and aspirations of persons belonging to national minorities concerning their identity protection and promotion, as well as to manage ethnic, linguistic, religious and cultural diversity, it is necessary to actively involve national minorities in the decision taking on all levels in the cultural, social, economic and public life of the society. This way the protection and promotion of their rights set out in the different UN, OSCE, and Council of Europe binding and non-binding documents can be realised and implemented.

"as set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992)". The article would like to reinforce existing standards, without enlisting all the rights enshrined in the above documents. While the UN Declaration and the OSCE Copenhagen Document are soft law provisions, the Council of Europe Framework Convention and Language Charter are legally binding documents signed or ratified by most of the EU countries.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Fundamental.rights@consilium.eu.int

Brussels, 27 June 2000 (30.06)

**CHARTE 4332/00
ADD 3**

CONVENT 35

**ADDENDUM TO
PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
- Amendments relating to civil and political rights and citizens' rights submitted by members of the Convention
(Reference documents: CHARTE 4284/00 CONVENT 28 (REV 1 for the French version only))

Delegations will find attached amendments from:

Mr Jean-Luc Dehaene (Article 27)

Amendment 605

Mr Win Griffith (Article 27)

Amendment 606

Proposed amendment to Article: 27. Relations with the administration

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text: Right to good governance

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file,¹ while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to address the institutions of the Union in one of the official languages of the Union and must have an answer in that language within a reasonable time.

Reasons

The purpose of the proposal is to replace the title of the provision (CONVENT 28 version ["*Relations with the administration*"]) with "*Right to good governance*". This concept conveys more clearly the substance of the fundamental right in question and, moreover, ties in with the concept of "*good governance*". The addition of "*within a reasonable time*" in paragraph 3 ties in with the same provision in paragraph 1.

Paragraph 3: "*Every person has the right ...*" is a legally clearer and stronger form of words than the version in CONVENT 28 ["*Every person may*"].

¹ Translator's footnote: The Dutch version, unlike the EN and F original texts, contains here a clause reading: "insofar as that is necessary in order to adduce evidence,".

Proposed amendment to Article: 27**Submitted by:** Win Griffiths MP

Proposed text: 1. Every person has the right to have his/her affairs handled impartially, openly and fairly and within a reasonable time by the institutions of the Union.

2. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons: Paragraph 2 of the original text can be deleted with the addition of "openly" to paragraph 1 and by the addition of an appropriate commentary in "Part B" of the Charter to take account of these more detailed issues.

The applicability of the Charter to bodies of the Union requires separate consideration.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 4 juin 2000 (04.06)
(OR. FR)****CHARTE 4333/00****CONVENT 36****NOTE DU PRESIDUM**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 – Projet d'articles 1 à 30 (doc. CHARTE 4284/00 CONVENT 28)
 = Propositions d'amendements de compromis présentés par le Présidium

Article 1

Faire du paragraphe 2 un nouvel article 1bis.

S'appuie sur les amendements 5, 14, 15, 16.

Article 3

Nouvelle rédaction:

1. Toute personne a droit à son intégrité physique, génétique et mentale.
2. Dans le cadre de la médecine et de la biologie, les principes suivants doivent notamment être respectés:

- interdiction des pratiques eugéniques, notamment celle qui ont pour but la sélection et l'instrumentalisation des personnes
- consentement libre et éclairé du patient
- interdiction de faire du corps humain et de ses parties une source de profit
- interdiction du clonage reproductif des êtres humains.

s'appuie sur les amendements 49, 52, 54, 56, 59, 64, 67.

Article 4

Le Présidium suggère de déplacer le paragraphe 2 à l'article relatif au droit d'asile et de remplacer "serait menacé d'être" par "pourrait être".

Article 5

Nouvelle rédaction du paragraphe 2

2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire. Ne sont pas considérées comme travail forcé ou obligatoire les prestations personnelles qui, établies par la loi, sont exigées des citoyens pour des motifs civiques en cas d'urgence ou de calamité ainsi que le service militaire ou le travail exigé normalement d'une personne privée de liberté.

S'appuie sur les amendements 96, 100, 101, 102,104

Ajouter un paragraphe 3

3. La traite des être humains est interdite

S'appuie sur l'amendement 90

Article 8

Lire le paragraphe 1 comme suit

Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial établi par la loi. Toute personne a la possibilité de se faire conseiller, défendre et représenter par un avocat.

Au paragraphe 2, au lieu de « serait indispensable », lire « serait nécessaire »

S'appuie sur les amendements 148, 149, 158, 162

Article 10

Lire le titre comme suit

« Principe de légalité et de proportionnalité des délits et des peines »

Au paragraphe 2, in fine, lire

« était criminelle d'après le droit international »

Ajouter un nouveau paragraphe 3

L'intensité des peines doit être proportionnelle à la gravité de l'infraction.

S'appuie sur les amendements 177, 179, 185, 187, 188

Article 11

Lire le titre comme suit

Droit à ne pas être jugé ou puni pénalelement deux fois pour un même délit

S'appuie sur l'amendement 199

Article 12

Lire le titre comme suit

Respect de la vie privée et familiale

Lire l'article comme suit

Toute personne a droit au respect de sa vie privée et de sa vie familiale, de son honneur et de sa réputation, de son domicile et du secret de sa correspondance et de ses communications.

S'appuie sur les amendements 207, 221

Article 13

Lire le titre comme suit

Droit de se marier et de fonder une famille

Supprimer le paragraphe 1

Le nouveau paragraphe 1 se lit ainsi

Le droit de se marier et le droit de fonder une famille sont garantis selon les lois nationales qui en régissent l'exercice

S'appuie sur l'amendement 243

Supprimer l'actuel paragraphe 2 qui sera inséré dans le droit sociaux

S'appuie sur l'amendement 251

Article 14

Lire l'article ainsi

Toute personne a droit à la liberté de pensée, de conscience et de religion ; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa

conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

S'appuie sur les amendements 252, 254, 255, 256, 257, 258, 259, 263, 264, 265, 270, 271, 272

Article 15

Ajouter un paragraphe 2

La liberté de presse et d'information est garantie dans le respect de la transparence et du pluralisme

S'appuie sur les amendements 279, 280, 281, 282, 284, 290

Article 16

Lire le paragraphe 2 comme suit

La liberté de création des établissements d'enseignement est garantie, dans le respect des principes démocratiques, selon les règles nationales régissant l'exercice de ce droit

S'appuie sur les amendements 312, 318, 320

Article 17

Nouvelle rédaction

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, notamment dans les domaines politique, syndical et civique

S'appuie sur les amendements 325, 326, 329, 330, 339

Article 19

Lire l'article comme suit

Toute personne a le droit de décider elle-même de la collecte, de l'utilisation et de la divulgation des

données à caractère personnel la concernant

S'appuie sur les amendements 359, 365, 367, 369, 372

Article 20

Lire l'article comme suit

Toute personne a le droit de posséder des biens acquis légalement, de les utiliser, d'en disposer et de les léguer. Nul ne peut être privé de sa propriété si ce n'est pour cause d'utilité publique, dans des cas et conditions prévues par une loi et moyennant une juste indemnité

S'appuie sur les amendements 380, 381, 382, 387, 389, 393, 400

Article 21

Lire comme suit

Le droit d'asile est garanti, conformément au traité instituant la Communauté européenne et dans le respect des règles de la convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1967 relatifs au statut des réfugiés ainsi que des autres traités pertinents

S'appuie sur les amendements 404, 404 bis (M. Melograni), 410, 414, 415, 416, 428, 429

Article 21 bis

Nouvel article qui reprend une partie de l'article 4 et se lit comme suit

1. Les expulsions collectives sont interdites
2. Nul ne peut être expulsé, ni extradé vers un Etat où il pourrait être soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants

S'appuie sur les amendements 82, 409, 412, 414, 432, 433

Article 22

Lire l'article comme suit

1. Est interdite toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine d'application du traité instituant la Communauté européenne et du traité sur l'Union européenne et sans préjudice des dispositions particulières desdits traités, toute discrimination fondée sur la nationalité est interdite.
3. L'Union cherche à éliminer les inégalités et cherche à promouvoir l'égalité de statut entre les femmes et les hommes. L'égalité des sexes est notamment assurée dans la fixation des rémunérations et des autres conditions de travail.

S'appuie sur les amendements 437, 439, 440, 442, 453, 454

Article 23

Lire l'article comme suit

1. Les enfants ont droit à la protection et au soin nécessaire à leur bien-être. Ils peuvent exprimer leur opinion librement sur les sujets qui les concernent, ces opinions étant prise en considération en fonction de leur âge et de leur maturité.
2. Dans tous les actes relatifs aux enfants, qu'ils soient accomplis par des institutions publiques ou privées de protection sociale, l'intérêt supérieur de l'enfant doit primer

S'appuie sur les amendements 474, 476, 478, 479, 484, 485, 486, 487, 489, 490, 491, 493

Article 24

Après « tout citoyen », ajouter « de l'Union »

S'appuie sur les amendements 510, 511, 514, 515

Article 25

Inverser les paragraphes 1 et 2

Au paragraphe 2, après « éligibilité », ajouter « au Parlement européen »

S'appuie sur l'amendement 532

Article 27

Changer le titre « droit à une bonne administration »

Débuter ainsi le paragraphe 3

« Toute personne a le droit de s'adresser... »

s'appuie sur l'amendement 555 et sur l'amendement de M. Dehaene

Article 28

Ajouter « de l'Union » après « citoyen »

S'appuie sur les amendements 565 et 569

Article 29

Après « citoyen », ajouter « de l'Union »

S'appuie sur l'amendement 581

Article 29 bis

Nouvel article

Protection diplomatique et consulaire

Tout citoyen de l'Union bénéficie, sur le territoire d'un pays tiers où l'Etat membre dont il est ressortissant n'est pas représenté, de la protection de la part des autorités diplomatiques et consulaires de tout Etat membre, dans les mêmes conditions que les nationaux de cet Etat.

S'appuie sur l'amendement 545 et reproduit la première phrase de l'article 20 du traité CE

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 May 2000**CHARTE 4344/00****CONTRIB 208****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of Lord Goldsmith Q.C, personal representative of the government of the United Kingdom. The contribution shows how an integrated two-part document would look (reference: CHARTE 4284/00 CONVENT 28).¹

¹ This text has been submitted in English language only.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 1 Object and purpose

All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law. In recognition of this, the European Union Institutions respect, within the spheres of their competences, the fundamental rights set out below.

PROCLAMATION OF RIGHTS

(PART A)

Article 2 Right to Life

- 1. Everyone's right to life shall be protected by law**
- 2. No one shall be condemned to the death penalty or executed.**

Article 4 Prohibition of torture and inhuman treatment

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

Article 5 Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Article 6 Right to liberty and security

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

Article 8 Right to a fair trial

- 1. Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.**

2. If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.

Article 10 No punishment without law

No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed.

Article 11 Right not to be tried or punished twice

No one shall be tried or punished twice for the same criminal offence.

Article 12 Respect for private life

Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

Article 13 Family life

Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right.

Article 14 Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Limitations can be placed on this right only in limited, specified circumstances.

Article 15 Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to received and impart information and ideas without interference by public authority and regardless of frontiers. Formalities, restrictions, conditions or penalties can be placed on this right only in limited, specified circumstances.

Article 16 Right to education

No one shall be denied the right to education.

Article 17 Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests. These rights may be restricted only in limited, specified circumstances.

Article 18 Right of access to documents

Every citizens of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, of the Council and of the Commission.

Article 19 Data protection

Every natural person has a right to protection for his or her personal data.

Article 20 Right to Property

Everyone is entitled to the peaceful enjoyment of his or her possessions. Public bodies may interfere with possessions or the way they are used only in specified, limited circumstances.

Article 22 Non-discrimination

1. Discrimination between citizens of Member States of the European Union on grounds of nationality shall be prohibited.
2. The rights and freedoms in [ECHR-based rights] shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 25 Right to vote and stand as a candidate for the European Parliament

Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

Article 26 Right to vote and stand as a candidate in municipal elections

Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State.

Article [27-29] Relations with the administration

1. Every person has the right in his or her dealings with the Institutions of the Union to be treated impartially, fairly and within a reasonable time.
2. In particular,
 - a) every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right, in accordance with specified conditions and procedures, to refer to the Ombudsman of the Union, cases of maladministration by Union institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.
 - b) every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament in accordance with specified conditions.
 - c) every person may write to the institutions of the Union in one of the official languages of the Union and have an answer in that language.

Article 30 Freedom of Movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

DEFINITION OF RIGHTS

(PART B)

Article 2 Right to Life

The rights in Article 2 are the rights guaranteed by Article 2 of the ECHR and Articles 1 – 4 of Protocol 6 to the ECHR.

Article 4 Prohibition of torture and inhuman treatment

The right in Article 4 is the right guaranteed by Article 3 of the ECHR.

Article 5 Prohibition of slavery and forced labour

The right in Article 5 is the right guaranteed by Article 4 of the ECHR.

Article 6 Right to liberty and security

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR.

Article 8 Right to a fair trial

The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR.

Article 10 No punishment without law

The right in Article 10 is the right guaranteed by Article 7 of the ECHR.

Article 11 Right not to be tried or punished twice

The right in Article 11 is the right guaranteed by Article 4 of Protocol 7 to the ECHR. It does not prevent the reopening of the case in accordance with the law if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings which could affect the outcome of the case.

Article 12 Respect for private life

The right in Article 12 is the right guaranteed by Article 8 of the ECHR

Article 13 Family life

The right in Article 13 is the right guaranteed by Article 12 of the ECHR

Article 14 Freedom of thought, conscience and religion

The right in Article 14 is the right guaranteed by Article 9 of the ECHR

Article 15 Freedom of expression

The right in Article 15 is the right guaranteed by Article 10 of the ECHR.

Article 16 Right to education

The right in Article 16 is the right guaranteed by Article 2 of the First Protocol to the ECHR, read with any reservation made in respect of it.

Article 17 Freedom of assembly and association

The right in Article 17 is the right guaranteed by Article 11 of the ECHR.

Article 18 Right of access to documents

The right in Article 18 is the right guaranteed by Article 255 of the Treaty establishing the European Community and shall be exercised in accordance with the conditions and subject to any limitations made under and in accordance with that Treaty provision.

Article 19 Data protection

The right in Article 19 is the right under Article 286 TEC and Community Directives on data protection and is subject to the conditions and limitations laid down in them.

Article 20 Right to Property

The right in Article 20 is the right in Article 1 of the Additional Protocol to the ECHR.

Article 22 Non-discrimination

Paragraph 1 is the prohibition of discrimination on grounds of nationality in Article 12 of the Treaty establishing the European Community. The prohibition applies within the scope of application of, and without prejudice to special provisions contained in, that Treaty.

Paragraph 2 is the right in Article 14 of the ECHR.

Article 25 Right to vote and stand as a candidate for the European Parliament

The rights in Article 25 are the rights in Article 19(2) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article.

Article 26 Right to vote and stand as a candidate in municipal elections

The rights in Article 26 are the rights in Articles 19(1) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article.

Article [27-29] Relations with the administration

The rights set out in Article [27-29] are the rights guaranteed by Article 21 of the Treaty establishing the European Community read with Articles 195 and 194 TEC and as are contained in general principles of Community law.

Article 30 Freedom of Movement

The right in Article 30 is the right provided for in Article 18(1) of the Treaty establishing the European Community and is subject to the limitations and conditions laid down in that Treaty and by the measures adopted to give it effect.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 juin 2000**CHARTE 4352/00****CONTRIB 216****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint des propositions d'amendement concernant les droits civils et politiques et droits des citoyens, soumises par le Comité des Régions. ¹

¹ Ce texte a été soumis en langue française uniquement.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Proposition d'amendement à l'article : sur le principe de démocratie

Auteur : Comité des régions

Texte proposé :

3 - Les collectivités territoriales élues exercent les responsabilités publiques qui leur sont légalement conférées, selon le principe de l'autonomie.

Justificatif :

1. Il résulte de l'article 1er du TUE qui prévoit que dans l'Union "les décisions sont prises dans le plus grand respect du principe d'ouverture et le plus près possible des citoyens" et des traditions constitutionnelles communes aux Etats membres que les assemblées locales élues disposent de l'autonomie dans le cadre de leurs compétences.
2. Il est important qu'un texte émanant de l'Union rappelle cette liberté fondamentale du citoyen de pouvoir élire les assemblées locales qui exercent des responsabilités publiques, dans le cadre de la loi, sous leur propre responsabilité et au profit de leur population.
3. Les collectivités locales sont l'un des principaux fondements de tout régime démocratique.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article : 22**

Auteur : Comité des régions

Texte proposé : ajout

3. L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes dans tous les domaines de la prise de décision.
(le reste sans changement)

Justificatif :

Dès lors qu'il s'agit de promouvoir l'égalité entre les hommes et les femmes, il semble important de préciser que cette intention doit se manifester dans le domaine le plus élevé, celui de la prise de décision, que celle-ci soit professionnelle ou politique.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Proposition d'amendement à l'article : 22 - Egalité et non discrimination
ou d'un nouvel article après l'article 22

Auteur : Comité des régions

Texte proposé :

Si amendement, nouveau paragraphe 3 : Les minorités ont droit au respect de leur religion, de leur langue et de leur culture.

Si nouvel article : Droit des minorités : Les minorités ont droit au respect de leur religion, de leur langue et de leur culture.

Justificatif :

Référence à l'article 27 du Pacte international relatif aux droits civils et politiques.

Les articles 12, 14,15 et 22 s'appliquent à des personnes et non à des groupes.

Le concept de minorité mérite d'être intégré à la Charte des droits fondamentaux.

Cette insertion s'avère indispensable dès lors que l'Union sera élargie à des Etats comportant des minorités importantes.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article : 27 - Relations avec l'Administration**

Auteur : Comité des régions

Texte proposé : nouveau paragraphe 3

3. L'action administrative est soumise au contrôle de légalité.

Justificatif :

Dès lors que le projet de Charte comporte un article sur les relations avec l'administration, il apparaît nécessaire de rappeler que l'action administrative est soumise au contrôle de légalité, ce qui constitue une garantie pour les administrés.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE
Droit économiques et sociaux

Proposition d'amendement à l'article : Proposition d'un nouvel article après l'article 32

Auteur : Comité des régions

Texte proposé :

Les travailleurs ont droit à une formation professionnelle permanente.

Justificatif :

Les évolutions scientifiques et techniques modifient les qualifications requises par les entreprises. Il importe que les travailleurs puissent s'adapter ou se former aux nouveaux métiers.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article :**

Proposition d'amendement à l'article 46 - Champ d'application

Auteur : Comité des régions

Texte proposé : ajout & 1

... ainsi qu'aux Etats membres et aux collectivités territoriales exclusivement dans le champ d'application du droit de l'Union.

Justificatif :

Les collectivités territoriales peuvent avoir à mettre en oeuvre des réglementations communautaires. Il importe que dans cette hypothèse, leur action ne porte pas atteinte aux droits fondamentaux énoncés par la Charte.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article :**

Proposition d'un nouvel article après l'article 50 (actuel). Il s'agit de prévoir les modalités de recours en cas d'atteinte aux droits fondamentaux énoncés par la Charte.

Auteur : Comité des régions

Texte proposé :

Toute atteinte aux droits énoncés dans la présente Charte est susceptible de recours devant les juridictions appropriées nationales et européennes et si nécessaire avec une aide juridique et financière adaptée.

Justificatif :

Dès lors que la Charte énonce des droits, elle doit prévoir les modalités de recours en cas de non-respect de ces droits.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 14 June 2000 (16.06)
(OR. fr)****CHARTE 4360/00****CONVENT 37****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
– Summary of amendments presented by the Praesidium
(Reference document: CHARTE 4284/00 CONVENT 28)

The purpose of this document, drawn up by the Secretariat at the request of the Convention, is to group the amendments to Articles 1 to 30 (CHARTE 4332/00) according to topic. This analysis does not cover drafting and linguistic amendments. These will be subject to specific examination. It will be noted that some of the Praesidium's compromise amendments are based on amendments not included in this analysis. This is because the Praesidium has already taken some linguistic or drafting amendments into account.

Article 1. Dignity of the human person

1. The dignity of the human person must be respected and protected.
2. Everyone is equal before the law.

Proposed amendments

Paragraph 1

- (1) adopt the wording: "the dignity of the human person is inviolable": Amendments 1 (Duff), 6 (Rodota, Paciotti, Manzella), 10 (Melograni), 11 (Voggenhuber)
- (2) move paragraph 1 to the preamble: Amendments 5 (Tarschys), 8 (Griffiths), 9 (Berthu)

Paragraph 2

- (1) adopt the wording: "All human beings are born free and equal in rights": Amendment 3 (Goldsmith) (which adds dignity)
- (2) change the position of paragraph 2: to a separate article, Amendments 16 (Berès), 22 (Manzella); with the principle of non-discrimination: Amendment 21 (Rodota, Paciotti, Manzella); with Article 8 (right to a fair trial) Amendment 14 (Griffiths)

Praesidium proposal: separate this article into two articles:

Make paragraph 2 into a new Article 1a.

On the basis of Amendments 5 (Tarschys), 14 (Griffiths), 15 (Korthals Altes), 16 (Berès).

Article 2. Right to life

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

Proposed amendments

- (1) align with the European Convention: Amendments 26 (Dehaene), 31 (Van Dam), 33 (Tarschys), 36 (Einem/Holoubek), 37 (Goldsmith)
- (2) include the Convention's definitions: Amendment 26 (Dehaene), 36 (Einem/Holoubek), 38 (Berthu)
- (3) state that the right to life extends until its natural end, Amendments 28 (Haenel), 29 (Berthu), 30 (Cisneros), 31 (van Dam)
- (4) set out the exceptions to the prohibition of the death penalty: Amendment 42 (Bereijo)
- (5) prohibit limitations on prohibiting the death penalty: Amendment 43 (Einem/Holoubek)
- (6) insert here the prohibition of expulsions contained in Article 4: Amendment 44 (Korthals Altes)

Article 3. Right to respect for the integrity of the human person

1. **Everyone has the right to respect for his physical and mental integrity.**
2. **In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenic practices;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**

Proposed amendments

- (1) deletion: Amendment 45 (Goldsmith)

paragraph 1

- (1) add the reference to genetic integrity; Amendment 51 (Altmaier)
- (2) delete physical and mental: Amendment 71 (Tarschys)

paragraph 2

- (1) delete the paragraph: Amendments 57 (Griffiths), 58 (Olsen), 72 (Korthals Altes)
- (2) supplement the list: Amendments 50 (Dehousse), 60 (Hirsch Ballin, Patijn) (prohibition of hybrids), 62 (Melograni) (clarifying the concept of informed consent), 66 (Berthu) (idem), 70 (Cisneros) (all life is the result of the fusion of human gametes)

- (3) prohibit all forms of human cloning, not merely reproductive cloning: Amendments 61 (Van Dam), 63 (Kaufmann), 65 (Mombaur), 66 (Berthu), 68 (Friedrich)

Praesidium proposal: clarify the wording of paragraph 2:

New drafting:

1. *Everyone has the right to respect for his physical, genetic and mental integrity.*
2. *In the fields of medicine and biology, the following principles must be respected in particular:*
 - *prohibition of eugenic practices, in particular those concerned with the selection and instrumentalisation of persons;*
 - *respect for the free and informed consent of the patient;*
 - *prohibition of making the human body and its parts a source of financial gain;*
 - *prohibition of the reproductive cloning of human beings.*

Article 4. Prohibition of torture and inhuman treatment

**No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.**

Proposed amendments

- (1) delete the article: Amendment 74 (van Dam)
- (2) delete the second sentence: Amendments 73 (Berthu), 78 (Goldsmith), 87 (Bereijo)

- (3) move the second sentence: Amendments 77 (Friedrich), 88 (Gnauck), 90 (Rodota, Paciotti, Manzella)
- (4) redraft the second sentence to clarify the fact that expulsion and extradition are prohibited where there is a risk of inhuman or degrading treatment or of being subject to the death penalty: Amendments 79 (Melograni), 82 (Korthals Altes), 83 (Dehaene), 84 (Griffiths), 85 (Hirsch Ballin, Patijn)
- (5) delete the danger of being subjected to the death penalty as this comes under Article 2: Amendment 81 (Olsen)
- (6) stipulate that any restriction is prohibited: Amendment 91 (Einem/Holoubek)

Praesidium proposal: move the second sentence to Article 21, clarify the wording in line with the amendments in (4):

The Praesidium suggests moving the second paragraph to the article on the right of asylum and replacing "would be in danger of being" by "could be".

Article 5. Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Proposed amendments

- (1) delete the article: Amendment 93 (van Dam)
- (2) add the prohibition on trafficking in human beings: Amendment 95 (Gnauck)

- (3) take over Article 4 of the ECHR: Amendment 96 (Tarschys)
- (4) clarify the concept of forced labour: Amendments 98 (Olsen), 100 (Bereijo), 101 (Korthals Altes), 104 (Dehousse)
- (5) state that this right may not be restricted: Amendment 99 (Einem/Holoubek)

Praesidium proposal: clarify the definition of the right as requested in (3)

New drafting of paragraph 2

2. *No one shall be required to perform forced or compulsory labour. The term "forced or compulsory labour" shall not include services required by law of citizens for civic reasons in case of an emergency or disaster and military service or the work ordinarily required of persons imprisoned.*

Based on Amendments 96 (Tarschys), 100 (Bereijo), 101 (Korthals Altes), 102 (Berthu), 104 (Dehousse)

Add a paragraph 3

3. *Trafficking in human beings is prohibited.*

Based on Amendment 90 (Rodota, Paciotti, Manzella)

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Proposed amendments

- (1) delete the second sentence: Amendments 105 (van Dam), 107 (Altmaier), 108 (Mombaur)
- (2) add a reference to the ECHR: Amendment 109 (Barros Mourra/Azevedo) or take over the text of the ECHR: Amendments 113 (Korthals Altes), 114 (Hirsch Ballin/Patijn), 116 (Tarschys)
- (3) delete the reference to security: Amendments 111 (Friedrich), 112 (Gnauck), 118 (Melograni)
- (4) extend security to cover "of person and family": Amendment 122 (Rodota/Paciotti/Manzella) or add that society must find ways of ensuring security of persons and property:
Amendment 123 (Dehousse)

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Proposed amendments

- (1) add a reference to rights under this Charter: Amendment 124 (Goldsmith), 128 (Hirsch Ballin/Patijn), 129 (Tarschys), 130 (Neisser) 131 (Bereijo), 132 (Olsen)
- (2) replace the reference to a court by one to a competent or independent authority or delete any reference to the authority in question: Amendments 124 (Goldsmith), 129 (Tarschys), 132 (Olsen), 134 (Melograni), 135 (O'Kennedy)
- (3) amend the title: Amendment 139 (Korthals Altes)

Article 8. Right to a fair trial

- 1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
- 2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice**

Proposed amendments

- (1) re-examine: Amendment 142 (Tarschys)
- (2) delete: Amendment 143 (Berthu)
- (3) Align with the ECHR with a reference to disputes over civil rights or criminal charges: Amendments 146 (O'Kennedy), 147 (Olsen), 149 (Einem/Holoubek), 152 (Goldsmith)

- (4) refer to the ECHR: Amendment 154 (Korthals Altes)
- (5) delete paragraph 2: Amendment 157 (Friedrich)
- (6) clarify paragraph 2 by stating that aid must be necessary: Amendments 158 (Melograni), 160 (Rodota/Paciotti/Manzella)
- (7) add the right to a lawyer: Amendments 148 (Neisser), 162 (Meyer/Berès/Leinen/Martin/Van den Burg), 163 (Duff) (included under Article 9)

Praesidium proposal: accept the amendments in (6) and (7):

Paragraph 1 to read as follows:

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

In paragraph 2, replace "is indispensable" by "is necessary".

Based on Amendments 148 (Neisser), 149 (Einem/Holoubek), 158 (Melograni), 162 (Meyer/Berès/Leinen/Martin/Van den Burg)

Article 9. Presumption of innocence and rights of the defence

- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.**
- 2. Everyone who has been charged shall be guaranteed respect for his rights to defence.**

Proposed amendments

- (1) delete: Amendment 166 (Goldsmith)
- (2) stipulate that the text concerns criminal offences: Amendments 164 (O’Kennedy) and 167 (Melograni)
- (3) replace this text with that of the ECHR: Amendment 169 (Buitenweg) and 173 (Korthals Altes)
- (4) add a reference to the ECHR: Amendment 170 (van Dam)
- (5) add that the victim of denial of justice has a right to damages: Amendment 174 (Berès)

Article 10. No punishment without law

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

Proposed amendments

- (1) delete paragraph 2: Amendment 185 (Bereijo)
- (2) replace the reference to general principles of international law with different wording: Amendment 187 (Rodotà/Paciotti/Manzella)

- (3) add a reference to penalty being in proportion to the seriousness of the offence: Amendment 188 (Rodotà/Paciotti/Manzella)

Proposal from the Praesidium: accept (2) and (3):

Title to read as follows:

"Principle of legality and proportionality of offences and penalties"

The end of paragraph 2 to read as follows:

"was criminal according to international law"

add a new paragraph 3:

The severity of penalties shall be proportional to the gravity of the offence.

Based on Amendments 177 (Berès), 179 (Neisser), 185 (Bereijo), 187 (Rodotà/Paciotti/Manzella) and 188 (idem)

Article 11. Right not to be tried or punished twice

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

Proposed amendments

- (1) delete: Amendment 189 (Berthu)
(2) copy the ECHR: Amendments 190 (Olsen) and 194 (Tarschys)

- (3) refer to the ECHR: Amendments 192 (van Dam) and 193 (Korthals Altes)
- (4) stipulate that this refers to criminal proceedings (Amendments 198 (Hirsch Ballin/Patijn), 199 (Berès) and 203 (Rodotà/Paciotti/Manzella) in the same State: Amendment 197 (Melograni)
- (5) include a proviso concerning the International Criminal Court: Amendment 206 (Beissel) and also Amendment 205 (Meyers)

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour and his reputation, his home and the confidentiality of his correspondence and communications.

Proposed amendments

- (1) copy the ECHR: Amendment 207 (Tarschys)
- (2) refer to limits (ECHR): Amendments 209 (van Dam), 215 (Bereijo), 220 (Korthals Altes), 231 (Gnauck) and 233 (Kaufmann)
- (3) delete "honour and his reputation": Amendments 210 (Griffiths), 211 (Hirsch Ballin/Patijn), 212 Buitenweg, Voggenhuber), 213 (Friedrich) and 217 (Kaufmann)
- (4) add data protection: Amendment 213 (Friedrich)
- (5) delete "correspondence": Amendment 214 (Neisser)
- (6) right to encryption of communications: Amendment 222 (Buitenweg/Voggenhuber)

- (7) replace ‘private life’ with ‘privacy’: Amendments 213 (Friedrich) and 216 (Gnauck).

Proposal from the Praesidium: add reference to family life

The title to read as follows

Respect for private and family life

The article to read as follows

Everyone has the right to respect for his privacy, his family life, his honour and his reputation, his home and the confidentiality of his correspondence and communications.

Based on Amendments 207 (Tarschys) and 221 (Goldsmith).

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.**
- 3. The family shall enjoy legal, economic and social protection.**

Proposed amendments

- (1) delete paragraph 1: Amendment 224 (Altmaier)

- (2) draw a distinction between the right to marry and the right to found a family: Amendment 225 (Barros Moura/Azevedo), refer to forming a partnership: Amendments 227 (Duff), 228 (Meyer/Leinen/Martin), 230 (Friedrich), 238 (Dehousse) and 239 (Buitenweg/Voggenhuber)
- (3) copy the wording used in the ECHR (refer to only men and women having the right to marry): Amendments 226 (Berthu), 230 (Friedrich), 235 (Goldsmith), 238 (Dehousse), 243 (Haenel) and 244 (Cisneros)
- (4) mention living with a partner as distinct from family life: Amendments 229 (Berès) and 230 (Friedrich)
- (5) delete paragraph 3: Amendments 245 (Jansson/Brax/Nikula), 249 (Olsen), 250 (Griffiths) and 251 (Hirsch Ballin/Patijn)

Proposal from the Praesidium: *delete paragraph 1, move paragraph 3 into the section on social rights*

The title to read as follows:

Right to marry and to found a family

Delete paragraph 1

The new paragraph 1 to read as follows

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

Based on Amendment 243 (Haenel)

Delete present paragraph 2, which will be inserted in social rights

Based on Amendment 251 (Hirsch Ballin/Patijn).

Article 14 Freedom of thought, conscience and religion

Anyone has the right to freedom of thought, conscience and religion.

Proposed amendments

- (1) Many amendments aim to incorporate all or part of Article 9(1) of the ECHR on the freedom to change religion or beliefs and the freedom to manifest religion or beliefs alone or in community with others. Amendments 252 (Berthu), 254 (Van Dam), 255 (Hirsch Ballin/Patijn), 256 (Buitenweg/Voggenhuber), 257 (Meyer/Leinen/Martin), 258 (Friedrich), 259 (Neisser), 263 (Einem/Holoubek), 264 (Vitorino), 265 (Cisnros), 270 (Tarschys), 271 (Rodota/Paciotti/Manzella), 272 Mombaur).
- (2) Some amendments propose adding the right not to disclose one's religion or beliefs (Amendments 253 (Duff), 256 (Buitenweg/Voggenhuber), 257 (Meyer/Leinen/Martin), 260 (Bereijo).
- (3) Some amendments aim to affirm the right to conscientious objection (Amendments 256 (Buitenweg/Voggenhuber), 257 (Meyer/Leinen/Martin), 261 (Gnauck), 262 (Kaufmann).
- (4) Some amendments aim to make clear in the Article itself the restrictions which may be applied to the exercise of this freedom with texts which repeat word for word, refer to, or are based on, the wording of Article 9(2) of the ECHR (Amendments 252 (Berthu), 254 (Van Dam), 260 (Bereijo), 261 (Gnauck), 266 (Goldsmith), and 270 (Tarschys)). One amendment makes observance of the principles of tolerance and democracy a restriction on freedom (Amendment 273 (Dehousse)).

Praesidium proposal

The Article should read as follows:

"Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance."

Based on Amendments 252 (Berthu), 254 (van Dam), 255 (Hirsch Ballin/Patijn), 256 (Voggenhuber/Buitenweg), 257 (Meyer/Leinen/Martin), 258 (Friedrich), 259 (Neisser), 263 (Einem/Holoubek), 264 (Vitorino), 265 (Cisneros), 270 (Tarschys), 271 (Rodotà/Paciotti/Manzella), 272 (Mombaur).

ARTICLE 14A (New): Freedom of research (in the arts and sciences) (Amendments 274 (Rodotta/Paciotti/Manzella), 279 (Buitenweg/Voggenhuber), 280 (Meyer/Leinen/Martin), 282 (Friedrich), 287 (Melograni), 299 Duff) and 321 (Cisneros).

Article 15

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

Proposed amendments

- (1) Several amendments aim to add a paragraph on freedom of press and information with due regard for transparency and pluralism (Amendments 76 (Duff), 279 (Buitenweng/Voggenhuber), 280 (Meyer/Leinen/Martin), 281 (Berès), 282 (Friedrich), 284 (Braibant), 289 (Gnauck), 290 (Rodota/Paciotti/Manzella), 292 (Mombaur).
- (2) Some amendments aim to add to the Article the final sentence of Article 10(1) of the ECHR, which states that freedom of expression does not prevent States from subjecting broadcasting companies to a system of authorisation (Amendments 278 (Griffiths), 281 (Berès), 283 (Neisser), 291 (Tarschys).
- (3) Several amendments propose incorporating in the Article the permitted restrictions on freedom of expression, whether by reference to Article 10(2) of the ECHR (Amendments 275 (Berthu), 286 (Van Dam), 291 (Tarschys), 293 Korthals Altes) and 294 (Goldsmith)) or in the form of alternative wordings (Amendments 281 (Berès), 288 (Bereijo), 295 (Dehousse)).
- (4) One amendment proposes adding a paragraph ensuring the existence of public broadcasting services (Amendment 280 (Meyer/Leinen/Martin)).

Praesidium proposal

Add a paragraph 2:

"Freedom of press and information shall be guaranteed with due respect for transparency and pluralism."

Based on Amendments 279 (Voggenhuber/Buitenweg), 280 (Meyer/Leinen/Martin/Van den Burg), 281 (Berès), 282 (Friedrich), 284 (Braibant), 290 (Rodotà/Paciotti/Manzella).

Article 16. Right to education

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.**
- 2. The founding of educational establishments shall be free of constraint.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.**

Three amendments propose deletion of Article 16 (Amendments 296 (Van Dam), 297 (Tarschys), 298 (Berthu)).

Paragraph 1:

- (1) Three amendments propose adopting the wording of the first sentence of Article 2 of the Additional Protocol to the ECHR ("No person shall be denied the right to education") (Amendments 300 (Friedrich), 302 (Griffiths) and 307 (Goldsmith)).
- (2) Three amendments propose deletion of the reference to "vocational and continuing training" (Amendments 300 (Friedrich), 305 (Loncle) and 312 (Bereijo)).
- (3) One amendment aims to assert the duty of neutrality of free and compulsory education (Amendment 313 (Braibant)); another proposes adding the principle of the secularism of education (Amendment 301 (Berès)).
Add "and training" to the title of the Article (Amendment 299 (Duff)).
- (4) One amendment proposes an alternative wording involving the need for the public authorities to ensure that schools exist in sufficient number (Amendment 310 (Dehousse)).

- (5) One amendment aims to define in a paragraph 1(a) – the aims of education (to diffuse knowledge and to foster understanding between different cultures) (Amendment 316 (Rodota/Paciotti/Manzella)), another adds the need for the progressive teaching of three languages (Amendment 310 (Dehousse)).

Paragraph 2

- (1) Three amendments propose deleting the principle of the free founding of educational establishments (Amendments 303 (Gnauck), 309 (Fayot), 319 (Olsen)); other amendments propose adding either public-authority approval (Amendment 311 (Beissel)) or respect for democratic principles and national laws (Amendments 317 (Bereijo) and 318 (Braibant)).

- (2) Alternative ideas are proposed:

respect for the independence of educational establishments (Amendment 299 (Duff)).

guarantee of equal access (Amendment 300 (Friedrich) or of freedom (Amendment 306 (Korthals Altes)) of access to education.

Paragraph 3

- (1) One amendment proposes deleting the term "education" (Amendment 99 (Duff)) and another amendment the term "instruction" (Amendment 309 (Fayot)).
- (2) Certain amendments make the exercise of parental rights subject to the personality of minors (Amendments 301 (Berès) and 322 (Rodota/Paciotti/Manzella)), the taking into account of children's views (Amendment 323 (Jannson/Brax/Nikula)), respect for the principles of tolerance and democracy (Amendment 310 (Dehousse)) or the laws of the country (Amendment 309 (Fayot)).

Praesidium proposal

Paragraph 2 should read as follows:

"The freedom to found educational establishments shall be guaranteed, with due respect for democratic principles, in accordance with the national laws governing the exercise of this right."

Based on Amendments 312 (Bereijo), 318 (Braibant) and 320 (Hirsch Ballin/Patijn).

Article 17 Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, including the right to form and join trade unions or political parties with others.

Proposed amendments

- (1) Most amendments aim to delete the reference to the right to form and join political parties, in order to avoid an overlap with Article 24 (Amendments 324 (Berthu), 326 (Solé Tura), 327 (Griffiths), 329 (Friedrich), 330 (Neisser) 334 (Bereijo), 335 (Gnauck), 337 (Cisnero), 338 (Rodotta/Paciotti)).
- (2) Two amendments aim to refer to NGOs and the social partners (Amendments 325 (Duff) and 339 (Van den Burg)).
- (3) Certain amendments qualify the right: right not to join (Amendment 333 (Cederschiöld)), right to form democratic parties only (Amendment 342 (Dehousse)) or peaceful associations (Amendment 335 (Gnauck)), need to respect the rights and freedoms guaranteed by the Charter (Amendment 335 (Gnauck)), requirement to pursue lawful aims or lawful means (Amendment 334 (Bereijo)).

- (4) Certain amendments aim to include in the Article restrictions on the exercise of the right, whether by reference to Article 11 of the ECHR (Amendments 332 (Van Dam) or 340 (Korthals Altes)) by opening up the possibility of restricting the right (Amendment 336 (Goldsmith)) or by mentioning categories which are professionally subject to restriction (Amendment 334 (Bereijo)).

Praesidium proposal:

New wording:

"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, in particular in political, trade union and civic matters."

Based on Amendments 325 (Duff), 326 (Solé Tura), 329 (Friedrich), 330 (Neisser), 339 (Van den Burg).

Article 18. Right of access to documents

"Every citizen of the Union or anyone residing in the Union has a right of access to the documents held by the European Parliament, the Council and the Commission".

Proposed amendments

- (1) Most amendments aim to extend the right of access for beneficiaries ("anyone" (Amendments 344 (Duff), 346 (Hirsch Ballin/Patijn), 347 (Buitenweg/Voggenhuber), 351 (Rodottà/Paciotti/Manzella), 353 (Korthals Altes) and 603 (Bonde)), the institutions in respect

of which it is exercised – "EU institutions and subsidiary bodies" (Amendments 344 (Duff), 346 (Hirsch Balin/Patijn), 347 (Buitenweg/Voggenhubert), 351 (Rodatà/Paciotti/Manzella), 352 (Altmaier), 353 (Korthals Altes) and 603 (Bonde)); "Member States where implementing Community legislation" (Amendment 354 (Barros Moura/Azevedo)); type of document ("information") (Amendments 346 (Hirsch Balin/Patijn), 347 (Buitenweg/Voggenhuber), 352 (Altmaier), 353 (Korthals Altes)); documents "held by" (Amendments 347 (Buitenweg/Voggenhuber), 349 (Vitorino), 352 (Altmaier) and 603 (Bonde)).

- (2) Two amendments, on the other hand, are more restrictive. One proposes deletion of Article 18 (Amendment 343 (Friedrich)), while the other allows access to official documents only (Amendment 356 (Beissel)).
- (3) Certain amendments aim to include in the Article a reference to the possible restrictions on the exercise of this right (Amendments 345 (Olsen), 346 (Hirsch Balin/Patijn) and 353 (Korthals Altes)), in particular a reference to Article 255 TEC in the enacting terms (Amendment 348 (Bereijo)) or in the statement of reasons/Part B (Amendment 350 (Goldsmith)).
- (4) One amendment provides for a right of appeal to the Ombudsman in the event of refusal (Amendment 603 (Bonde)).
- (5) One amendment proposes including this Article in Article 27 (Relations with the administration; Amendment 355 (Dehousse)).

Article 19. Data protection

"Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used."

Proposed amendments

- (1) Some amendments aim to provide a more explicit definition of the scope of data protection:
 - inclusion of the principle of the legitimacy of (the) purposes (pursued) and of proportionality, right to be informed of collection, right to independent verification, right to rectification, authorisation to publish (Amendments 364 (Melograni), 366 (Buitenweg/Voggenhuber), 373 (Rodotà/Paciotti/Manzella), 374 (Dehaene), 378 (Dehousse)).
 - extension of the right to decide to include the collection of personal data (Amendments 364 (Melograni), 365 (Buitenweg/Voggenhuber), 371 (Gnauck), 372 (Vitorino), 373 (Rodotà/Paciotti/Manzella)).
- (2) Certain amendments, however, aim to make this right less absolute (Amendments 357 (Tarschys), 360 (Olsen)) by providing in the enacting terms for the possible collection and disclosure of personal data for legitimate purposes of public interest, as laid down by law (Amendments 362 (Hirsch Ballin/Patijn), 363 (Griffiths), 369 (Neisser)), or in the statement of reasons/Part B (Amendment 377 (Goldsmith)).
- (3) Two amendments aim to merge this Article with Article 12 on respect for private life (Amendments 358 (Friedrich), 375 (Korthals Altes)).
- (4) Two amendments aim to restrict the right to natural persons only (Amendments 370 (Bereijo) and 377 (Goldsmith)) while another amendment suggests on the contrary that it should be made clear that it also extends to legal persons (Amendment 376 (Barros Moura/Azevedo)).

Praesidium proposal

The Article should read as follows:

"Everyone has the right to determine for himself whether personal data concerning him may be collected and disclosed and how they may be used."

Based on Amendments 359 (Duff), 365 (Buitenweg/Voggenhuber), 367 (Berès), 369 (Neisser) and 372 (Vitorino).

NEW ARTICLE 19A: Principle of the primacy of private action (see Amendment 379 (Altmaier))

Article 20. Right to property

"Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest in the cases and subject to the conditions provided for by law and subject to the prior guarantee of fair compensation."

Proposed amendments

- (1) Several amendments aim to delete the requirement of a prior guarantee of the granting of fair compensation in the case of expropriation (Amendments 381 (Olsen), 382 (Solé Tura), 389 (Bereijo), 390 (Gnauck), 392 (Cisneros), 393 (Tarschys), 400 (Beissel)). On the other hand, three amendments propose a more toughly worded text whereby the fixing, indeed the payment, of compensation would occur prior to expropriation (Amendments 380 (Berthu), 395 (Dehaene) and 396 Meyers)).

- (2) Several amendments propose adding the social function of the right to property, more especially the requirement to use it in accordance with the general interest and possible consequent restrictions on the exercise of this right (Amendments 383 (Melograni), 386 (Berès), 389 (Bereijo), 390 (Gnauk), 394 (Rodotà/Paciotti/Manzella), 397 (Van den Burg), 398 (Korthals Altes), 399 (Barros Moura/Azevedo)).
- (3) Three amendments propose that the Article stipulate the right to bequeath property in one's possession (Amendments 380 (Berthu), 387 (Friedrich), 390 (Gnauck)).
- (4) Some amendments suggest keeping the wording of all or part of Article 1 of the Additional Protocol to the ECHR (Amendments 381 (Olsen), 384 (Griffiths), 385 (Hirsch Ballin/Patijn), 391 (Goldsmith), 395 (Dehaene)).

Praesidium proposal

The Article should read as follows:

"Every person has the right to own, use, dispose of and bequeath lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by the law, subject to fair compensation."

Based on Amendments 380 (Berthu), 381 (Olsen), 382 (Solé Tura), 387 (Friedrich), 389 (Bereijo), 393 (Tarschys), 400 (Beissel).

ARTICLE 20A new:

- (5) Prohibition on expulsion (Amendments 401 (Altmaier) and 417 (Friedrich)).
- (6) Rights of minorities (Amendments 295 (Dehousse), 401 (Altmaier), 418 (Friedrich), 435 (Griffiths), 470 (Einem/Holoubek), 496 (Barros Moura/Azevedo), 597 (Rack), 598 (Voggenhuber) and 604 (Bonde)).

Article 21. Right to asylum and expulsion

- 1. Nationals of third countries shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.**
- 2. Collective expulsion of aliens is prohibited.**

Proposed amendments:**Article 21(1):**

- (1) Several amendments aim at opening up right of asylum to "everyone" in order to cover citizens of the Union, stateless persons, or both (Amendments 402 (Goldsmith), 404 (Olsen), 404a (Melograni), 406 (Buitenweg/Voggenhuber), 407 (Meyer/Leinen/Van den Burg), 409 (Friedrich), 410 (Neisser), 411 (Jansson/Brax/Nikula), 412 (Gnauck), 413 (Kaufmann), 415 (Loncle), 416 (Dehaene), 423 (Hirsch Ballin/Patijn), 427 (Loncle), 429 (Paciotti/Manzella)).

- (2) Several amendments note that asylum is not an individual right and it is the right to seek/apply for asylum which should be recognised (Amendments 402 (Goldsmith), 405 (Griffiths), 422 (O'Kennedy), 424 (Bereijo), 425 (Cisneros), 428 (Korthals Altes).
- (3) Other amendments pursue a similar aim, stating that "politically persecuted persons shall be protected in accordance with the rules of the 1951 Geneva Convention" (Amendments 409 (Friedrich), 412 (Gnauck), 415 (Loncle), 426 (Altmaier), 427 (Loncle)).
- (4) Some amendments try to clarify the reasons for granting refugee status by restricting it to those who are the object of political persecutions (Amendments 409 (Friedrich), 412 (Gnauck), 426 (Altmaier)). Others, on the other hand, aim to broaden the reasons to persecution and inhuman and degrading treatment (Amendments 403 (Duff), 406 (Buitenweg/Voggenhuber), 407 (Meyer/Leinen/Van den Burg), 413 (Kaufmann), 419 (Dehousse)) or to make particular reference to reasons for asylum that are specific to women (Amendments 406 (Buitenweg/Voggenhuber), 407 (Meyer/Leinen/Van den Burg), 413 (Kaufmann), 419 (Dehousse)).
- (5) Various additions are also suggested:
- . defining the minimum procedural requirements for processing applications for asylum (Amendment 403 (Duff)) and the social cover asylum seekers should receive during that process (Amendment 406 (Buitenweg/Voggenhuber)).
 - . stating that asylum is granted in each Member States and not in the Union as an area in itself (Amendment 404 (Melograni)).
 - . ensuring that the reference is not restricted to the 1951 Convention and the 1967 Protocol thereto (Amendments 404 (Melograni), 108 Berès, 414 (Vitorino)).
 - . add the right to reunion with the family (Amendment 406 (Buitenweg/Voggenhuber)).
 - . make provision for asylum seekers to be put under an obligation to adhere to the democratic values and fundamental laws of the Union (Amendment 419 (Dehousse)).

- (6) One amendment suggests that the entire article be deleted (Amendment 402 (Goldsmith)).

Article 21(2)

- (1) Two amendments suggest that the prohibition should not be restricted to aliens alone (Amendments 414 (Vitorino), 432 (Mombaur)).
- (2) One amendment suggests splitting asylum and the ban on expulsion into two separate articles (Amendment 414 (Vitorino)).
- (3) Three amendments propose the deletion of paragraph 2 (Amendments 402 (Goldsmith), 430 (Berthu) and 432 (Mombaur)).
- (4) One amendment envisages procedural assurances in the event of individual expulsion (Amendment 411 (Jansson/Brax/Nikula)).
- (5) One amendment sets out the ban in detail (Amendment 419 (Dehousse)).
- (6) Several amendments suggest including in the same article the ban on collective expulsions and the ban on individual expulsions/extraditions to a State which practices torture, the death penalty or any other inhuman treatment (Amendments 406 (Buitenweg/Voggenhuber), 409 (Friedrich), 412 (Gnauck), 413 (Kaufmann), 433 (Rodota/Paciotti/Manzella)).
- (7) One amendment envisages the possibility, subject to the guarantees recognised by international law, of expelling illegal immigrants or offenders (Amendment 421 (Berthu)).

Praesidium proposal:

To read as follows:

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

Based on Amendments 404 (Olsen), 404a (Melograni), 410 (Neisser), 414 (Vitorino), 415 (Loncle), 416 (Dehaene), 428 (Korthals Altes), 429 (Rodotà/Paciotti/Manzella).

Article 21a

New article taking over part of Article 4 and to read as follows

- 1. Collective expulsions are prohibited.*
- 2. No one may be expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman treatment.*

Based on Amendments 82 (Korthals Altes), 409 (Friedrich), 412 (Gnauck), 414 (Vitorino), 432 (Hirsch Ballin/Patijn), 433 (Rodotà/Paciotti/Manzella).

ARTICLE 22: Equality and non-discrimination (36 amendments)

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.**

- 3. The Union shall seek to eliminate inequalities and to promote equality between men and women. In particular equality between the sexes shall be ensured when setting pay and other working conditions.**

Proposed amendments

- (1) One amendment seeks to limit this Article to equality between men and women (Amendment 436 (Fayot)).
- (2) One amendment proposes inserting this Article in to Article 1a (Amendment 443 (Rodotà/Paciotti/Manzella)).

Article 22(1)

- (1) Several amendments favour presenting a list of forms of prohibited discrimination as examples (Amendments 439 (Jansson/Brax/Nikula), 442 (Cederschiöld), 446 (Rodotà/Paciotti/Manzella), 449 (Cisneros), 453 (Melograni), 454 (Buitenweg), 455 (Voggenhuber/Buitenweg), 456 (Haenel)).
- (2) The following additions to the list are proposed:
 - Belonging to a regional or cultural minority (Amendment 434 (Duff))
 - Nationality (Amendments 435 (Griffiths), 450 (Kaufmann))
 - Genetic characteristics, health status (Amendments 437 (Berès 440 (Vitorino))
 - (Political opinion) or any other opinion (Amendment 440 (Vitorino))

- Belonging to an ethnic, religious or linguistic minority (Amendment 439 (Jansson/Brax/Nikula))
 - Civil status (Amendment 454 (Buitenweg))
- (3) Deletions have been proposed:
- Include only the forms of discrimination mentioned in Article 14 of the ECHR (Amendment 441 (Goldsmith))
 - Sexual orientation (Amendment 444 (Buttiglione))
- (4) One amendment seeks to limit the principle of non-discrimination to those rights enshrined in the Charter (Amendment 441 (Goldsmith)).

Article 22(2)

- (1) Three amendments seek to restrict the benefit of the prohibition of discrimination based on nationality to citizens of the European Union only (Amendment 439 (Jansson/Brax/Nikula), 441 (Goldsmith) and 451 (Bereijo)). Certain amendments propose on the contrary that nationality be added to the list of prohibited discriminations in Article 22(1) thereby extending the benefit to all people (Amendments 435 (Griffiths) and 450 (Kaufmann)). Two other amendments suggest using the exact wording of Article 12 TEC ("without prejudice to any special provisions contained in the Treaties") (Amendments 440 (Vitorino) and 447 (Olsen)).
- (2) One amendment proposes the deletion of paragraph 2 (Amendment 457 (Kaufmann)).

Article 22(3)

- (1) Certain amendments propose mentioning equal treatment of women and men (Amendment 445 (Maij-Weggen)) (Amendment 438 (Friedrich), 468 (Mombaur)).
- (2) Five amendments propose the deletion of paragraph 3 (Amendments 442 (Cederschiöld), 447 (Olsen), 461 (Tarschys), 465 (Hirsch Ballin/Patijn) and 467). Others ask only for the deletion of the first sentence (Amendments 465 (Hirsch Ballin/Patijn)) or the second sentence (Amendments 440 (Vitorino), 458 (Berthu), 460 (Bereijo) and 469 (Beissel)).
- (3) Alternative formulations of the principle of positive discrimination, expressed in the first sentence of paragraph 3, were proposed (Amendments 436 (Fayot), 446 (Kothals Altes), 464 (Solé Tura), 469 (Beissel), 470 (Einem/Holoubek)).
- (4) Alternative wordings were also proposed for the second sentence of paragraph 3 (Amendments 435 (Griffith), 445 (Maij-Weggen), 462 (Cisneros), 463 (Barros Moura/Azevedo), 464 (Solé Tura)).

Praesidium proposal

The Article is to read as follows:

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

3. *The Union shall seek to eliminate inequalities and to promote equal status for men and women. In particular equality between the sexes shall be ensured when setting pay and other working conditions.*

Based on Amendments 437 (Berès), 439 (Jansson/Brax/Nikula), 440 (Vitorino), 442 (Cederschiöld), 453 (Melograni), 454 (Buitenweg)

Article 23. Children's rights

Children must be treated as equal individuals; they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Proposed amendments

- (1) Several amendments seek to insert the concept of the "best interest of the child", enshrined in the Convention on the Rights of the Child and the right to protection and care (Amendments 474 (Vitorino), 475 (Olsen), 476 (Valetto/Melograni), 478 (O'Kennedy), 479 (Hirsch Ballin/Patijn), 482 (Gnauck), 484 (Hermange), 485 (Cisneros), 486 (Tarschys), 488 (Maij-Weggen), 490 (Haenel), 493 (Korthals Altes)).
- (2) Two amendments seek the deletion of the Article (Amendments 471 (Goldsmith) and 472 (Berthu)).
- (3) There is a proposal for an explicit reference to protection from all threats to intellectual development and psychological and sexual integrity of the child (Amendment 487 (Rodotà/Paciotti/Manzella), 491 (Dehaene)) and against all harmful and exploitative forms of child labour (Amendment 492 (Van den Burg)).

(4) One amendment suggested placing this Article after Article 13 on family life (Amendment 494 (Dehousse)).

- Shorter alternative versions were also proposed (Amendments 473 (Duff), 477 (Griffith), 480 (Berès), 481 (Bereijo), 489 (Loncle)).

Praesidium proposal

This Article is to read as follows:

1. *Children shall have the right to protection and to the care necessary for their well-being. They may express their opinions freely on matters which concern them and these opinions shall be taken into consideration in a manner appropriate to their age and maturity.*
2. *In all decisions relating to children, whether taken by public or private welfare bodies, the first concern shall be the child's best interests.*

Based on Amendments 474 (Vitorino), 476 Valetto/Melograni), 478 (O'Kennedy), 479 Hirsch Ballin/Patijn), 484 (Hermange), 485 (Cisneros), 486 (Tarschys), 487 (Rodotà/Paciotti/Manzella), 489 (Loncle), 490 (Haenel), 491 (Dehaene) and 493 (Korthals Altes)

NEW ARTICLE 23A

- (1) Principle of democracy (Amendments 495 (Duff), 519 (Berthu), 520 (Berthu), 521 (Berthu), 522 (Berthu) and 523 (Berthu)).
- (2) National and regional identities (Amendments 496 (Barros Moura/Azevedo) and 518 (Berthu)).
- (3) Right to nationality (Amendment 497 (Rodotà/Paciotti/Manzella)).

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Proposed amendments

- (1) Several amendments propose that this Article be deleted (Amendments 498 (Korthals Altes), 499 (Tarschys), 500 (Cisneros), 501 (Goldsmith), 502 (Kaufmann), 503 (Hirsch Ballin/Patijn), 504 (Van Dam), 505 (Berthu), 506 (Einem/Holoubek)).
- (2) One amendment argues for a requirement for political parties to have a democratic internal structure (Amendment 517 (Barros Moura/Azevedo)).
- (3) One amendment proposes dispensing with the requirement that political parties observe the rights and freedoms guaranteed by the Charter (Amendment 510 (Friedrich)).
- (4) One amendment seeks to extend the right to form a political party and to join a political party to everyone (Amendment 516 (Dehaene)); another restricts the right to join to aliens resident in the Union (Amendment 513 (Loncle)).
- (5) Several amendments propose that "Union" or "of the Union" be added to "citizens" (Amendments 509 (Melograni), 510 (Friedrich), 511 (Bereijo), 512 (Gnauck), 513 (Manzella), 514 (Loncle), and 515 (Mombaur)).

Praesidium proposal

After "Every citizen" add "of the Union".

Based on Amendments 510 (Friedrich), 511 (Bereijo), 514 (Loncle), and 515 (Mombaur).

Article 25. Right to vote and to stand as a candidate for the European Parliament

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

Proposed amendments

- (1) Three amendments are designed to give the right to vote and to stand for election to third-country nationals legally resident for 5 years in the territory of the Member States (Amendments 525 (Meyer/Leinen/Martin/Berès/Van den Burg), 534 (Buitenweg/Voggenhuber), 536 (Kaufmann)).
- (2) Two amendments propose adding that universal suffrage shall be equal (Amendments 528 (Friedrich) and 530 (Einem/Holoubek)) and one amendment that elections shall be held regularly (Amendment 529 (Melograni)).
- (3) One amendment suggests merging Articles 25 and 26 (Amendment 525 (Meyer/Berès/Leinen/Martin/Van den Burg)).

- (4) Three amendments propose that it be stated in this Article that exercise of this right is subject to conditions (Amendments 526 (Goldsmith) and 537 (Van Dam), or could be the subject of derogations (Amendment 533 (Fayot)).

Praesidium proposal

Reverse the order of paragraphs 1 and 2.

In paragraph 2 after "candidate" add "for the European Parliament".

Based on Amendment 532 (Friedrich).

Article 26. Right to vote and to stand as a candidate in municipal elections

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

Proposed amendments

- (1) Four amendments want it stated in the Article that exercise of this right is subject to conditions (Amendments 538 (Van Dam), 542 (Goldsmith) and 544 (Manzella)) or could even be subject to derogations (Amendment 539 (Fayot)).
- (2) One amendment suggests extending the right to persons resident in the Union (Amendment 541 (Kaufmann)).

(3) Repeat the wording of Article 19(1) TEC (Amendments 540 (Bereijo), 542 (Goldsmith)).

NEW ARTICLE 26A: Right to diplomatic protection (Amendments 545 (Duff) and 595 (Dehousse))

Praesidium proposal

Diplomatic and consular protection

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

Based on Amendment 545 (Duff) and reproducing the first sentence of Article 20 TEC.

Article 27. Relations with the administration

- 1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.**
- 2. This right includes:**
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;**
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;**
 - the obligation of the administration to give reasons for its decisions.**
- 3. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.**

Proposed amendments

- (1) One amendment proposes merging Articles 27, 28 and 29 into one single article (Amendment 601 (Goldsmith)).
- (2) Two amendments aim to extend the scope of paragraph 1 to Member States where they are acting within the scope of Community law (Amendments 547 (Vitorino) and 548 (Altmaier)). One amendment on the other hand, aims to make clear that the obligation to give reasons for decisions lies solely with the institutions and bodies of the Union (Amendment 550 (van Dam)).
- (3) Two amendments aim to define rules of conduct for the institutions and bodies of the Union before a decision is taken (e.g. gathering of relevant facts, prohibition of the misuse of powers, proportionality) (Amendments 599 (Hirsch Ballin/Patijn) and 600 (Korthals Altes/Patijn)).
- (4) Two amendments restrict the obligation to give reasons for individual decisions (Amendment 545a (Herzog)), or even to negative decisions only (Amendment 554 (Tarschys)).
- (5) One amendment proposes the deletion of paragraph 2 (Amendment 555 (Rodota/Paciotti/Manzella)).
- (6) One amendment proposes transforming the obligations of the administration into rights for everyone (Amendment 545b (Bereijo)); the same amendment adds to paragraph 2 a series of procedural guarantees where an administrative decision carries sanctions or has an adverse effect; it also adds a paragraph 3 on the civil liability of the administration.

- (7) One amendment suggests restricting the possibility (Amendment 558 (Rodotta/Paciotti/Manzella)) suggests presenting it as a right) for persons to address the institutions of the Union in one of the official languages of the Union to citizens of the Union only (Amendment 557 (Mombaur)); one amendment proposes replacing the word "address" by the word "write" (Amendment 601 (Goldsmith)).

Praesidium proposal

Change the title to "Right to good administration"

- A. Paragraph 3 to begin as follows

"Every person has the right to address..."

Based on Amendment 555 (Rodota/Paciotti/Manzella) and on the amendment of Mr Dehaene

Article 28. Ombudsman

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

Proposed amendments

- (1) Three amendments propose extending the right to apply to the Ombudsman to everyone (Amendments 562 (Hirsch Ballin/Patijn), 564 (Buitenweg), 570 Korthals Altes)) or secondarily to nationals of third countries who are established outside the Union and maintain relations of governance with the Union (Amendment 571 (Dehousse)). One amendment proposes that the right should not be extended to legal persons (Amendment 567 (Cisneros)), another suggests a horizontal provision for legal persons (Amendment 565 (Gnauck)).
- (2) One amendment proposes that the cases referred should cover acts of agents of the Union (Amendment 561 (Duff)), a second suggests restricting these to acts of judicial bodies (Amendment 562 (Hirsch Ballin/Patijn)), and a third proposes excluding acts of the European Parliament and of the Court of Auditors (Amendment 568 (Buttiglione)).
- (3) One amendment proposes also placing the Ombudsman under an obligation to draw up an annual report (Amendment 571 (Dehousse)).
- (4) Another amendment proposes that provision be made in Article 29 for supervision of the role of the Ombudsman by the European Parliament Committee on Petitions (Amendment 580 (Buttiglione)).

Praesidium proposal

Add "of the Union" after "citizen"

Based on Amendments 565(Gnauck) and 569(Dehaene).

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Proposed amendments

- (1) Three amendments give every person the right to petition (Amendments 574 (Hirsch Ballin/Patijn), 575 (Buitenweg) and 582 (Korthals Altes)). One amendment proposes however that legal persons be excluded (Amendment 579 (Cisneros)); two others suggest adding a horizontal provision relating to legal persons (Amendments 576 (Friedrich) and 577 (Gnauck)).
- (2) Three amendments propose limiting the right to petition to matters which come within the Union's fields of activity and which directly or individually affect the person intending to exercise that right. (Amendments 573 (Olsen), 576 (Friedrich), 577 (Gnauck)).
- (3) Two amendments propose instituting the right to petition any institution or body of the Union (Amendments 574 (Hirsch Ballin/Patijn) and 582 (Korthals Altes)).
- (4) One amendment adds that this right shall be exercised under the conditions and limitations laid down in Article 194 of the Treaty (Amendment 573 (Olsen)).

Praesidium proposal

After "citizen" add "of the Union"

Based on Amendment 581 (Dehaene).

Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

Proposed amendments

- (1) Several amendments aim at extending freedom of movement to nationals of third countries either legally resident (Amendments 583 (Berès), 588 (Hirsch Ballin/Patijn), 591 (Kaufmann)), resident for 5 years or for a long time (Amendments 584 (Einem/Holoubek), 589 (Buitenweg/Voggenhuber)) or who have been granted refugee status (Amendment 589 (Buitenweg/Voggenhuber)).
- (2) Some amendments aim at making provision in this article for the right to be exercised subject to the restrictions and conditions laid down in the Treaty establishing the European Community (Amendments 587 (Olsen) and 590 (Bereijo)) or to set this out in the statement of reasons/Part B (Amendments 593 (Goldsmith) and 594 (Tarschys)). One amendment makes provision for freedom of movement to be exercised subject to national controls designed to preserve liberty and security of persons (Amendment 585 (Berthu)).
- (3) One amendment proposes adding the freedom to leave and then return to the territory of the Member States in a second paragraph (Amendment 584 (Einem/Holoubek)).
- (4) Two amendments propose adding the freedom to settle to the right to move and reside freely (Amendments 589 (Buitenweg/Voggenhuber) and 591 (Kaufmann)); another proposes spelling out the freedoms (live, work, seek work, study) (Amendment 586 (Duff)).

NEW HORIZONTAL ARTICLES:

- (1) Possibility of extending citizenship rights to any legal or natural person (Amendment 596 (Duff)).
 - (2) Interpretation and determination of the scope of rights and freedoms in the Charter which are similar to those laid down in the ECHR (Amendment 582 (Korthals Altes)).
-

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 15. Juni 2000**CHARTE 4367/00****CONTRIB 230****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Ergänzungsvorschlag zu den Identitätsrechten, vorgelegt von Herrn Wilhelm Brauner, Vertreter des Österreichischen Parlaments. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Wien, am 15. Juni 2000

Prof. Dr. Wilhelm Brauner

*Ersatz-Mitglied des Konvents zur Erarbeitung eines Entwurfs einer
Grundrechte-Charta der Europäischen Union*

Herrn
Roman Herzog
Vorsitzender des Konvents

Betrifft: Ergänzungsantrag zur Grundrechte-Charta

Sehr geehrter Herr Vorsitzender!

In meinem Namen sowie dem des Konvents-Mitglieds Abgeordneter zum Nationalrat Dr. Harald Ofner unterbreite ich den folgenden Antrag, den Charta-Entwurf um die hier festgelegten Minderheitenrechte zu ergänzen.

Hochachtungsvoll

(o. Univ.-Prof. Dr. W. Brauner)

Ergänzungsvorschlag Ofner / Brauner zum Vorschlag der Präsidentschaft zu einem EU-Grundrechtskatalog.

Artikel ... Identitätsrechte

(1) Jede Person hat das Recht auf Achtung ihrer Identität in ethnischer, sprachlicher, kultureller, religiöser und weltanschaulicher Hinsicht.

(2) Das Recht auf Identität gewährleistet insbesondere die unbeschränkte und ungeschmälerte Ausübung der individuellen und gemeinschaftsbezogenen Grundrechte auf nationaler Ebene sowie auf der Ebene der Union.

Erläuterungen allgemein: Bewußt wird davon abgesehen, die Identitätsrechte sowie die Sprachenrechte als Minderheiten-(= Volksgruppen-, Nationalitäten-) rechte zu definieren. Sie sollen jeder Gruppe unbeschadet ihrer Größe zukommen. Es soll dadurch auch dem Denken in Minderheiten und Mehrheiten entgegengewirkt werden. Die Aufnahme der vorgeschlagenen Bestimmungen erscheint deshalb geboten, weil erstens Minderheitenschutzbestimmungen zahlreiche Verfassungen, auch solche von EU-Mitgliedsstaaten aufweisen, wie weiters vor allem in Hinblick auf Beitrittswerber aus Osteuropa. Hingewiesen sei auf folgenden Satz in der EU-Broschüre „Das Europäische Parlament und die Verteidigung der Menschenrechte“ (S. 13): „Bei der Unterstützung der Stärkung der aufstrebenden Demokratien Ost- und Mitteleuropas hat das Parlament insbesondere der Lage von Minderheiten Rechnung getragen“.

Die vorgeschlagenen Artikel sind als subjektive öffentliche Rechte konzipiert. Zusätzliche Zielbestimmungen erscheinen angesichts internationaler Verpflichtungen etwa aufgrund des „Rahmenübereinkommens zum Schutz nationaler Minderheiten“ wie auch der „Europäischen Charta der Regional- oder Minderheitensprachen“ für nicht notwendig beziehungsweise wegen der Notwendigkeit einer starken Detaillierung für nicht angebracht.

Erläuterung zu Abs. 1: Die Textierung geht von der Überlegung und Tatsache aus, daß sich die angeführten Identitätsbezüge nicht decken müssen. Der Gebrauch beziehungsweise das Bekenntnis zu einer bestimmten Muttersprache muß nicht identisch mit dem zu einer bestimmten Ethnie, die Zugehörigkeit zu einer bestimmten Kultur kann sprachen- und ethnübergreifend sein.

Erläuterung zu Abs. 2: Die Verwirklichung der Identität besteht in der Regel in der Ausübung individueller Grundrechte wie etwa des Rechts auf freie Meinungsäußerung oder auch des sozialen Grundrechts auf Bildung wie ferner im Gebrauch gemeinschaftsbezogener Grundrechte wie etwa der freien Vereinsbildung.

Artikel ... Sprachenrechte

- (1) Jede Person hat das Recht auf den Gebrauch ihrer Sprache im privaten und geschäftlichen Verkehr, auch in der Öffentlichkeit, sowie auf das Erlernen dieser Sprache an privaten Bildungsanstalten.**

- (2) Jede einer autochthonen ethnischen oder einer autochthonen sprachlichen Gruppe angehörende Person hat das Recht, bei ausreichendem Bedarf ihre Sprache an öffentlichen Bildungsanstalten jedenfalls im Gebiet dieser Gruppen zu erlernen. Sie hat ferner das Recht, diese Sprache im Verkehr mit Gerichten und Verwaltungsbehörden zu gebrauchen, ohne daß ihr dadurch ein zusätzlicher Kostenaufwand entsteht.**

- (3) Die Sprachenrechte gelten sinngemäß auch im Bezug auf Gebärdensprachen.⁷**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 15 June 2000 (19.06)**CHARTE 4371/00****CONVENT 38****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

- Contribution from the former President of the Federal Republic of Germany, Roman Herzog, relating to Articles 1 to 7
-

Please find attached a revised version of Articles 1 to 7 from the former President of the Federal Republic of Germany. In producing his draft, he has drawn to a very large extent on the texts and comments of the Praesidium.

As the German translation of "statement of reasons", he has chosen to use "**Erläuterungen**" ("comments") instead of "Begründung".

President Herzog has introduced the statements of reasons using Lord Goldsmith QC's wording where available. In addition, he has in each case included in the statement of reasons a paragraph on the extent to which fundamental rights may be limited.

Article 1. (previously Article 1(1)). Dignity of the human person

The dignity of the human person must be respected and protected.

Statement of reasons

The dignity of the human person is the real basis of fundamental rights. For that reason the 1948 Universal Declaration of Human Rights enshrined this principle in its preamble as follows:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.."

Consequently, Article 1 produces the following effects, inter alia:

1. None of the rights laid down in this Charter may be used to harm the dignity of another person.
2. The dignity of the human person is part of the actual substance of the rights laid down in this Charter and, pursuant to the second sentence of Article 47, must therefore be respected, even where a right is restricted by legislation.

Article 2 (previously Article 1(2)). Equality before the law.

Everyone is equal before the law.

Statement of reasons

Article 2 corresponds to a right which has been included in all European constitutions since the 1789 Declaration of Human and Civil Rights and has also been recognised by the Court of Justice in a judgment as a basic principle of Community law (Judgment of 13 November 1984, Racke, Case 283/83 [1984] ECR 3791).

Article 2 therefore goes beyond Article 14 of the European Convention on Human Rights, which simply prohibits discrimination with regard to the enjoyment "of the rights and freedoms set forth in this Convention".

Article 3 (previously Article 2) Right to life

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

Statement of reasons

1. The content of paragraph 1 corresponds to the first sentence of Article 2(1) of the European Convention on Human Rights, which reads as follows:
"1. Everyone's right to life shall be protected by law..."
The second sentence of the provision, which referred to the death penalty, was superseded by Article 1 of Protocol 6 to the European Convention on Human Rights, which reads as follows:
"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."
Article 3(2) of the Charter is based on that provision.
2. Article 3 of the Charter may, pursuant to Article 47 thereof, be subject to limitations within certain limits. However, these limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms." Limitations are therefore only permissible in the context of the following provisions:
 - (a) Article 2(2) of the European Convention on Human Rights:
"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."
- (b) Article 2 of Protocol No 6 to the European Convention on Human Rights:
"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 4 (previously Article 3)

Right to respect for the integrity of the human person

- 1. Everyone has the right to respect for his physical, genetic and mental integrity.**
- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenic practices, in particular those concerned with the selection and instrumentalisation of persons;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**

Statement of reasons

The principles of this Article are already included in the Convention on Human Rights and Biomedicine. The Charter does not set out to depart from these principles.

The list in paragraph 2 is not exhaustive, but includes only those rules which are absolutely indispensable. They therefore leave open the possibility of taking account of any progress in this area.

Article 5 (previously Article 4). Prohibition of torture and inhuman treatment

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

Statement of reasons

The right in Article 5 is the right guaranteed by Article 3 of the European Convention on Human Rights, which has the same wording.

No limitations are admissible pursuant to Article 47(4) of the Charter.

Article 6 (previously Article 5). Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**
"The term "forced or compulsory labour" shall not include services required by law of citizens for civic reasons in case of an emergency or disaster and military service or the work ordinarily required of persons imprisoned.
- 3. Trafficking in human beings is prohibited**

Statement of reasons

The right in Article 6 is the right guaranteed by Article 4(1) of the European Convention on Human Rights, which has the same wording.

Pursuant to Article 47 of the Charter, limitations of this right may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms."

Consequently:

1. Paragraph 1 may not be limited at all.
2. Paragraph 2 may be limited only to the extent that Article 4(3) of the European Convention on Human Rights defines the prohibition of forced or compulsory labour. That provision reads as follows::

"For the purpose of this article the term "forced or compulsory labour" shall not include:

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

Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in crime.

Article 7 (previously Article 6)

Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Statement of reasons

The rights in Article 7 are the rights guaranteed by Article 5 of the European Convention on Human Rights.

Pursuant to Article 47 of the Charter, Article 7 may be restricted only within certain limits and under certain circumstances. However, such limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms " Therefore, the only limitations which are permissible are those in the context of Article 5 of the European Convention on Human Rights, which reads:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- (e) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

Insofar as the Charter is applied in the Union context, the rights laid down in Article 7 must be particularly observed if, pursuant to Title VI of the Treaty on European Union, the Union adopts framework decisions to harmonise criminal law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 16 June 2000 (20.06)
(OR. fr)****CHARTE 4372/00****CONVENT 39****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
- Amendments submitted by the members of the Convention regarding social rights and the horizontal clauses
(Reference doc.: CHARTE 4316/00 CONVENT 34)

Delegations will find attached the amendments submitted by members of the Convention.

Article 31

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Deleted.

Reasons:

The proposal and the Statement of Reasons raise a number of questions and, accordingly, the introductory Article 31 should be deleted. For example, it leaves unresolved the question of what 'rights' and 'principles' are, the relationship with the horizontal provisions of Article 46 and to what extent a clear delineation can be made between the Charter and the 'political objectives' excluded by the Cologne mandate. In particular, it is not clear which of the social rights that are listed can be enforced at law, i.e. on an individual basis, and why in accordance with the Statement of Reasons only the legislative is to be bound by the fundamental rights. All of these issues will need to be discussed in depth.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Pervenche BERÈS

Proposed text:

Delete this article.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Andrew Duff MEP

Proposed text:

Delete this article

Reasons:

The draft article duplicates other horizontal clauses, is not a fundamental right and therefore has no place here. Instead, the relevant Treaty provisions should be cited in the definitions, including Article 136.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Jo Leinen

Proposed text:

Delete article.

Reasons:

The article contains limitations which are in any case already covered by Article 46, and gives the impression that special limitations exist on social rights. This is contrary to the idea of the indivisibility and universality of the rights enshrined in the Charter.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social Rights and principles

Submitted by: Lord Goldsmith QC

Proposed text:

Delete this article.

Reasons:

This article purports to impose far-reaching obligations on Member States to observe the economic and social rights listed and an obligation to implement the social principles set out in this Charter.

This is a wholly new approach when the Convention has, since its creation, been acting on the basis that the Charter is only to be addressed to EU Institutions and to Member States (at most) when acting to implement EC law and as a restriction on their powers. Further, there is no warrant in the Cologne mandate for imposing obligations or restrictions on the social partners who are not the addressees of the Charter.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment t0: Article 31**

Submitted by: Ieke van den Burg

Proposed text:

Delete as a separate article

Reasons:

It is not necessary and contrary to the generally acknowledged indivisibility of fundamental rights to formulate separate horizontal clauses for the social and economic rights. Elements of the Proposed text may be included in art. 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Delete this article.

Reasons:

The social partners are independent organisations, not part of the EU institutions or bodies. Most of the substance is already covered in Article 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

How to resolve the problems currently dealt with by social assistance must remain a national issue. The Charter must not prevent new models and modern structures emerging, and Article 31 therefore appears to be too far-reaching especially in the light of the statement of reasons to the article.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 31

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Delete article.

Reasons:

This article is recast in new Article 46a.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Deleted.

Reasons:

The scope needs to be apparent from a general clause for the Charter as a whole. Any legally binding effect is apparent from the text of the individual provisions. Moreover, the proposed text of Article 31 suggests, wrongly, that it is legally binding on the social partners.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Articles 31 and 46

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Maria Eduarda Azevedo is in favour of merging Articles 31 and 46.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Win Griffiths, MP

Proposed text:

The institutions and bodies of the Union and the Member States, exclusively with the scope of Community law, shall observe the rights set out in this Charter.

Reasons:

If such an article is needed, (given the proposed Article 46), it should refer to all rights and not just specify social rights.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

The social rights and principles set out in this Charter shall be restricted to those areas covered by Community law and shall respect the right of each Member State to choose its own social model.

Reasons:

It is unnecessary to list all those who may be required to apply social rights and principles. It is vital, however, to mention that respect must be shown in all cases for the right of each Member State to choose its own social model, in accordance with the principle of subsidiarity

.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Dr Erling Olsen, Danish Government representative

General remark:

As regards the integration of the 'main text' with its accompanying 'justification', refer to my general remark (1) to Convent 28.

Proposed text:

This provision is of a horizontal nature and it is therefore proposed that it should be entered as Article 46a as follows:

‘Fundamental social rights shall be interpreted under the conditions laid down by rules established in national law or collective agreement, and by custom and practice, in accordance with applicable Community law’.

Reasons:

Fundamental social rights differ from civil and political rights to a certain extent in that they can only be construed in the light of the legislator’s definition of those rights. Account must therefore be taken of the national legislator’s power to give practical expression to those rights. The substance of those rights will therefore derive from the national provisions applying within the framework of Community law. The aim of the provision is, by supplementing Article 46(2), to ensure that the Charter does not extend the scope of current Community law or restrict the national definition of the rights in question

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Jens-Peter Bonde

Proposed text:

The institutions and bodies of the Union and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter, taking account of the differences in national practice, especially as regards agreements.

Reasons:

The charter is addressed to the Union Institutions and bodies and not the Member States.

The relationship between the citizen and the Member State is in any case governed by national legislation and the conventions to which the individual Member States have acceded.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Guy Braibant

Proposed text:

With due regard for the principle of subsidiarity, the institutions and bodies of the Union, the Member States, exclusively in the implementation of Community law, and the social partners at Community level shall observe and implement the social rights and principles set out in this Charter.

Reasons:

This amendment has three aims:

- *To specify that the articles on social rights should only apply to Member States when they implement Community law (a similar amendment has been submitted in relation to Article 46); the expression ‘within the scope of Community law’ is too broad and vague since it covers areas of shared competence and the Union’s second and third pillars. Such an extension is not acceptable.*
- *To indicate that the Charter includes social rights and principles.*
- *To refer to the principle of subsidiarity, which is particularly important in this area.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31: Social rights and principles

Submitted by: Piero Melograni

Proposed text:

Replace 'Community law' with 'Union law', and 'Community level' with 'Union level'.

Reasons:

The scope of the Charter is not restricted to the Community sphere alone, but extends to all areas of Union responsibility. See also Article 46(1), which reads as follows: 'The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Heinrich NEISSER

Proposed text:

Article 31. Social rights and principles

The institutions and bodies of the Union *and* the Member States, exclusively within the scope of Community law, ~~and the social partners at Community level, acting within the framework of their respective powers~~, shall observe the social rights and implement the social principles set out in this Charter.

Reasons:

In view of the organisational structure of the European Community, it is not defensible to regard the social partners as Community bodies and hence to impose requirements on them under provisions relating to fundamental rights. The institutional involvement of the social partners is regulated in the context of the Economic and Social Committee; only that committee possesses the status of a consultative body. For this reason the social partners also cannot be regarded in this section as institutions with an obligation to respect fundamental rights. Moreover, it should be made clear whether the phrase ‘scope of Community law’ is synonymous with ‘application’ or ‘implementation of Community law’.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social Rights

Submitted by: Gabriel Cisneros Laborda

Proposed text:

The Institutions and bodies of the Union and the Member States, exclusively within the scope of Community law, shall implement the rights set out in this Charter.

Reasons:

- *The mandates given in Cologne and Tampere laid down that the Charter shall include social rights insofar as they do not merely establish principles for Community action. The Charter should therefore confine itself to subjective rights. In its statement of reasons for this article, the Praesidium explains that 'these are principles whose application will, in a certain number of cases, be subject to the adoption of implementing measures'. Nevertheless, that clarification is not sufficient to comply with the mandates given, and would not be sufficient even if it were included in the articles. Furthermore, it should be pointed out that no clear distinction is drawn between rights and principles either in Article 31 or in the following articles.*
- *According to the most generally accepted theory, fundamental rights pose an obligation on the state but not on individuals. It is consequently proposed that the reference to the social partners as passive subjects be deleted.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Article 31. Social rights (*two words deleted*)

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights (*five words deleted*) set out in this Charter.

Reasons:

Without the statement of reasons, the article is likely to cause confusion rather than to have any other effect, particularly because of the differing concepts used, such as ‘rights’ on the one hand and ‘principles’ on the other.

The inclusion of mere State objectives and principles does not seem to be covered by the terms of reference adopted by the Cologne European Council on 3 and 4 June 1999. The European Council decision does indeed state that ‘in drawing up such a Charter account should (...) be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC)’, but it very specifically limits the terms of reference by adding ‘insofar as they do not merely establish objectives for action by the Union’.

In view of this clear instruction, it does not seem to the purpose to incorporate ‘social rights’ in the draft Charter whose substance is confined to merely stating objectives for the European Union and the Member States within the scope of the Charter and which do not, as the Council clearly intended, confer on citizens enforceable rights which can be invoked at law.

It will not be possible to explain to the public what purpose is served by laying down extensive and detailed social rights which do not alter the legal status quo.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed positioning and title:

The institutions and bodies of the Union, the Member States, exclusively within the scope of *Union* law, and the social partners at Community level, *each* acting within the framework of their respective powers, shall observe the *rights set out in this Charter and shall set themselves the goal of effectively realising the principles set out in the Charter.*

Reasons:

The difference in terminology in respect of the rights included in the Charter ('observe') and the principles ('set themselves the goal') is intended to make explicit the difference in nature between rights and principles. The term 'observe' is taken from Article 6 of the Treaty on European Union, whereas the term 'set themselves the goal of effectively realising' is taken from the preamble to part I of the Revised European Social Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Jean-Luc Dehaene, representative of the Belgian Government, Karel De Gucht and Roger L'Allemand, representatives of the Belgian Parliament

Proposed text:

Acting within the framework of their respective powers, the institutions and bodies of the Union, the Member States, within the scope of Union law, and the social partners at Community level shall observe and implement the social rights set out in this Charter.

Reasons:

The word ‘exclusively’ which preceded the phrase ‘within the scope of Community law’ has been deleted because the courts must be allowed to determine whether the Community is competent in respect of fundamental rights and not be restricted to applying the rights only within a previously determined area of competence.

In the same phrase, ‘Community law’ has been replaced with ‘Union law’. Violations of these social rights may occur as a result of action taken by the Union within its sphere of competence.

For the sake of greater clarity, the phrase ‘acting with the framework of their respective powers’ has been placed at the beginning of the sentence so that there is no doubt that it applies equally to the Union institutions and to the Member States. This applies, in particular, to the Dutch language version.

At the end of the article, the words ‘the social principles’ have been deleted from the phrase ‘shall observe the social rights and implement the social principles set out in this Charter’. There is no reason to refer to any principles other than the actual social rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Mr François Loncle

Proposed text:

The institutions and bodies of the Union, the Member States when they apply Community law and the relevant social partners shall be responsible for implementing the social rights and principles set out in this Charter.

Reasons:

This amendment concerns the wording of the article.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31 SOCIAL RIGHTS AND PRINCIPLES

Submitted by: JORDI SOLÉ TURA

Proposed text:

The institutions and *the* bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners *shall implement the rights and shall observe and implement (where appropriate) the social principles* at Community level, acting within the framework of their respective powers set out in this Charter.

Reasons:

It seems inconsistent that, in the existing text, rights should be observed and social principles be implemented. Rights shall not only be observed but shall also be implemented solely on the basis of the fact that they are proclaimed in the Charter and the social principles set out in the Charter shall be implemented, pursuant to what was laid down in the Cologne and Tampere resolutions, on the grounds that they are something more than mere general principles or once they become rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposal for a horizontal clause

In sofar as this Charter contains rights and principles corresponding to rights and principles laid down in the Revised European Social Charter, their meaning and scope shall be equivalent to the meaning and scope of the rights and principles in the Revised European Social Charter.

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Reasons:

The purpose of this provision is to ensure that the same meaning and scope are applied to the rights and principles laid down in the Charter as attach to the provisions in the Revised European Social Charter, even if their wording is different. It goes without saying that this shall apply only to the extent that the provisions of the Charter in fact correspond to those in the Revised European Social Charter. The article thus leaves intact the option of ensuring even greater protection by way of the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31 (new second paragraph)

Submitted by: **Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister**

Proposed text:

The recognition of, respect for and protection of the rights set out in Articles ... shall inform positive law, judicial practice and the action of the public authorities. They may only be invoked before a judicial authority in accordance with the provisions of the laws that embody them in detail.

Reasons:

The explanatory statement appears to express the position that, by reason of their special nature, certain social rights, insofar as they determine the mandatory provision of state services, cannot be considered as individual rights that can be directly applied and invoked, but, rather, as principles which must govern the action of the public authorities and may, accordingly, be invoked before the courts only where they are embodied in detail in law and in accordance with the terms of the laws concerned.

I fully agree with this position. The category of social and economic rights includes, in view of its particular nature, rights having different implications and different types of effectiveness in law.

Certain rights concern freedom and equality (e.g. the right to form and to join trade unions, the right to strike, the right to collective bargaining, the freedom to choose an occupation or profession, the right not to be discriminated against at work on grounds of gender, etc). These are individual rights which can be directly exercised as such, within the limits constituted by respect for other rights, protected goods and values recognised in the Charter.

Other rights (e.g. welfare rights, the right to social assistance in old age, the right to health, the right to decent housing, the right to environmental protection, etc) are guiding principles which require the intermediary action of the legislator and generate a form of individual right which may be invoked before the courts only in the terms and to the extent permitted by the laws that embody such rights in detail. They are 'legal rules of principle' which orientate social and economic policy in a form binding on the public authorities and, as guiding principles of the social and economic order, will inform positive law, judicial practice and the action of the public authorities. As such, they have a negative force or effectiveness (marking limits on the freedom of action of the legislator), insofar as they prohibit any acts of the public authorities that would manifestly flout or contradict them by pursuing ends contrary to or incompatible with the values which those rights embody.

Finally, it seems important to point out that certain social and economic principles which embody clear objectives of social and economic policy (e.g. full employment, economic growth and stability, the fair distribution of national income, the improvement of the quality of life and the environment, etc) should, according to the agreement reached by the Cologne European Council, remain outside the contents of the Charter of Fundamental Rights. This text stated that the drafting of the Charter should also take account of economic and social rights, on the same basis as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (see Article 136

of the EC Treaty), insofar as they do not simply constitute bases for the objectives of the Union's action.

I believe that this important point should be explained clearly, by means of an article referring to 'rights of provision' of this type.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: positioning and title of Article 31

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed positioning and title:

Include Article 31 as a horizontal article with the title 'Obligations pursuant to the Charter'

Reasons:

The Charter should contain an article indicating the nature of the obligations derived from both the civil and political rights and rights of the citizen and from the social rights and principles that are included. Limiting the article to social rights and principles alone is inconsistent. This should be included with the horizontal articles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 31. Employment rights

- 1. Everyone has the right to work and the right to protection of his job. Every individual has the right to choose and engage in an occupation and trade and the right to free access to career assistance facilities.**
- 2. Everyone has a right to protection against unjustified or abusive termination of employment.**
- 3. Notwithstanding Article 22, the Member States shall take steps to promote the social and professional integration of particularly disadvantaged groups.**

Reasons:

Employment rights are set out Article 31(1). Similar provisions can be found in the constitutions of the Member States, e.g. Belgium (Article 23), Denmark (Articles 74 and 75(1)), Finland (§ 15), the preamble to the 1946 French Constitution, Greece (Article 22), Italy (Articles 4 and 35), Luxembourg (Article 11), Netherlands (Article 19), Portugal (Articles 47, 53 and 58) and Spain (Articles 35 and 40).

Provisions specifically relating to this subject are also to be found in the constitutions of the German Länder (Bavaria, Brandenburg, Hessen, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia) and in the constitutions of the applicant countries.

At international level, the Member States have recognised employment rights in Article 23 of the Universal Declaration of Human Rights (UDHR), Article 6 of the (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 1 of the European Social Charter (ESC) and paragraphs 2 and 4 of the Community Charter of Basic Social Rights for Workers (CCBSRW).

Article 31(2) sets out the right to occupational freedom, which has been upheld by a large number of decisions of the Court of Justice (e.g. Nold, Case 4/73, Reports 1974, p. 491) and in Article 32 of the Presidium's proposal. Freedom of access to career assistance facilities is a basic right of individuals, which in future will fall within the EU's sphere of competence, following the decisions of the Lisbon European Council (conclusions of the Lisbon European Council, paragraph 29).

Under Article 137 of the EC Treaty, protection against dismissal is part of the EC's sphere of competence. Article 31(2) takes over the Presidium's proposal (Article 38, Convent 34) to a large extent and thereby upholds a basic principle which is contained in the constitutions of many Member States and applicant countries and is also given universal recognition in international conventions (e.g. ILO Convention No 158). Given that protection of one's employment is a human right, the term 'worker' has been replaced in the proposal with 'everyone'. This is in line with the wording of existing international provisions, such as those contained in the UDHR (Article 23), the ICESCR (Article 6(1)) and the ESC (Article 1).

Article 31(3) reiterates a basic principle already contained in Article 22(3) of the Presidium's proposal (Convent 28) with respect to women and in Article 43 (Convent 34) with respect to disabled persons, extending it, beyond these specific cases, to all disadvantaged persons.

Reasons:

Those amendments are intended to expand on my original working draft (submitted on 6 January; Contrib. 2) and to establish the second and third pillars of my three-pillar model which obtained general approval in the Convention (submitted on 4 May; Contrib. 144).

The aim of my amendments is to reach a compromise between the different positions within the Convention regarding economic and social rights. The proposed amendment is intended to make the articles more readable so that Union citizens can identify with the system of values set out in the Charter without reducing the text's legal clarity. At the same time, it should not make promises which the Union will not be able to keep. The proposal therefore mainly seeks to establish rights which will protect people against any measures taken by the Union which might threaten the fundamental social rights of the individual, and to uphold objective social standards, which can form the basis of a

system of values on the European model. As a result of Articles 3 and 136 et seq. of the EC Treaty and the second and third pillar provisions, the European Union will in future have a wider sphere of competence which requires protection of fundamental rights as a matter of urgency to ensure that the high level of social protection - guaranteed by the Member States - is not undermined. This is why both 'neutral' and politically affiliated NGOs have called for recognition of fundamental social rights¹.

Given that the indivisibility and interdependence of fundamental rights and human rights have now gained universal recognition and that it has taken almost fifty years for this joint international position to be achieved, it is important that the social rights set out above be placed on an equal footing with the basic freedoms, EU citizens' rights and judicial rights established in Convent 28. Due account has therefore been taken of the proposal submitted by the UN Committee on Economic Social and Cultural Rights, by letter of 27 April 2000, to the chairman, Prof. Dr Herzog, including the suggestions and warnings contained therein.²

¹ One example can be found in the position of the European Union of Christian Democratic Workers (EUCDW) (Contrib. 128), which calls for 'a broad catalogue of fundamental social rights.'

² 'The Committee ... would nevertheless like to point out that if economic and social rights were not to be integrated in the Draft Charter on an equal footing with civil and political rights, such negative regional signals would be highly detrimental to the full realisation of all human rights at both the international and domestic level, and would have to be regarded as a retrogressive step contravening the existing obligations of Member States of the European Union under the International Covenant on Economic, Social and Cultural Rights.'

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31(new)

Submitted by: Johannes Voggenhuber

Proposed text:

Everyone who does not have sufficient own resources available has the right to a minimum income as a means of safeguarding his/her dignity and to enable him/her to take part fully in social, cultural and political life.

Reasons:

New numbering of the entire article. Rights directly related to human dignity (fundamental and human rights) come before trade union rights.

Article 31 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 31a (new)

Submitted by: Mr Vitorino, Commission representative in the Convention

Proposed text:

Article 31a. Equal treatment for men and women

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be guaranteed.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Reasons:

Paragraph 1 of this article is inspired by point 16 of the Community Charter of the Fundamental Social Rights of Workers: 'Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed. To this end, action should be intensified to ensure the implementation of the principle of equality between men and women as regards in particular access to employment, remuneration, working conditions, social protection, education, vocational training and career development ...'. The right to equal opportunities and equal treatment for men and women with regard to employment and work is also enshrined in Article 141 of the EC Treaty and Article 20 of the revised European Social Charter.

The possibility of positive measures to rectify existing situations of inequality between men and women (paragraph 2) is already recognised in Article 2(4) of Directive 76/207 and Article 141(4) of the EC Treaty, whose wording is used in the second paragraph of this amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 31a (new)

Submitted by: Pervenche BERÈS

Proposed text:

Article 31a. Equal rights for men and women

Equal rights shall be guaranteed for men and women, in particular as regards education, conditions of employment and pay, working relations and social protection systems. Implementation of these rights may lead to positive discrimination.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31a (new article)

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The principle of equality between men and women shall be guaranteed in access to employment, working conditions and welfare provisions. There shall be no discrimination on grounds of gender. Male and female workers shall have the right to equal pay for equal work or work of equal value.

Reasons:

It is proposed to maintain, in the specific area of social rights, the principle of non-discrimination between men and women in the field of employment, to which the Treaty dedicates especial attention in view of its importance as an embodiment of the principle of equality, with provision being made additionally for positive discrimination measures as authorised by Article 141(4) of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment: New Article: Equality between men and women

Submitted by: Lord Goldsmith QC

Proposed text:

For Part A: Proclamation of Rights

Equality between men and women must be ensured with regard to pay, work and employment.

For Part B: Definition of Rights

The rights in this article are the rights provided for in Article 141 of the Treaty establishing the European Community and in the relevant secondary legislation adopted by the Community. They are subject to the limitations and derogations specified in those provisions and in any national measures adopted to give them effect.

Reasons:

These rights were previously included in Convent 18. It was my understanding of the Convention's discussion that these rights should be included in the draft Charter. My amendments to Convent 28 were made with the expectation that these rights would be included in Convent 34.

The specific existing rights in the Treaties concerning equality between men and women with regard to work and employment (including pay) deserve a separate article. I would therefore like to propose this article for inclusion.

Article 32

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

The freedom to choose one's occupation, to conclude contracts and to set up a business shall be respected by Community law.

Reasons:

The freedom to choose an occupation, as described in the Praesidium's proposal, is both too limited and too extensive. It is too limited in terms of the areas covered: mention must also be made of the freedom to conclude contracts and to set up businesses, which are both essential in a market economy. It is too extensive in terms of the conditions of application: it is wrong to say that everyone has the right to choose his or her occupation without restriction; the sentence should be rephrased to show that this freedom is to be respected by Community law.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32 FREEDOM TO CHOOSE AN OCCUPATION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Everyone has the right to work, to choose his or her occupation freely and to receive sufficient remuneration to meet his or her personal needs and those of his or her family. Under no circumstances can there be any discrimination on the grounds of sex.

Reasons:

It is not enough to say that everyone has the right to choose and to engage in an occupation. Such a right and the pursuit of an occupation must provide the individual and his or her family with adequate remuneration and under no circumstances is it acceptable in a free, competitive society for this right and this freedom of choice to be restricted on the grounds of sex.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 32

Submitted by: Frits Korthals, Altes, representing the Netherlands Government

Proposed text:

Article 32: Right to free choice of employment

Reasons:

The title of this Article is brought in line with the substance of the Article following adoption of the next amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Andrew Duff MEP

Proposed text:

Article 32. Freedom to choose *employment*

Everyone has the right to choose and *accept a job*

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 32****Submitted by: Ieke van den Burg****Proposed text:****Replace by:****Article 32. The right to work****Everyone has the right to earn a living in a freely chosen and accepted occupation.****Reasons:**

In conformity with the (Revised) European Social Charter (art. 1) and the UN International Covenant on Economic Social and Cultural Rights (art 6) the title is drafted as "right to work", and the content is adapted to both articles referred to. In the Reasons, these references should be included, and as such then also refer to what measures may be expected from authorities to guarantee this right. For the function of this Charter focused on the EU and its institutions the respect of this right is more relevant, than instruction norms for labourmarket activities.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation.

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Amend the title of the article to read: “Right to work and freedom to choose an occupation.”

Re word the article to read as follows: “Everyone shall have the right to engage in an occupation of his own free choice, on a self-employed or employed basis, in a place of his choosing.”

Reasons:

This wording makes it possible to stress that everyone has the right to earn his living by an occupation freely chosen, and takes into account the increasing mobility of workers within Europe.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 32: Freedom to choose a profession

Union citizens shall have the right to choose and to engage in an occupation.

Reasons:

Restricting this fundamental right to Union citizens is regarded as absolutely essential.

In the version as proposed, third-country nationals legally resident in the territory of the Member States would have the right to choose and to engage in an occupation. The Union has no jurisdiction for such a far-reaching provision. Article 137(3) of the EC Treaty merely allows it to regulate the 'conditions of employment of third-country nationals legally residing in Community territory'.

With the text as proposed there is also the risk of secondary rights and rights of association of third-country nationals being called into question.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Article 32. Freedom to choose an occupation

Every citizen of the Union has the right to choose and to engage in an occupation.

Reasons:

The proposed text would also confer the right to choose and to engage in an occupation on third-country nationals residing lawfully within the territory of the Member States. The Union does not have the power to adopt such a far-reaching provision; Article 137(3) of the EC Treaty allows it only to regulate ‘conditions of employment for third-country nationals legally residing in Community territory’. There is also a danger that such a provision might call into question secondary provisions and the provisions of association agreements for third-country nationals from the point of view of fundamental rights.

Moreover, under the established case law of the CJEC, the right of free and equal access to an occupation also implies a right of residence for third-country nationals in other Member States of the Union for the purpose of seeking employment and applying for a job (cf. for example Article 39(2) of the EC Treaty in conjunction with Articles 1-6 of Regulation (EEC) 1612/68). At present Community law confers on third-country nationals who are lawfully resident in a Member State the right to reside in another Member State for only three months (cf. Article 62(3), EC Treaty).



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Every citizen of a Member State of the EU has the freedom to work, seek work, set up in business or provide services in any other Member State.

For Part B, “Definition of Rights”:

The right in Article 32 is the right provided for in the provisions of Articles 39 to 55 of the Treaty establishing the European Community and of the relevant secondary legislation adopted by the Community, and is subject to the limitations and derogations specified in those provisions and in any national measures adopted to give them effect.

Reasons:

First, the proposed article is not sufficiently clear. I assume it is intended to apply to free movement of workers and businesses and associated recognition of professional qualifications. However, the right of establishment (ie to set up in business) is a very important right, but is not included. The draft article therefore does not go far enough in describing one of the main benefits citizens have through EU membership.

Second, it is important that the right is clearly defined - my proposed amendment therefore makes a vital link between: the suggested Article; the main provisions of the Treaty (Articles 39 to 55); and the highly relevant secondary legislation covering free movement of workers and the recognition of qualifications (which facilitate free movement).

Third, the Article as drafted is in any event wrong in asserting that there is a “right” to employment. This would raise unrealistic expectations. Nor does the ECJ Nold case judgment support the argument that the right to choose and engage in an occupation is “recognised without any ambiguity in the case law of the Court”. What is important is the right to work and seek work in other Member States.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Charlotte Cederschiöld

Proposed text:

Everyone has the right to choose and to engage in an occupation and business activity, including the freedom of establishment and entrepreneurship.

Reasons:

The freedom of establishment is guaranteed in Article 43 in the EC Treaty. The proposed amendment is in accordance with the principle of the four freedoms.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Everyone has the *freedom* to choose and *the right* to engage in an occupation.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Gabriel Cisneros Laborda

Proposed text:

Everyone has the right to choose an occupation.

Reasons:

The state is not always able to guarantee that a person can engage in the occupation he or she has chosen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 32. Right to work

Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

Reasons:

This text is taken from the European Social Charter (Revised), which combines the freedom to choose an occupation and the right to work. The freedom to choose an occupation is meaningless in the absence of a right to work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 32

Submitted by: Guy Braibant

Proposed text:

Article 32. Freedom to choose an occupation and right to work

Everyone has the right to engage in the occupation of his choice in compliance with the rules defined by law.

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

Reasons:

This amendment seeks to specify the conditions under which the freedom to choose an occupation is to be applied and to incorporate in the Charter the right to work, as enshrined in Article 1 of the European Social Charter, without however creating an individual right to employment. The right to work implies the right to have access to a free placement service

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Citizens of the Union shall have the right to earn their living in an occupation freely entered upon, subject to any restrictions which may be laid down pursuant to Article G of the Revised European Social Charter and Article 39(4) of the Treaty establishing the European Community.

Reasons:

The Praesidium's proposal differs substantially, in terms of wording, from existing provisions guaranteeing the right in question. Accordingly, a wording is proposed which reflects more closely Article 1(2) of the Revised European Social Charter (ESC), which says:

'Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

...

- 1. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;'*

It needs to be made clear that this provision in the Charter should have no other meaning than the meaning already attached in practice to Article 1(2) of the Revised ESC. That is to say: the right must be interpreted as a guarantee against discriminatory restrictions on freedom to choose an occupation and restrictions which can be regarded as a form of forced labour. Interpreting this right as a directive to the (European or national) authorities to guarantee every citizen of the Union the work of his choice does not follow from Article 1(2) of the Revised ESC and it is therefore unacceptable as an interpretation of the present provisions.

Freedom of choice of occupation is also guaranteed in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights and is recognised in Article 12(1) of the European Parliament's Declaration of Fundamental Rights and Freedoms (1989) and in point 4 of the Community Charter of Fundamental Social Rights of Workers (1989).

This is a right which is granted solely to persons to whom the rules on the free movement of workers are applicable (Article 39, EC Treaty) This is brought out in the amendment by restricting the granting of the right to citizens of the Union.

It would be preferable to indicate in the article itself the conditions under which the right can be restricted. The danger of a general restrictive clause is that the scope for restriction is too broad. This is why there is a reference to Article G of the Revised ESC. Because of the concise nature of the text there is simply a reference to that article, without including the provisions of the article verbatim.

In connection with the restrictions still existing within the European Union on the eligibility of subjects of other Member States for the public service, there is also a reference to Article 39(4), ECT, which states that the provisions on the freedom of movement of workers within the Community shall not apply to the public service.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 32

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 32 to read:

Everyone has the right to choose and to engage in an occupation in accordance with the European provisions governing access thereto.

Reasons:

The right to choose one's occupation does not relieve one of the obligation to comply with the legal provisions governing access thereto.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose and engage in an occupation

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Article 32. Freedom to choose and engage in an occupation

Add: 'according to the regulations governing each occupation'.

Reasons:

This limitation, as spelled out in the Community Charter of the Fundamental Social Rights of Workers, Article 4, should be included in order to give the correct information about the enjoyment of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 32

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 32 to read:

Article 32. Right to employment and freedom to choose an occupation

1. Everyone has the right to fulfil their potential in an occupation freely chosen or accepted.
2. Everyone has the right freely to choose and engage in an occupation.
3. The Union shall promote continuing training and life-long learning aimed at enabling everyone to acquire new job-related knowledge and skills.

Reasons:

The first and third paragraphs are based on Article 1 of the Revised Social Charter. The second paragraph clarifies the freedom to choose an occupation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Pervenche BERÈS

Proposed text:

Article 32. Right to employment

- 1. Everyone has the right to earn his living in an occupation freely chosen or accepted.**
- 2. All employment shall confer the right to a fair remuneration.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 32

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

- 1. Everyone has the right to choose and engage in an occupation or profession, under the terms laid down by Community and Member State law.**
- 2. Every worker who is a national of a Member State of the European Union has the right to freedom of movement throughout the territory of the Union, under the terms laid down by the EC Treaty.**
- 3. Freedom of enterprise is recognised in the framework of the market economy.**

Reasons:

1. The right to choose and engage in an occupation ('profession' should be added - cf. the Community Charter of Social Rights, point 2) has been recognised by ECJ case-law, but on a basis subject to limitations, relating essentially to the objectives of Community integration (e.g. limits on imports and exports, security measures) and to the requirements of the administrative regulation of the professions; a reference to those limitations should be included, as a general provision is not sufficient, in particular because certain limitations arise from national law. In the 1974 ECR cited in the explanatory statement, it is stated that this freedom, far from being an absolute privilege, should be viewed in the context of the social function of the goods and activities protected, and that it has therefore to be exercised within the limits established in the public interest, including the objectives of general interest pursued by the Community. The same point is made in the ECR of 30 July 1996 and in many others.

2. It is proposed to include, as a separate right, the right of workers who are nationals of the EU Member States to freedom of movement as workers throughout the territory of the Union, under the conditions laid down in Article 39 of the Treaty. In a similar vein, point 1 of the Community Charter affirms the principle of the free movement of workers as the first of workers' social rights.

3. I believe it is important to include under economic and social rights the 'right of freedom of enterprise', as a logical correlative of the right to private property recognised in the Charter. This could be included in a separate article.

This right has been expressly recognised by the ECJ (see Decision of 27 September 1979, Case 230/78).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Jean-Luc Dehaene, representative of the Belgian Government, and Karel De Gucht and Roger L'Allemand, representatives of the Belgian Parliament

Proposed text:

Reasons:

Delete the second sentence of the ‘statement of reasons’. The text should no longer refer to the free movement of persons.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32 (Statement of reasons)

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

This right is recognised in the case law of the Court as a fundamental right (see judgement of principle in Case 4/73 Nolde [1974] ECR 491).

Reasons:

The words 'without any ambiguity' need to be deleted from the first sentence: the judgement in the Nolde case is more flexible. The second sentence needs to be deleted in its entirety, because it has nothing to do with the proposed text of Article 32.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 32. Right to fair and reasonable working conditions

- 1. Everyone has the right to safe and healthy working conditions. For the purposes of protecting this right, everyone has the right, in particular, to limitation of daily and weekly working hours, to an annual period of paid leave and to fair and equal pay for equal work.**
- 2. Young people, pregnant women and persons bringing up children have a right to special protection. This right includes the right to maternity leave and to parental leave following the birth or adoption of a child with the aim of reconciling family and professional lives.**

Reasons:

Article 32(1) summarises the provisions of Articles 35 and 36 (Convent 34), thereby tightening up the text of the Charter. The term 'workers' used in the Presidium's proposal has been replaced with 'everyone'. It should again be pointed out that the rights contained in Article 32 are, according to Article 23 of the UDHR and Article 7 of the ICESCR, applicable to everyone and therefore human rights and that a different wording would represent a regression in relation to the international standards. The constitutions of the Member States also consider this right to apply to everyone (e.g. Belgium (Article 23), Netherlands (Article 19(2)), Portugal (Article 59). Under the Cologne terms of reference, the Charter must also therefore adopt this wording.

The wording 'fair and equal pay for equal work' is based on Article 23(2 and 3) of the UDHR, Article 7 of the ICESCR, Articles 2 and 4 of the ESC and ILO Conventions 100 and 131, and is also contained in the constitutions of many of the Member States.

Article 32(2) combines Articles 37 and 39 of the Presidium's proposal (Convent 34).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32 (new)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

Social security and social assistance

Everyone has the right to social security benefits, which guarantee protection particularly in the event of pregnancy, illness, need for care, old age, or unemployment.

Reasons:

Article 32 bis – ter

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 32

Submitted by: Manzella

Proposed text: Insert the following after Article 32:

Article 32a. Rights of workers who are EU citizens

Every EU citizen has the right to choose an occupation and to engage in economic and cultural activities in accordance with the provisions on freedom of movement and establishment within the territory of the Union set out in the Treaties.

Reasons:

While Article 32 covers all workers, whether they are EU citizens or not, the proposed article set out above is specifically intended to protect workers who are EU citizens.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 32a (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 32a (new). Right to life-long training

Everyone must have access to life-long professional training.

Reasons:

This provision is contained in Document ‘Convent 18’ and is also to be found in all convention or charter documents. It is a fundamental principle nowadays aimed at guaranteeing each individual’s ongoing professional adjustment and personal development.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 32b (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 32b (new). Right to fair and equal pay

Workers have the right to a fair remuneration sufficient for a decent standard of living. The right to equal remuneration for work of equal value shall be guaranteed.

Reasons:

This provision is taken from Convent 18 and the European Social Charter (Revised) to combine the two ideas which are closely related to the right to work: equal remuneration for men and women and a fair remuneration.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of additional article on the right to a minimum wage after Article 32

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

- ‘1. Employees in an identical situation shall be entitled to equal remuneration on the basis of objective criteria.
2. Every employee has a right to receive a fixed minimum remuneration which may not be lower than the minimum wage set by the Member State in which he is employed.’

Reasons:

The aim is to include an article reflecting the current state of affairs in the European Union, namely the introduction by all the Member States of a minimum wage in line with the principle of equal pay, in other words equal remuneration for employees whose employment situation is identical.

A further aim is to ensure equal treatment for all employees, and in particular equality of treatment for men and women.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of an additional article on the right to a minimum income after the article on the minimum wage

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

‘Anyone who lacks adequate resources has the right to receive minimum social benefits to enable him to live in dignity.

Anyone who is deprived of employment has a right to income substitution benefit’.

Reasons:

Nowadays everyone should be entitled to a minimum income, as distinct from the minimum wage.

Article 33

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

The UK supports informing and consulting employees and believes that employee involvement mechanisms should reflect the requirements of individual organisations. The UK has signed up to directives in this area relating to specific cases: European Works Councils, Acquired Rights and Collective Redundancies. However, no general right as described in this article currently exists and I cannot accept one here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Win Griffiths, MP

Proposed text:

Delete – or significant rewording is required.

Reasons:

I have no doubt that this article sets out best practice for most companies but it is arguable as to whether it is a fundamental human right rather than very desirable good practice by employers.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be deleted.

Reasons:

Doubts as to the constitutional status of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Article 33. Working conditions

Employment contracts and working conditions must respect the dignity and health of employees and enable them to lead a harmonious family life alongside their work.

Reasons:

The wording proposed in the amendment seeks to replace Articles 33 (Workers' right to information and consultation within the undertaking), 35 (Right to rest periods and annual leave), 36 (Safe and healthy working conditions), 37 (Protection of young people), 38 (Right to protection in cases of termination of employment) and 40 (Right of migrant workers to equal treatment). These articles set out principles which are certainly worthy of protection but should be dealt with at national level or through a directive, and not in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 33

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Article 33: Informing and consulting workers within the undertaking

Reasons:

The title needs to be brought in line with the nature of this article which is a directive. Accordingly, the words 'right to' need to be deleted from the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Amend the title and text of the article so that they refer not only to the *undertaking* but also to the *workplace*.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall take measures such that workers or their representatives are regularly informed, pursuant to Article 21 of the Revised European Social Charter, of the economic and financial state of the undertaking which employs them and are consulted in good time on decisions being considered by the employer which might have a serious effect on workers' interests.

Alternative text:

The Union shall take measures such that workers or their representatives :

- a. are regularly informed in a comprehensible way of the economic and financial state of the undertaking which employs them;**
- b. are informed and consulted in good time on decisions being considered by the employer which might have a serious effect on their jobs, including decisions on collective redundancies, and on their working conditions.**

Reasons:

The proposed amendment seeks to tie in more closely with Article 21 of the Revised European Social Charter (ESC). It also establishes greater clarity concerning the cases in which workers or their representatives have to be informed and/or consulted.

The specific reference in the alternative text to cases of collective redundancies is based on Article 29 of the Revised ESC and the reference to working conditions comes from Article 22 of the Revised ESC.

The wording 'The Union shall take measures...' is also a better reflection of the character (that of a directive) of this Article than the Praesidium's proposal which mistakenly refers to a 'right'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Amend as follows: '**Workers *or* their representatives...**'

Reasons:

To avoid discrepancies it would be preferable to bring the text of the draft article in line with the (Revised) European Social Charter. Such a wording would also respect different national systems for information and consultation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Jens-Peter Bonde

Proposed text:

Workers and/or their representatives have the right to information and consultation in good time within the undertaking or group of undertakings which employs them.

Reasons:

The first change makes this provision more flexible, in that it will then be sufficient to inform either the workers or their representatives, which in many cases would be more appropriate. The addition of ‘group of undertakings’ aligns the wording on Directive 94/45 on European works councils.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33 WORKERS' RIGHT TO INFORMATION AND
CONSULTATION WITHIN THE UNDERTAKING

Submitted by: JORDI SOLÉ TURA

Proposed text:

Workers and their *trade-union* representatives have the right to information and consultation in good time within the undertaking which employs them.

Reasons:

The purpose of this amendment is to specify that the representatives in question are trade-union ones.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Charlotte Cederschiöld

Proposed text:

Workers and their representatives have the right to information and consultation within the undertaking which employs them.

Reasons:

The inclusion in the Article of the words “in good time” is beyond what is stated in Article 137.1.

The wording “in good time” is difficult to judge in the new economy. To make a right relative, as it would be with the inclusion of “in good time”, would be damaging to the conception of fundamental rights. European citizens should know what their rights are and there must not be any uncertainty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Andrew Duff MEP

Proposed text:

Article 33. *Right to information and consultation at work*

Workers (*delete: 3 words*) have the right to be informed and consulted within the undertaking that employs them.

Reasons:

The draft article goes beyond the existing EU consensus in this area. The reference to workers' representatives is implicit, being covered elsewhere in the Article on the recognition of trades unions. The phrase 'in good time' is a value judgement and therefore has no place as a fundamental right; it is also prejudicial to the current negotiations on the mergers and take-overs directive.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 33****Submitted by: Ieke van den Burg****Proposed text:****Workers and their representatives have the right to effective information (and), consultation and participation in major decisions at all relevant national or international levels within the undertaking which employs them.****Reasons:**

- *the word "effective" is to be interpreted in line with articles 21 and 29 of the Revised European Social Charter, meaning: "regularly, at appropriate time and in a comprehensive way", thus it covers "in good time"*
- *"and participation" is added, following art 22 of the Revised European Social Charter, which speaks also about participation in decisionmaking processes in the undertaking.*
- *"in major decisions" refers to different situations which may have major impact for workers such as formulated in the relevant (R)ESC articles, without naming them in detail*
- *"at all relevant national or international levels" is added to stress the importance of crossborder information, consultation and participation, where major decisions in transnational companies are taken often at a higher crossborder level.*

NB the Reasons should also refer to art. 22 and 29 of the RESC and to point 18 of the Community Charter on Fundamental Social Rights for Workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information, consultation *and participation* in good time *and on a regular and effective basis*. *This right shall be guaranteed at all levels of the undertaking, both nationally and internationally.*

Reasons:

Worker participation, a widely established principle in the European social model, should be added, as should the international dimension, in the context of the internal market.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 33

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 33 to read:

Workers and their representatives have the right to be provided on a regular basis and in good time with comprehensive information about the economic and financial situation of the undertaking which employs them, without prejudice to the right not to divulge information which could be prejudicial to the undertaking, or to the possibility of requiring that certain information be kept confidential.

Workers and their representatives also have the right to be consulted in good time on decisions which could substantially affect the interests of workers, particularly by having an important impact on the employment situation in the undertaking.

Reasons:

- 1. The article is made clearer by the distinction made between information and consultation.*
- 2. Information is less useful when it is incomprehensible, fragmentary or late.*
- 3. The consultation system provided for in Article 21 of the Social Charter covers all the situations dealt with in the various proposals and has the additional advantage of referring clearly to threats to jobs. Article 29 of the Social Charter contains details regarding the implementation of the relevant rights.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking.

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words 'consultation in good time' by the words 'prior and timely consultation'.

Reasons:

This wording makes it possible to involve workers more fully in the choices and decisions made within the undertaking.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Einem/Holoubek

Proposed text:

Workers and their representatives have the right to *appropriate and timely* information and consultation regarding all significant changes within the undertaking which employs them.

Reasons:

It should be specifically stated in the text that information and consultation should take place in an appropriate way, in an appropriate quantity and with regard to all significant changes in the undertaking.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them *with regard to matters of fundamental relevance to them.*

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

As labour-law entitlements are subject to regular change, and with the aim of incorporating in the European Charter of Fundamental Rights only rights which are genuinely fundamental, such entitlements should be governed by secondary law instead. If Article 46 is to be retained, the very wide scope of the article ought, at the minimum, to be restricted by means of the amendment. The German version of the headings to the articles ought to be rephrased so as to make it clear that the rights in question can be invoked at law and that the aim is not to secure third-party effect for fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 33: Workers' right to information and consultation within the undertaking

Workers or their representatives have the right to information and consultation in good time within the undertaking which employs them on matters directly affecting them.

Reasons:

As far as the German wording is concerned, the term 'Recht' should always be used instead of the term 'Anspruch', and the title and the text should be brought in line. This also applies to some of the other articles.

Furthermore, the wording should be changed to 'Workers or their representatives...' in line with Article 21 of the Revised Social Charter.

Finally, it is necessary to specify the object of the information. Obviously it cannot mean that information has to be given on every aspect of the business policy and activities of the undertaking. This would go substantially beyond German law on co-determination - which is in any case very broad; nor is it the purpose, as the examples of collective redundancies and the transfer of undertakings quoted in the original version (Convent 18) show. It is therefore proposed that the phrase 'on matters directly affecting them' be added by way of clarification.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Pervenche BERÈS

Proposed text:

Workers and their representatives have the right to information and consultation in good time *on proposed decisions which could concern them or affect their interests at all levels of the undertaking* which employs them.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 33

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 33 to read:

Article 33. Workers' right to information and consultation

Workers and their representatives have the right to be informed and consulted in good time by the undertaking or group of undertakings which employs them, about matters affecting their interests.

Reasons:

The amendment clarifies the scope of the right to information and consultation and brings it into line with the new international industrial environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 47

1 (as original)

2 (new) Workers and their representatives have the right to be informed and consulted in good time, in any event prior to any final decisions by the management of the undertaking which affect their working conditions and interests, and in all situations involving restructuring, reorganisation or merger of the undertaking.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Articles 33 and 34 (to be combined)

Submitted by: Jo Leinen

Proposed text:

Rights of collective bargaining and action

1. Everyone has the right to form trade unions and to take collective action to defend their economic and social interests.

All workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

2. The freedom of collective bargaining of trade unions and employers' associations shall be respected.

Reasons:

As the rights referred to in Articles 33 and 34 are related, it seems desirable to combine them, in order to streamline the Charter as a whole. (Translator's note: a sentence which does not affect the English version is omitted here). The first sentence of Paragraph 1 and the whole of Paragraph 2 are taken from the proposals by Prof. Meyer (Art. 33(1)).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 36

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 33. Rights of collective bargaining and action

- 1. Everyone has the right to form trade unions and to take collective action to ensure that his economic and social interests are upheld and enforced.**
- 2. The right of trade unions and employers' organisations to collective bargaining shall be respected.**

Reasons:

Article 33(1) and (2) takes up the Presidium's proposals contained in Article 34 (Convent 34) and Article 17 (Convent 28) and is also based on similar provisions in the constitutions of the Member States (e.g. Germany Article 9(3), Finland § 10a, Italy Article 39, Portugal Article 55, Sweden Chapter II §17, Spain Article 37), the German Länder (Brandenburg Article 51, Saxony Article 25, Saxony-Anhalt Article 13(3) and Thuringia Article 37) and international treaties and conventions (UDHR Article 23(4), International Covenant on Civil and Political Rights/ICCPR Article 22, ICESCR Article 8, ESC Articles 6 and 7 and ILO Conventions Nos 87, 98 and 151).

The Presidium's restriction, i.e. 'under the conditions laid down by national legislation and practice' is not in line with the 'right to form a trade union', which is a human right, as defined in the UDHR Article 23(4), ICESCR Article 8(1) and ESC Article 5. The restriction would cause the text to fall short of existing international standards.

The article is not intended to confer new competences on the Union, but to ensure that the Union recognises this freedom, as guaranteed by the Member States and their international obligations.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

Everyone has the right of access to medical and health care.

Reasons:

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Article 33 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 33a (new article after Article 33)

Submitted by: Mr François Loncle

Proposed text:

Workers have the right to fair pay for their work.

Reasons:

It would seem justified to insert this essential article, which does not appear in the list of proposed articles.

Article 34

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

Article 137.6 in the EC Treaty explicitly prohibits the interference of the EU in national legislation on these matters. This Article cannot, therefore, remain in the Charter.

Principles stating only what everyone would wish for, hope for, and work for are too vague. If the right cannot be guaranteed, it risks damaging the Charter as a whole.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34: Rights of collective bargaining and action

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The agreements referred to in Article 139 of the EC Treaty should be governed by secondary law.

Moreover, freedom of association is already provided for by Article 17 (freedom of association and assembly).

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

Matters relating to the right of employers and workers to associate for the protection of their interests are covered by Article 11 ECHR and that Article is already reflected, and rightly so, in Article 17 of the draft Charter. To the extent that the text duplicates the effect of Article 17, and therefore of Article 11 of the ECHR, it is unnecessary. Moreover, to single out a particular aspect of Article 11 and deal with it separately at a different point in the Charter is undesirable because it undermines the integrity both of the ECHR Article and also of the Article of the Charter designed to reflect it.

However, my concern is not simply about duplication. The text goes further than Article 11 in imposing an obligation to negotiate and a right to take collective action that are to be found neither in the ECHR nor in Community law. In that connection the “statement of reasons” reads too much into the “Swedish Engine Drivers’ Union” case. Whilst in that case and others the Court has asserted that Article 11 implies a “right to be heard”, the case establishes that the existence of a right in national law to bargain collectively is no more than one of the ways in which it is possible to confer that “right to be heard”.

The text also implies that employers and workers have a cross-border right to defend their economic and social interests. That too goes beyond Article 11 and is not to be found in Community law.

The reference to conditions laid down by national legislation and practice is welcome. However, these words do not remove the effect of the preceding sentences in apparently conferring general rights to bargain collectively and take collective action and a cross-border right to defend interests.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

1. **Employers or organisations of employers and organisations of workers have the right to negotiate and conclude, by virtue of the procedures established in the Member States pursuant to Article 6(2) of the Revised European Social Charter, collective agreements.**
2. **Workers and employers have the right to collective action, including the right to strike, in cases of conflicts of interest. This right may be restricted only subject to the conditions set out in Article G of the Revised European Social Charter.**

Reasons:

The wording of the amendment is more in line with Article 6 of the Revised European Social Charter (ESC).

In the first paragraph the reference to procedures for free bargaining valid in the Member States is linked to Article 6(2) of the ESC in which the Member States are obliged to work towards the creation of such procedures.

For the reason given in the reasons for the amendment to Article 32, the second paragraph includes a reference to Article G of the Revised ESC.

Moreover, it may be taken as read that the rights included in this Article, together with the right to trade unions in Article 17, for example, may also be exercised at European level. Accordingly, there is no need to add a sentence to this effect to the Article. By way of illustration - and in connection with the right to form and join trade unions in Article 17 - reference may be made to Article 5 ESC which explicitly includes the right to set up international organisations of employers and workers. It raises the question, however, of whether an addition on these lines might be necessary for more articles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 34

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 34 to read:

Employers or employers' organisations and workers or workers' organisations have the right, where appropriate under the conditions laid down by national legislation or European Union rules, to negotiate and conclude collective agreements, including at European Union level.

The right to take collective action shall apply in cases of conflicts of interest and shall include the right to strike where all other means fail. This right may be restricted by the right of requisition where the public interest so requires, but that restriction must be laid down by law.

Reasons:

- 1. The separation of the article into two subparagraphs makes the text clearer.*
 - 2. Recognition of the above rights does not give the Community any powers to harmonise provisions governing the exercise of the right of association and the right to strike. Article 137(6) of the EC Treaty specifically excludes Community harmonisation in this area. Nonetheless, the inclusion of such a right gives full force to Article 138 of the EC Treaty, which provides that the Community shall promote the consultation of management and labour at European level.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 34

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 34 to read:

- 1. Workers and employers have the right to negotiate and conclude collective agreements, including at European Union level.**
- 2. In cases of conflicts of interest, workers and employers have the right to take collective action including the right to strike to defend their economic and social interests, including at European Union level.**

Reasons:

In the interests of clarity, a distinction should be made between the right to negotiate collective agreements and the right to take collective action to defend one's economic and social interests.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 46

Employers and workers have the right to negotiate and conclude collective agreements and the right to transnational freedom of association.

Workers have the right, in cases of conflicts of interest, to take collective action, including at Union level, which also comprises the right to cross-border solidarity action and strikes.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Guy Braibant

Proposed text:

Employers and workers have the right, at all levels, to negotiate and conclude collective agreements and to take collective action, including strike action, in cases of conflicts of interest, to defend their economic and social interests under the conditions laid down by national and Community legislation and practice.

Reasons:

This amendment refers to the freedom to take strike action, which is recognised in the laws of all the Member States. The specific reference to 'national and Community legislation and practice' enables the Member States and the Community to set the limits for the exercise of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 34: Rights of collective bargaining and action

Submitted by: Piero Melograni

Proposed text:

Add the words '**and Union**' after the word '**national**'.

Reasons:

The proposed amendment includes in the provisions any direct responsibilities which the Union may in future take on in respect of collective bargaining and action.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Insert, after the words 'collective action', the words 'including the exercise of the right to strike,'

Reasons:

The right to strike should be recognised nowadays at European level.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Jean-Luc Dehaene, representative of the Belgian Government, and Karel De Gucht and Roger L'Allemand, representatives of the Belgian Parliament

Proposed text:

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action to defend their interests.

Reasons:

The phrase ‘in cases of conflicts of interest’ has been deleted. It should be possible to take collective action even if such a conflict does not exist.

The adjectives ‘economic and social’ qualifying ‘their interests’ must be deleted because they place an undue restriction on negotiations and action.

The rest of the sentence has been deleted. The reference to ‘European Union level’ is unnecessary and the reference to the conditions of implementation laid down by national legislation and practice does not belong here. Implementing provisions are already contained in the horizontal clauses.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34.

Submitted by: Andrew Duff MEP

Proposed text:

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of *primary* conflicts of interest (*delete 8 words*) at European Union level (*delete 10 words*)

Reasons:

The inclusion of the qualification ‘primary’ is necessary to exclude secondary action. The exclusion of the two other phrases is intended to avoid the obvious and to suppress needless repetition, respectively, as well as to emphasise the intended focus on the EU.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 34. Right of collective bargaining and action

Employers and *workers' organisations* have the right to negotiate and conclude collective agreements. *Workers* have the right to take collective action, *including the right to strike*, to defend *and promote* their *material and moral* interests.

Reasons:

Employers negotiate either individually or collectively, but always with workers' organisations. Due account should be taken of this in the structure of the text.

Workers take collective action not only to safeguard acquired rights, but also to promote their interests.

The structure of this article should highlight the fundamentally unbalanced relationship between employers and workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Pervenche BERÈS

Proposed text:

Employers and workers have the right to negotiate and conclude collective agreements. In cases of conflicts of interest, *employees have the right to take collective action to defend their material and moral interests, including strike action.*

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 34****Submitted by: Ieke van den Burg****Proposed text:****Title: Right of association, collective bargaining and collective action**

Employers and workers have the right of association in order to constitute employers' organisations and trade unions for the defence of their economic interests, including at European Union level. Employers or employers' organisations and workers' organisations have the right to negotiate and conclude collective agreements, including at European Union level. Workers and their organisations have the right to take collective action, including the right to strike, in one or more EU Member States, including at EU level, in cases of conflicts of interest, and to support others in solidarity actions.

Reasons:

- *It is necessary to start with the right of association in this article, since it is essential that organisations of employers and workers have the right to negotiate and conclude collective agreements;*
- *The formula about the defence of their economic interests (stemming from art. 11 of the Community Charter) should be linked to the right of association and not to qualify the collective action;*
- *The right to take collective action is a workers' and a trade unions' right;*
- *This right should be respected and guaranteed across borders in all EU member states (be it in all or in only some of these states);*
- *The right should also include solidarity actions;*
- *The right to strike should explicitly be mentioned.*

In the Reasons reference should be made not only to the ECHR, article 5 RESC and the Community Charter, but also to ILO Conventions 135 (not ratified by Belgium and Ireland) C 87 and C 98, ratified by all EU member states!!

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

The text should specify that the right to negotiate and the right to take collective action apply **'under the conditions laid down by rules established in national law or collective agreement, by custom or practice.'** See amendment to Art. 31.

The phrase **'including at European level'** should also be deleted. The right to negotiate at EU level can be included in a separate paragraph 2 with the same wording as Article 139(1) of the EC Treaty: **'Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.'**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Editorial improvement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Heinrich NEISSER

Proposed text:

- Article 34. Rights of collective bargaining and action

Under the conditions laid down by national legislation and practice, employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, ~~under the conditions laid down by national legislation and practice.~~

Statement of reasons

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. [...] The concept of collective action includes, amongst other things, the right to strike and the right to impose a lockout.

Reasons:

It should be made clear in Article 34 that the right to take collective action likewise exists only under the conditions laid down by national legislation and practice. It should also be made clear that the concept of ‘conflicts of interest’ relates only to labour disputes and not to general political conflicts .

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 34. Right to health protection

Everyone has the right to protection of his health. To enable this right to be exercised, the Union shall ensure, above all, that everyone has access to medical care and shall take measures to guarantee consumer protection and protection of natural conditions of life.

Reasons:

Article 34 incorporates the substance of the Praesidium's proposals for Articles 42, 44 and 45. It is intended to ensure that the Union does not infringe these rights which are predominantly guaranteed by the Member States. It also sets out an objective norm, against which EU action may be measured and which is already contained in the Treaties (Articles 3, 152, 153 and 174 of the EC Treaty). The right to health protection, a healthy environment and consumer protection is also contained in a large number of international conventions recognised by the Member States (e.g. UDHR Article 25, ICESCR Article 12 and ESC Article 11), and in the national constitutions (e.g. Belgium Article 23, Finland § 15a, Italy 21(3) and Article 38, Luxembourg Article 11, Netherlands Article 22, Portugal Articles 64 and 66 and Spain Article 43).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34 (new)

Submitted by: Johannes Voggenhuber

Proposed text:

Everyone has the right to adequate and suitable housing.

Reasons:

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Article 34 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 34

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 34:

Article 34a. Right to a fair remuneration and to equal treatment

1. Every worker has the right to a fair remuneration for work carried out, such as to give him or her a decent standard of living.
2. Every worker has the right to a fair remuneration for work of equal value.
3. Equal treatment for men and women shall be ensured, inter alia by means of positive action, in respect of working conditions, work relations and the social protection system.
4. All non-EU nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers.

Reasons:

Paragraph 1 of this new article is based on Article 4 of the Social Charter and Article 5 of the Community Charter of the Fundamental Social Rights of Workers, paragraphs 2 and 3 are based on Article 141 of the Treaty, while paragraph 4, which takes over the substance of Article 40 of this Charter, with a view to ensuring comprehensive coverage of this area.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 34a (new)

Submitted by: Pervenche BERÈS

Proposed text:

Article 34a. Minimum wage

Every worker has the right to a minimum wage, in keeping with the economic and social situation in each Member State.

Reasons:

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Article 35

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest periods and annual leave

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35: Right to rest periods and annual leave

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Alternative proposal (if the above is rejected)

Every worker has the right to limitation of maximum working hours, to *appropriate* rest periods and to an annual period of paid leave.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

With the aim of incorporating in the European Charter of Fundamental Rights only rights which are genuinely fundamental, labour-law entitlements should be governed by secondary law instead. If Article 46 is to be retained, and bearing in mind that entitlements are subject to regular change, the reference to ‘daily and weekly’ rest periods ought at the minimum to be deleted from the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 35****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to reasonable working times****(NB : and change in reference: should be referred to article 2 of the Revised Social Charter****Reasons:**

This title covers the content of the article that not only refers to rest periods and annual leave, but also to reasonable daily and weekly working hours to be maximized.

Important: The Reasons should refer to article 2 of the Revised Social Charter. This refers a.o. to a minimum of four weeks' holiday, and to the Sunday rest.

A reference could also be included to point 8 of the Community Charter on Fundamental Social Rights for Workers which provides a precise formulation of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 35

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed title:

Article 35: *Reasonable hours of work, rest periods and annual leave*

Reasons:

The title should be made to reflect the nature of the article, which is a directive. Accordingly, the words 'Right to' need to be deleted from the title. Furthermore, and in accordance with the text of the next amendment, the words 'Reasonable hours of work' also need to be included in the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall take measures so that reasonable daily and weekly hours of work are defined and workers can have a weekly rest period which shall, as far as possible, coincide with the day which, through tradition or custom, is recognised as a day of rest in the Member States, and may be entitled to an annual period of paid leave.

Reasons:

This wording is more in line with Article 2, introduction and paragraphs 1 and 5, of the Revised European Social Charter, while the substance of the Article is made more precise.

The wording ('The Union shall take measures...') also better expresses the nature of this article, which is concerned with principles, that the Praesidium's proposal which refers to a 'right'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 35

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 34 to read:

Every worker has the right to just conditions of work, which shall include limitation of maximum working hours, daily and weekly rest periods and an annual period of paid leave.

Reasons:

1. *To make the article clearer.*
 2. *Article 2 of the Revised Social Charter defines the term 'just conditions of work'.*
 3. *Sometimes major differences may exist between one Member State and another and even one sector and another in determining exactly what 'just conditions' may or should be.*
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-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest periods and annual leave

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of rights”:

Every worker has the right to a weekly rest period and to an annual period of paid leave.

For Part B, “Definition of rights”:

The right in Article 35 extends so far as is required by the relevant secondary legislation adopted by the Community under Article 137(1) of the Treaty Establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

I do not accept that a “general right to limitation of maximum working hours” currently exists and it is therefore inappropriate for this document. The article as drafted fails to take account of the provisions of the Working Time Directive whereby workers can choose to work in excess of 48 hours per week limit provided for in the Directive. This is subject to a review in 2003 but to include it here would pre-empt the outcome of that review. My wording more accurately reflects the current position under the Directive including the excluded areas.

As always, having a clear ‘Definition of Rights’ which ties the right to a precise legal source is an essential requirement for me to accept the short Part A statement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Right to rest periods and annual leave

Every worker has the right to limitation of working hours, to appropriate rest periods and to an annual period of leave with no loss of pay.

Reasons:

Again, it would be better to replace the term 'entitled' with 'right' and to leave out the word 'maximum'. Moreover, the concept of 'daily and weekly rest periods' is too restrictive and detailed; the flexible phrase 'appropriate rest periods' is better.

The phrase 'annual period of paid leave' should be replaced with the phrase 'annual period of leave with no loss of pay.' This makes it possible to avoid any misunderstanding that holiday pay should be granted as a fundamental right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Einem/Holoubek

Proposed text:

Every worker has the right to *effective* limitation of maximum working hours, to *adequate* daily and weekly rest periods and to an *appropriate* annual period of paid leave.

Reasons:

In order to make clearer and more comprehensible to the citizen what this article guarantees, it should be specifically stated that the restriction on maximum working hours should be controlled by appropriate measures in such a way as to be effective. It should also be specifically stated that the daily and weekly rest periods should fulfil their objectives adequately, and the length of the period of paid annual leave should be appropriate.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Andrew Duff MEP

Proposed text:

Article 35. Right to rest periods and annual leave

Every worker has the right to *limited* working hours, to daily and weekly rest periods and to an annual period of paid leave.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest periods and annual leave.

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Insert the word 'weekly' before the words 'working hours'.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 35

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 35 to read:

1. Every worker has the right to daily and weekly rest periods and to an annual period of paid leave, and may not waive that right.
2. The maximum length of the working week shall be established by the competent legislative body.

Reasons:

The proposed amendment recasts the Praesidium's text and is intended to make a clear distinction between the right of workers to daily and weekly rest periods and annual leave and the guarantee that the maximum length of the working week shall be laid down by law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Johannes Voggenhuber

Proposed text:

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave of at least 4 weeks.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Win Griffiths, MP

Proposed text:

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to annual paid leave as established in the law of Member States.

Reasons:

The right to rest periods is the earliest recorded right but its implementation, if included in the Charter needs proper clarification in Part B.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Pervenche BERÈS

Proposed text:

Article 35. Right to rest periods and annual leave

- 1. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.**
- 2. Every hour of work beyond the maximum working hours confers a right to increased pay.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest and annual leave

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Every worker has the right to limitation of maximum working hours (*six words deleted*) and to *paid annual leave*.

Reasons:

Maria Eduarda Azevedo prefers a more general wording, i.e. deleting the reference to daily and weekly rest periods.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Editorial improvement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 35 Right to rest periods and annual leave

**Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and
Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament**

This amendment applies only to the DUTCH version of Amendment 35.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Amendment to: Article 35

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 35. Right to education

- (1) **Everyone has the right to education and the right of access to vocational and continuing training, as well as lifelong learning. This right includes the right to receive free compulsory education.**
- (2) **The founding of educational establishments shall be free of constraint.**
- (3) **The right of parents to have their children educated and taught in accordance with their religious, philosophical and educational convictions shall be respected.**

Reasons:

Article 35 takes over much of the Presidium's proposed wording for Article 16 (Convent 28) and incorporates it in the social provisions for organisational reasons. Given that the right to education – linked to the duty to attend school – is recognised in all Member States and contained in the ECHR (Article 2 of the additional Protocol), there is no need to provide a specific justification for this right which has not given rise to any controversy in the Convention. Given that the EC has certain responsibilities in this area under Articles 149 and 150 of the EC Treaty, fundamental rights must be guaranteed. The additional 'right to lifelong learning' is a universally recognised principle and is necessary for all individuals as a result of technical innovation. The Lisbon European Council described lifelong learning as 'a basic component of the European social model'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35 (new)

Submitted by: Johannes Voggenhuber

Proposed text:

Everyone has the right to earn a living by means of freely chosen or accepted work.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 35****Submitted by: Johannes Voggenhuber****Proposed text:****New Article 37****Reasons:**

Article 36

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be deleted or, otherwise, that it be included in a chapter devoted to principles.

Reasons:

See the reasons for the amendment to Article 31 (first paragraph).

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and healthy working conditions

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36: Safe and healthy working conditions

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The substance of the article is already covered by the right to physical integrity.

As labour-law entitlements are subject to regular change, and with the aim of incorporating in the European Charter of Fundamental Rights only rights which are genuinely fundamental, such entitlements should be governed by secondary law instead.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

(Every worker has the right to safe and healthy working conditions.)

Reasons:

This article, however ideal, will not be possible to be fulfilled or guaranteed by the Union. The EU can hardly guarantee the right to safe and healthy working conditions, which would mean that most day-care centres and building sites must be closed down. This would mean that the article becomes meaningless and that might put the whole Charter in jeopardy.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 36

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Safe and healthy working conditions

Reasons:

The title is brought in line with the wording of the article following adoption of the next amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall take measures to implement safe and healthy working conditions.

Reasons:

This wording ('The Union shall take measures...') better reflects the nature of this article, which is concerned with a question of principle, than the Presidium's proposal which refers to a 'right'. Moreover, the phrase 'right to safe and healthy working conditions' is too vague,. The amendment therefore includes the more accurate and specific wording 'safe and healthy working conditions'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and health working conditions

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the follow two-part text:

For Part A, “Proclamation of Rights”:

Every worker’s right to safe and healthy working conditions is protected by law.

For Part B, “Definition of Rights”:

The right in Article 36 extends so far as is required by the relevant secondary legislation adopted by the Community under Article 137(1) of the Treaty establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

As worded, the right is too general. But I accept the general thrust of this article as long as it can be made to reflect Community legislation accurately. My draft seeks to do this.

In particular my draft defines the content of this right by reference to existing law. I would not regard it as acceptable to have a right expressed in purely general terms.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Win Griffiths, MP

Proposed text:

Every worker has the right to safe and healthy working conditions as established in the law of Member States.

Reasons:

This article if included in the Charter, requires clarification in Part B.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Brings the article more in line with Article 3 of the European Social Charter

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 36

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 36 to read:

Every worker has the right to safety and health protection at work.

Reasons:

- 1. To make the article clearer.*
 - 2. The existence of preventive measures are implicit in the notion of health protection. That notion covers more than just the adoption of measures aimed at preventing working practices or conditions from damaging the health of workers. Furthermore, this is the notion used in Directive 91/533.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 36. Safe, healthy *and hygienic* working conditions

Every worker has the right to safe, healthy *and hygienic* working conditions.

Reasons:

Hygiene at work is a well established concept in the workplace and there are many different national provisions on the subject. This is additional to the concept of health at work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Mr François Loncle

Proposed text:

Every worker has the right to safe and hygienic working conditions.

Reasons:

The term 'hygienic' is more in keeping with Article 3 of the revised Social Charter.

Translator's note: 'Hygiène' is the term used in the French version of the European Social Charter. The English version actually refers to 'safe and healthy working conditions'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 36****Submitted by: Ieke van den Burg****Proposed text:****Every worker has the right to safe and healthy working conditions and to protection of his/her dignity at work****Reasons:**

Not only physically relevant protection, also protection against (sexual) harassment, aggression etc are important. The addition of this article is based on art. 26 of the RESC..

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Pervenche BERÈS

Proposed text:

Every worker has the right to *safety and protection of his health and hygiene at work. Industrial accidents and occupational diseases confer the right to social benefits and compensation.*

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and healthy working conditions

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Reword the existing text as follow:

1. “Every worker has the right to safe, hygienic and healthy working conditions and to conditions of work that are not detrimental to his physical and mental wellbeing and his private life’.”

Add the following paragraph:

2. “Any worker who sustains an industrial injury or contracts an occupational disease may apply for recognition of his disability or invalidity and for financial compensation.”

Reasons:

The aim is to highlight the protection of conditions of work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Johannes Voggenhuber

Proposed text:

1. (as original)

2. (new) Workers have the right, in cooperation with the management of the undertaking, to assess safety and working conditions in the undertaking and to request their improvement.

3. Everyone who suffers an industrial accident or industrial disease has the right to adequate social compensation.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 36. Right to safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Reasons:

The new wording [which does not affect the English version] (changing the German 'Anspruch' to 'Recht') seeks to standardise the way in which social rights are formulated.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Articles 36, 37 and 39 (to be combined)

Submitted by: Jo Leinen

Proposed text:

1. Every worker has the right to healthy and safe working conditions.

2. Young people, pregnant women and those with children to bring up have the right to special protection. This right includes, in particular, the right to maternity leave and parental leave with the aim of reconciling family life and employment. It also includes the right of young people to working conditions appropriate to their age and stage of development.

(Also incorporate in the statement of reasons/Part B the following text from Article 37 of the Praesidium proposal:)
The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to *certain* derogations.

Reasons:

In order to streamline the Charter, Articles 36, 37 and 39 should likewise be combined, as they deal with closely related matters. The special protection of young people, pregnant women and those with children to bring up is taken, in this form, from Prof. Meyer's draft. The specific restriction for young people (former Article 37) is transferred to the statement of reasons, in line with the Praesidium's proposals for other articles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 38

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 36. Right to housing

The right of individuals to adequate housing shall be respected.

Reasons:

Article 36 gives the right to housing EU recognition. This means that the obligations on the Member States under international law regarding the right to housing (e.g. UDHR Article 25(1), ICESCR Article 11, UN Convention on the Rights of the Child Article 27(3) and EC Article 31 rev.) may not be jeopardised by the Union. The right to housing is also mentioned explicitly in the constitutions of many Member States (Belgium Article 23, Finland § 15a, Greece Article 21(4), Portugal Articles 22(2) and 65, Sweden Chapter 1 § 2 and Spain Article 47) and implicitly in others (Germany Articles 1, 13, 14 and 20). This right is also recognised in the constitutions of the German Länder (e.g. Bavaria Article 206(1), Brandenburg Article 47 and Saxony-Anhalt Article 47).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and healthy working conditions

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Clarify the implications of this article.

Reasons:

It must be explained, preferably in a part B of the Charter, who the addressee of this article is. Under Swedish legislation an employee cannot hold his/her employer responsible before a national court for violations of Swedish law in this field. Such initiatives are reserved for the competent authorities.

Article 36 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 36a (new article after Article 36)

Submitted by: Mr François Loncle

Proposed text:

Every worker has the right to professional training throughout his working life.

Reasons:

This amendment is intended to rectify an omission.

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Article 37

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

This question is very important. However, there already exists a directive in this matter (94/33/EG) and this is sufficient for the protection of youths in employment situations.

There is a need to distinguish between what should be put in a Charter, which will eventually become a constitution, and what can be regulated with directives and secondary law. Not every regulation can be raised to constitutional level.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37: Protection of young people

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Alternative proposal (if the above is rejected)

The Community shall seek to ensure that a minimum age of admission to employment is laid down which is not lower than the minimum school-leaving age

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The provision is complex, particularly as regards the exceptions permitted, and is already too detailed. Moreover, it relates only to employment. Its proper place, therefore, is secondary law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 37. Protection of young people****Submitted by: Mr Georges BERTHU, MEP****Proposed text:****Delete this article.****Reasons:**

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 37

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed title:

Protection of children and young persons with regard to the labour process

Reasons:

This Article is concerned solely with the protection of children and young persons with regard to the labour process. A provision on the protection of children in general is already contained in Article 23. Furthermore, and by analogy with Article 7 of the Revised European Social Charter, the term 'children and young persons' is preferred to 'young people'. The amendment seeks to change the title of the article accordingly.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Win Griffiths, MP

Proposed text:

The minimum age of admission to full time employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people.

Reasons:

This text is more concise and Part B can give a full explanation of its implementation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age.

Young people admitted to work must have working conditions appropriate to their age.

Reasons:

This article should be restricted to the important principle that admission to employment must not be permitted before the end of compulsory schooling. A list of exceptions is inadvisable because it may appear exhaustive .

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 37, first subparagraph

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text:

After 'minimum school-leaving age', insert 'nor, under any circumstances, fifteen years of age,'.

Reasons:

The rule banning work by children under fifteen years of age can, for example, free up more casual jobs for students and others.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

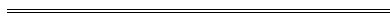
Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Free compulsory education shall be granted at least until the minimum age for entering the labour process. This age may not be less than fifteen, with the exception of certain forms of light work permitted by law for a maximum period of eight (?) hours per week.

Reasons:

Guarantees of the right to education are given priority. This stresses the guarantee nature of the article and cuts out the possibility of setting the two age limits at too low a level; the present text does not preclude this. The amendment also holds out the possibility of part-time compulsory education for young people in employment provided they are at least fifteen years old.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Pervenche BERÈS

Proposed text:

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training (*9 words deleted*).

Young people admitted to work must have working conditions which suit their age.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

1. **The minimum age of admission to employment must not be lower than fifteen years, subject to exceptions for light work which shall be defined elsewhere and which is not harmful to the health, mental well-being or development of the child.**
2. **In accordance with Article 17 of the Revised European Social Charter, the Union shall work towards a situation where working conditions of persons under the age of 18 are in line with their development.**

Reasons:

In the first place this amendment numbers the different parts of the article.

The wording of the first paragraph of the amendment has been brought more in line with Article 7(1) of the Revised European Social Charter (ESC). Accordingly, the phrase 'the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training' is replaced with 'fifteen years'. Preference has been given to a text closer to the Revised ESC than that of the Community Charter, because the Revised ESC is a legally binding instrument with an adequate supervisory mechanism which has already generated a respectable body of case law in respect of the 1961 ESC. It is advisable not to run counter to practice - the risk of which increases the more the wording departs from that of the Revised ESC.

Furthermore, the reference to 'the minimum school-leaving age' is not clear, because it can vary from one Member State to another. Stating the age of 15 ensures that a standard which is clear to everyone is laid down. The reference to rules on 'preparation for work through vocational training' is superfluous in the light of paragraph 2 of the amendment.

The purpose of the second paragraph of the Presidium's proposed text is to adapt labour legislation rules for working young persons to the requirements of their development and the needs of their vocational training. Here, too, a wording is proposed for the second paragraph which in terms of substance has the same effect as the Presidium's proposal but which is linked more clearly to the relevant provisions in the ESC. For the sake of brevity, the text of Article 7 of the Revised ESC is not included verbatim; instead, there is a reference to it.

The wording of the second paragraph ('...the Union shall work towards...') better puts across the nature of this Article, which is concerned with a principle, than the Presidium proposal.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

New Article 40

The minimum age of admission to employment must not be lower than the minimum school leaving age without prejudice to such rules as may be more favourable to young people, in particular (7 words deleted) in regard to vocational training and subject to derogations limited to certain light work.

Young people admitted to work have the right to have working conditions which suit their age.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 37****Submitted by: Ieke van den Burg****Proposed text:****Title: Protection of children and young persons**

1. as proposed
2. **Children and young people admitted to work have the right to working conditions which suit their age, protect their safety and health, and encourage the full development of their personality and of their physical and mental capacities.**

Reasons:

The amendment also refers to children, and extends the protection in the second part with the essential notion of art. 17 of the RESC of a responsibility with respect to a healthy development of children and young persons..

This would be the appropriate place for a reference to the UN Convention on the Rights of the Child, which has been ratified by all Member States; and ILO Conventions 182 and 138 dealing with the worst forms of Child Labour and Minimum Age.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37. Protection of young people

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the follow two-part text:

For Part A, “Proclamation of Rights”:

The minimum age of employment must generally not be lower than the minimum age at which compulsory full-time schooling ends.

Young people under 18 years of age are entitled to working conditions which suit their age and to be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.

•

For Part B, “Definition of Rights”:

The right in Article 37 extends so far as is required by the relevant secondary legislation adopted by the Community under Article 137(1) of the Treaty establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

I agree that it is important to protect the interests of young people in the workplace. It is very important to tie the Charter wording into the Young Workers Directive and I do not believe the Praesidium’s text goes far enough in this direction. It does not for example prevent the economic exploitation of young workers or the protection of their health and safety and needs to be strengthened. My amendment seeks to do this. The Praesidium text recognises the need for young people to be able to undertake work as part of vocational training and subject to limitations in the directive. This is covered through my part B text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 37, second subparagraph

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text:

Young people admitted to work must have working conditions which suit their age *and be protected in particular against all types of work that may jeopardise their safety, health, personal, psychological, moral or social development or their education.*

Reasons:

The special working conditions required by young people need to be spelled out, and limits need to be set in this area.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37. Protection of young people

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

At the end of the existing text, insert the following sentence: 'They shall be subject to specific safeguards to protect them against hazards that might affect their health and their physical and mental development'

Reasons:

The aim is to ensure greater protection for minors in employment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 37. Protection of young people.

- in the first paragraph, delete ‘and subject to derogations limited to certain light work’.
add the following: *‘Young people under 18 years of age must have working conditions which suit their age and be protected against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.’*

Reasons:

This amendment reintroduces the former, more explicit wording contained in Convent 18.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Einem/Holoubek

Proposed text:

Protection of young people *in the workplace*

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions *and a level of protection in the workplace* which suit their age.

Reasons:

The title should describe the content of the article more precisely. No amendment is proposed to the first paragraph. The amendment to the second paragraph is intended to make clear that the aim of this provision is to protect young people in the workplace.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 37: Protection of young people

Submitted by: Piero Melograni

Proposed text:

Reverse the order of the two paragraphs.

Reasons:

This amendment places the emphasis on the general principle of the type of working conditions to be provided for young people. The stipulation of the minimum age for admission to employment then establishes the scope for application of that general principle.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Andrew Duff MEP

Proposed text:

Article 37. Protection of young people *at work*

The minimum *working age (delete 4 words)* must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I would propose that the phrase ‘**and cultural activities**’ be added to paragraph 1.

Reasons:

This is based on Council Directive (94/33/EC) on the protection of young people at work.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 37. Right to social security

Everyone has the right to social security and to access to social services for himself and his family with a view to leading a life guaranteeing respect for human dignity, in particular in the event of maternity, illness, dependence or old age.

Reasons:

Article 37 is both more specific than the Presidium's proposal (Article 41, Convent 34) and more concise. The specific reference to leading a life guaranteeing respect for human dignity is contained in the constitutions of the Member States (Belgium Article 23, Denmark § 75(2), Finland § 15a, preamble to the 1946 French Constitution, Greece Article 21(3), Italy Article 38, Luxembourg Article 11, Netherlands Article 20, Portugal Article 63, Sweden Chapter 1 § 2 and Spain Articles 40, 41 and 50), the constitutions of the applicant countries (Poland Article 67, Slovenia Articles 50 and 66 and Hungary Article 70e), the constitutions of the German Länder (e.g. Brandenburg Articles 45 and 47, Mecklenburg-West Pomerania Articles 17(2) and (3), Saxony Article 7 and Saxony-Anhalt Article 40) and international treaties (UDHR Articles 3 and 25, ICCPR Article 6¹, ICESCR Article 11, ESC Articles 12, 13 and 14, CCFR § 10 and ILO Convention No 102).

¹ On the interpretation of this article, see General Comment 6 of the UN Human Rights Committee in UN Doc HRI/GEN/1/Rev.2, para 5.

Article 37 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 37a new****Submitted by: Ieke van den Burg****Proposed text:****Title: Gender equality**

In the perspective of obtaining substantial equality between men and women and of combating structural inequality, women have the right to enjoy positive measures particularly in the field of employment, working conditions, fair and equal pay, social security and pension rights.

Reasons:

In addition to the general anti-discrimination article, proposed by the Presidium in art. 22 , it is crucial to make an explicit statement of the right of women to enjoy "positive action" to be able to really obtain equality in the sphere of employment, pay and social security.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 37a (new)

Submitted by: Pervenche BERÈS

Proposed text:

Article 37a. Protection of the elderly

All elderly persons have the right to lead an independent and decent life. They should be able to participate fully in political, social and cultural life.

All workers and their dependants have the right to a pension guaranteeing a decent standard of living and independence.

Reasons:

Article 38

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38: Right to protection in cases of termination of employment

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Alternative proposal (if the above is rejected)

All workers have a right to protection against *arbitrary* termination of employment.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

In view of the numerous interests which have to be weighed against one another in cases where employment is terminated, protection against termination of employment is not a matter which ought to be dealt with by instituting a fundamental right. In view of its complexity, it should be dealt with by secondary law instead.

As an alternative, it should be stressed that in order to ensure respect for human dignity, protection against arbitrary termination of employment is necessary.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 38. Right to protection in cases of termination of employment****Submitted by: Lord Goldsmith QC****Proposed text:***Delete all***Reasons:**

The Article as drafted provides for a general and unqualified right which goes well beyond existing law. In principle, the UK accepts the need to protect workers against unjust terminations and has adopted legislation to implement protections including in the specific areas required by certain Directives, for example in the areas of acquired rights, health and safety at work, equal treatment, pregnancy and maternity and collective redundancies. But the text proposed goes well beyond the present legislation at EU level requiring protections in these specific instances and seeks to introduce a general right where none currently exists. If such legislation is to be introduced it should be done through the relevant part of the TEC (Article 137(3)) and discussed in that context.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment.

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Delete this text.

Reasons:

Under Swedish legislation termination of employment on 'unjustifiable grounds' is prohibited and the meaning of the term 'unjustified' is wider than in the European Social Charter. The problem with the current draft article is that there is no generally accepted definition of the term 'unjustified'. It cannot be left to the ECJ to interpret that term.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 38

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed title:

Protection in cases of termination of employment

Reasons:

The title should be brought in line with the nature of the article which is a directive. Accordingly, the words 'right to' should be deleted from the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall work towards employers being afforded effective protection against unjustified termination of employment.

Reasons:

The amendment seeks a closer link with Article 24 of the Revised European Social Charter.

Furthermore, the wording ('The Union shall work towards...') better expresses the nature of this article, which is concerned with a principle, than the Praesidium text which refers to a 'right'

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Andrew Duff MEP

Proposed text:

Article 38. *Protection against unfair dismissal*

Everyone has the right to protection against arbitrary termination of employment.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 38: Right to protection in cases of termination of employment

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT, representative of the Belgian Parliament

Proposed text:

All workers have a right to protection against arbitrary termination of employment.

Reasons:

The principle obtaining under Belgian law is that employers are not obliged to give any justification for termination of employment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 38

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 38 to read:

Article 38. Right to job protection

All workers have the right not to be dismissed without good cause.

Reasons:

The proposed wording couches in positive terms the worker's right not to be dismissed unjustly or unlawfully.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Charlotte Cederschiöld

Proposed text:

All workers have a right to protection against termination of employment with justifiable cause.

Reasons:

In this Article, we would like to change the English words "unjustified" and "abusive" to the English equivalent of the Swedish "saklig grund" or the German "sachliche gesetzliche Grund".

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment. *Protection of workers in the event of collective dismissals shall be guaranteed.*

Reasons:

Specific provision must be made for protection in the event of collective dismissal which is practiced for economic reasons and is particularly harmful to workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. All workers have a right to protection against unjustified or abusive termination of employment.
2. *Collective termination of employment for economic reasons lacks any objective foundation and confers entitlement to compensation.*

Note: cf. Directive on collective termination of employment

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Pervenche BERÈS

Proposed text:

Article 38. Right to protection in cases of termination of employment

- 1. All workers have a right to protection against unjustified or abusive termination of employment.**
- 2. All workers have a right to compensation in the event of termination of employment and reparation in the event of abuse of termination of employment.**
- 3. Workers in a company with high profit margins shall be protected against mass redundancy measures.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 38****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to protection against unfair dismissal**

Every worker has the right to information about the conditions applicable to his/her contract or employment relationship and to protection against unjustified, abusive, or discriminatory termination of employment. Pregnant workers and workers enjoying maternity and parental leave, as well as trade union and workers' representatives have the right to a temporary prohibition of termination or employment. Every worker has the right to protection of his/her claims in case of insolvency of his/her employer

(NB additional references necessary!!)**Reasons:**

The amendment broadens the article, by adding the right to information about the employment Contract, as contained in Directive 91/533 of October 1991, and in article 2,6 of the Revised Social Charter. This is necessary to be sure that the protection against unfair dismissal may function adequately.

In the original protection against unfair dismissal also "discriminatory" reasons for termination of employment have been added, as well as the prohibition of dismissal for certain categories of workers. For a more elaborate qualification of invalid vs. valid reasons of termination of employment, I propose to refer to ILO Convention 158.

Protection in case of insolvency has been added, and should be referred to RESC art 25, ILO convention 173, and EC Directive 80/987.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words 'unjustified or abusive' with the words 'unjustified, abusive or discriminatory'.

Add the following sentence: 'They shall have a right to apply to the courts'.

Add the following paragraph:

2. It shall be unlawful to dismiss pregnant women and women on maternity leave.

Reasons:

Workers may not be dismissed without due cause, and workers may appeal to the courts on the basis of the grounds for and conditions of their dismissal.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against arbitrary or abusive termination of employment.

Reasons:

The proposed wording is based on the Presidium's Statement of Reasons which seeks to make this article provide protection against arbitrary redundancy. 'Abusive' termination of employment refers to dismissal as a result of exploiting a formal legal position.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Heinrich NEISSER

Proposed text:

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment.

Statement of reasons

This Article simply provides for protection against arbitrary termination of employment.

Reasons:

As the concept of termination of employment may possibly have different meanings under the law of the individual Member States, it should be made clear that all forms of premature termination of employment are covered here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 38. Right of migrant workers to equal treatment

Third country nationals and their families working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union citizens in respect of working conditions and social security.

Reasons:

Article 38 takes over much of the wording of the Presidium's proposed Article 40 (Convent 34), with the additional phrases 'and their families' and 'and social security'. The protection of migrant workers' families is one of the key issues in this area. This is why families are explicitly referred to even in the title of the UN Convention relating to the protection of migrant workers¹. This convention also contains more extensive rights for migrant workers, such as the right to social security (Article 27 of the Convention on Migrant Workers). Failure to incorporate these two additions would mean that the European Union would fall behind international standards which have been achieved as a result of laborious negotiations.

¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by UN General Assembly Resolution 45/158 of 18 December 1990.

Article 38 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 38 bis new****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to fair remuneration****Every worker has the right to a fair remuneration****Reasons:**

This article disappeared from the proposals of the Praesidium. Equal pay for work of equal value has become an element in the anti-discrimination article(s), but the concept of fair remuneration, as it is contained in RESC article 4, is an essential element of the fundamental social and economic rights, which should also be included in the EU Charter.

Article 39

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39: Right to reconcile family and professional life

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

From the systematic point of view, this article ought to be confined to the sphere of secondary law, and even there its formulation would be too ample. This right ought to be formulated in the light of the growing flexibility of the organisation of work and to take account of the interests of employers and the practical requirements of the individual work-place.

Protection of the family is already provided for in Article 13.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Jo Leinen

Proposed text:

Delete article.

Reasons:

See reasons for Articles 36, 37 and 39 – Article 39 is incorporated in Article 36 (new).

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 39

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Combining family and professional life

Reasons:

The title should be brought in line with the nature of the article which is a directive. Accordingly, the words 'right to' should be deleted from the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall work towards a situation where all workers can combine their family and professional lives. To this end the Union shall take measures to ensure an entitlement to maternity which shall at least satisfy the requirements of Article 8 of the Revised European Social Charter and an entitlement to appropriate parental leave following the birth or adoption of a child.

Reasons:

The wording of the two sentences ('The Union shall work towards a situation...' and '...the Union shall take measures...') better expresses the nature of this article, which is concerned with a principle, than the Praesidium text which refers to a 'right'.

Linking the duration of maternity leave to Article 8 of the Revised Social Charter guarantees a minimum period for such leave.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39. Right to reconcile family and professional life

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

1. All workers have the right to reconcile their family and professional lives (*29 words deleted*).
2. *Work within the family looking after children or elderly persons shall be considered as an occupation engaged in for the benefit of society.*

Reasons:

1. **It is unnecessary to list the specific means (maternity leave, parental leave, etc.) of reconciling family and professional life. The statement of principle is sufficient.**
2. *This article should not, however, be viewed solely from the point of view of people engaging in an occupation. It should also take account of people working within a family.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Win Griffiths, MP

Proposed text:

All workers have the right to reconcile their family and professional lives.

Reasons:

If this article is to be included in the Charter the rights referred to in the second sentence of the original text need to be properly considered in Part B.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 39****Submitted by: Andrew Duff MEP****Proposed text:****Article 39. *Parental rights******(Delete 17 words) Everyone has the right to maternity and paternity leave on the birth or adoption of a child.*****Reasons:**

The first sentence is incomprehensible

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39. Right to reconcile family and professional life

Submitted by: Lord Goldsmith QC

Proposed text:

Delete “All workers have the right to reconcile their family and professional lives.” Amend to produce the following two-part text: Right to maternity and parental leave

For Part A, “Proclamation of Rights”:

Every woman has the right to maternity leave before and/or after childbirth and all workers have the right to parental leave following the birth or adoption of a child.

For Part B, “Definition of Rights”:

The right in Article 39 is the right provided for in the provisions of Article 137 and of the relevant secondary legislation adopted by the Community, and is subject to the limitations and derogations specified in those provisions and in any national measures adopted to give them effect.

Reasons:

Protection in the fields of maternity and parental leave is important. However, the first sentence of this article is far too general and without foundation in existing EU legislation. There are currently no general rights recognising the right to reconcile family and professional life and their inclusion in this document is therefore unjustified and risks raising expectations which will not be met. My amendments seek to address these points.

The content of the right is again defined by the Part B text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 39: Right to reconcile family and professional life

Submitted by: Piero Melograni

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to protection of maternity before and after childbirth, with female workers being provided with working conditions appropriate to their condition, the right to maternity leave before and after childbirth and the right to parental leave *inter alia* in the event of adoption of a child.

Reasons:

The proposed wording includes in this article the right to protection of maternity, involving the provision of working conditions appropriate for workers who are pregnant, in accordance with Article 8 of the Revised European Social Charter. It also stipulates that maternity leave covers the period both prior to and after childbirth. Lastly, the replacement of the words 'following the birth or adoption of a child' with the words 'inter alia in the event of adoption of a child' breaks the direct temporal link between the granting of parental leave and the birth or adoption (under Directive 96/34, parents may take parental leave up until the child reaches eight years of age).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and after childbirth and the right to parental leave following the birth or adoption of a child.

Reasons:

*'Maternity leave before and/or after' is replaced with 'maternity leave before and after'.
By its very nature, an entitlement to maternity leave is required before and after childbirth.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

‘**and/or**’ should be replaced by ‘**in connection with**’ for the sake of clarity.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 39

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text:

Add the following:

Maternity and parental leave may, at the worker's own choice, be taken either in full or in part before the event giving entitlement to such leave.

Reasons:

For physical or psychological reasons, the time at which such leave needs to be taken can vary from worker to worker.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

New Article 42

Everyone with family responsibilities has the right to take or seek employment without thereby suffering discrimination, and to discharge his/her family responsibilities without jeopardising his/her employment or career.

All workers have the right to paid maternity leave of at least 14 weeks before and after the birth and the right to paternity leave of at least three months before the birth or adoption of a child.

Everyone has the right of access to paid childcare.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Pervenche BERÈS

Proposed text:

Article 39. Right to reconcile family and professional life

1. ***All individuals have the right to reconcile their family and professional lives. This right includes in particular the right of workers to paid maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.***
2. All individuals with family responsibilities have the right to engage in or apply for a job without being discriminated against and to exercise their family responsibilities without their job or career being jeopardised.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39 RIGHT TO RECONCILE FAMILY AND PROFESSIONAL LIFE

Submitted by: JORDI SOLÉ TURA

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave so that the mother and father can share the period during which the employment contract is suspended on maternity grounds.

Reasons:

The purpose of this amendment is to improve the wording and to prevent confusion between maternity leave and parental leave.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Einem/Holoubek

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and (*1 word deleted*) after childbirth, the right to parental leave following the birth or adoption of a child, *and the right to carer's leave.*

Reasons:

The word 'or', which leaves the question of whether the maternity leave should be granted before or after childbirth open, should be deleted. A suitable period before 'and' after the birth should be granted for the sake of the health of mother and child.

In addition to the rights contained in this article in the Presidency's version, a right to 'carer's leave' should also be specified. This right is one of the essential conditions for a family life based on partnership and for reconciling family and working life. From the point of view of the person needing care it is of fundamental importance that the care should be given by close family members. Carer's leave within the meaning of the proposed amendment covers care of close relatives in the case of acute illness that makes such care necessary. The necessity arises either from the seriousness of the illness or the particular needs of the family member, as in the case of a small child, for example.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 39****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to combine work and family responsibilities****Every worker has the right to reconcile family and professional life.****Every person with family responsibilities has the right to remain in or apply for employment without being discriminated against, and to carry out family responsibilities without prejudice to his/her job or career.****Every female worker has the right to maternity protection, including the right to paid maternity leave.****Every worker has the right to parental leave.****Reasons:**

"Combination of work and family responsibilities" is a more precise title.

Also for the content of the article more precise formulations are proposed on the basis of articles 8 and 27 of the Revised Social Charter and the EC directives.

(NB the right to parental leave does not only exist immediately following birth or adoption!)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 39. Level of protection

- 1. No provision of this Charter may be interpreted as restricting the protection guaranteed by European and national law and international agreements and treaties, with particular regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.**
- 2. For the purposes of interpreting the fundamental rights set out in this Charter, in particular economic and social rights, due account should be taken of those international agreements and treaties concluded by EU Member States.**

Reasons:

Article 39(1) takes over the wording of the Presidium's proposal for Article H 4 (Convent 27), which is preferable to the present version (Article 49, Convent 34), in which the level of protection has been lowered by the introduction of the condition that *all* Member States must, for example, have ratified an international convention.

Article 39(2) takes due account of the criticism often made in the Convention that social rights should not be set out in too much detail and that the interpretation of the Charter should be given a dynamic character. On this basis, I am proposing a practical approach to the third pillar of my three-pillar model. Paragraph 2 goes further than the Presidium's proposal by putting forward provisions on the interpretation of the rights contained in the Charter. The international protection of fundamental and human rights must be seen as a global system which has become clearer and more binding in the last 50 years. The reference to internationally established standards makes it possible to choose concise and comprehensible expressions without losing in legal clarity. Moreover, the provisions on interpretation of the Charter take account of the restrictions which certain states have introduced in the form of reservations, provided these are not contrary to the Vienna Convention on the law of Treaties.

Clearly, Article 39 also applies to agreements and treaties which will be concluded in the future (future developments clause).

Article 40

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40. Rights of migrant workers to equal treatment

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all.

Reasons:

The proposed draft right goes beyond existing rights. Whilst rights are enjoyed by the nationals of those countries which have entered into specifically negotiated association agreements with the European Union conferring those rights, there is no existing general right for third country nationals.

While the Community does have competence under Article 137(3) TEC to act in respect of "conditions of employment for third-country nationals legally residing in Community territory", this has not yet been exercised. The proposed Article 40 would therefore pre-empt the exercise of that power. If a general principle of equal treatment in employment is to be enshrined in Community law this should be done by means of a directive under Article 137(3) TEC.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40: Right of migrant workers to equal treatment

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

In case of doubt, the concept ‘working conditions’ is likely to be interpreted broadly, and as a result might confer rights on third-country nationals equivalent to those enjoyed by EC workers pursuant to Article 39 of the EC Treaty. Under these circumstances, Article 40 might give rise both to rights of residence and to rights to equal social and fiscal privileges.

However, the EU does not have sufficient powers to confer such rights; at most, it can regulate certain ‘conditions of employment’ pursuant to Article 137(3) of the EC Treaty. Moreover, there is a danger that restrictions for third-country nationals under the Treaties and association agreements might be rendered ineffective.

From the systematic point of view, moreover, a fundamental right which is conferred only on third-country nationals has no place in a Charter of Fundamental Rights which assigns rights either to everyone or to citizens of the Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 40. Right of migrant workers to equal treatment****Submitted by: Mr Georges BERTHU, MEP****Proposed text:****Delete this article.****Reasons:**

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Deleted.

Reasons:

There are several arguments against the Presidium's proposal. In the first place this clause does not seem 'worthy' of a Charter: secondary legislative provisions suffice. Secondly, existing differences in rules should not be undermined by a clause on a fundamental right. The risk is that restrictions on third-country nationals may be undermined by treaties and association agreements.

Thirdly, the Charter should not include any rights granted only to third-country nationals. A fundamental right granted only to third-country nationals has no place in a charter of fundamental rights concerned with rights for all or with rights for Union citizens.

Moreover, the wording leaves open the question of what rights might be granted to stateless persons from third countries. If the aim is to prevent 'wage dumping', the Charter is not the appropriate tool.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 40

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Delete article.

Reasons:

The substance of this article is included in the fourth paragraph of Article 34a on equal treatment of workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Andrew Duff MEP

Proposed text:

Article 40. *Rights of foreign workers*

Third-country nationals working lawfully *within* Member States *have the right* to treatment not less favourable to that of European Union workers (*delete 5 words*).

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 40****Submitted by: Ieke van den Burg****Proposed text:****Title: Right of workers from third countries and their families to equal treatment****Third country nationals working lawfully in the territory of the Member States, and their families, have the right to equal treatment in working conditions and regulations and provisions related to their status as a worker.****Reasons:**

The change in the title solves the inconsistency with the **Proposed text** of the Presidium.

The addition of "and their families" is in accordance with art. 19 of the RESC and with existing regulations and traditions in Member States.

The reference to working conditions is extended with one to regulations and provisions that are related to workers, and do also apply to third country nationals.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 40. Right of migrant workers to equal treatment

The Union shall take measures to ensure that third-country nationals working lawfully in the Union are not treated less favourably than citizens of the Union in respect of the rights referred to in Articles 32 to 39.

Reasons:

As so many third-country nationals are living and working lawfully in the Union, it would not be appropriate to grant them more limited protection of their social rights than citizens of the Union. NB: the absence of any reference to Article 40 (social security) is deliberate.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 40: Right of migrant workers to equal treatment

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Non-EU nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.

Reasons:

The above wording also takes in stateless persons who are legally resident in EU territory.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 40. Right of migrant workers to *protection*

Migrant workers residing in the territory of the Member States are entitled to protection which guarantees them treatment not less favourable than that of citizens of the European Union in respect of working conditions.

Reasons:

Equal treatment of workers from outside the European Union is best ensured by protecting them. By stressing the right to protection, the Charter of Fundamental Rights will also harmonise with the European Social Charter (Article 19). In addition, the above amendment extends protection to stateless persons working in the territory of the Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 40: Right of migrant workers to equal treatment

Submitted by: Piero Melograni

Proposed text:

Replace 'Third-country nationals' with 'All non-EU nationals'.

Reasons:

The proposed amendment extends the scope of this provision to cover displaced persons.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Pervenche BERÈS

Proposed text:

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment *identical to that of European Union workers (5 words deleted)*.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 40

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Third-country nationals working lawfully in the territory of the Member States are entitled to *the same treatment as* European Union workers in respect of working conditions.

Reasons:

The wording requires improvement on technical grounds. The Praesidium's proposed wording is ambiguous: the phrase 'treatment not less favourable than' does not seem to belong in an article intended to affirm the right to equal treatment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40. Right of migrant workers to equal treatment

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words 'treatment not less favourable' by the words 'non-discriminatory treatment'.

Reasons:

The aim is to make this article more intelligible to the layman.

**Translator's note: as it stands, this amendment would render the original ungrammatical.*

Presumably the amendment should read:

'Replace the words 'treatment not less favourable than that of European Union workers in respect of working conditions by the words: 'non-discriminatory treatment.'

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 43

Third country nationals working (one word deleted) in the territory of the Member States are entitled to equal treatment to that of European workers in respect of working conditions and income.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 40. Right of workers *from third countries* to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions, *remuneration, social protection, housing and training*.

Reasons:

The provision should state more specifically what is meant by working conditions by listing the main aspects thereof.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Einem/Holoubek

Proposed text:

Discrimination in respect of working conditions (particularly as regards wages, the retirement pension, social security, accommodation and training) against third-country nationals working lawfully in the territory of the Member States as opposed to employees who are nationals of an EU Member State shall be forbidden.

Every employee shall be guaranteed the right to equal pay for equal work.

Reasons:

The 'non-discrimination in respect of working conditions', to use the words of the Presidency's statement of reasons, which this article is intended to provide should also be expressed in its wording. Like comparable prohibitions, this should also be worded as a prohibition of discrimination. It is further suggested that the scope of this prohibition of discrimination in respect of working conditions should be clarified by an explanation of the term 'working conditions'.

The proposed new second paragraph ensures that the central tenet of the right of migrant workers to equal treatment, namely the right to receive equal pay for equal work, is guaranteed. Since Article 22(3) of the Charter provides this right in the context of equal treatment for men and women, it must again be stated expressly in the context of the rights of migrant workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. Third-country nationals working lawfully in the territory of the Member States are entitled to *non-discriminatory treatment vis-à-vis the treatment received by European Union workers in respect of work, remuneration and social security protection.*
2. *Access to employment on the part of third-country nationals legally resident within the territory of the Member States shall be governed by the same rules as those applicable to EU workers.*

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of terms of employment and working conditions.

Reasons:

The proposed amendment brings the text in line with the existing Statement of reasons which refers to 'terms of employment'. There may be a translation problem involved here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Deleted.

Reasons:

The ban on discrimination in Article 22 already provides for equal treatment for migrant workers within the confines of the rules on the free movement of workers.

Alternative text:

Third-country nationals working lawfully within the Union are entitled to treatment not less favourable than that of workers from the European Union in respect of working conditions.

Reasons:

This amendment is essentially editorial in nature and is largely a question of translation. For example, the English term 'lawfully' should be translated by 'rechtmatig' and the English concept 'working conditions' by 'arbeidsvoorwaarden'.

Furthermore, the statement of reasons for this article should indicate that it ties in with article 19, introduction and fourth paragraph, of the Revised European Social Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 40. Scope

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.**
- 2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Reasons:

Article 40 takes over the wording proposed by the Presidium's proposal (Article 46, Convent 34).

Article 41

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

This Article is excessive in relation to our assignment, as it has relative dimensions (e.g., how do you guarantee “a decent existence” – and what is it?). To include such a right in the Charter risks making the fundamental and universal rights relative.

The means to achieve the political goal (to abolish dependence due to causes like maternity, old age, illness, and unemployment) should not become blocked through structures based on experiences only from the industrial society. This is not the place to solve these problems of poverty and the door for new alternatives must be kept open.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41: Social security and social assistance

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic or an independent fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

Paragraph 1's objective of ensuring that Member States provide protection against the well-known social risks is unexceptionable. However, the EU does not possess full competence, its powers being limited to workers (Article 137(3), first indent). Moreover, there is a danger that this provision might impose excessive constraints on the scope for the adoption of social measures by legislatures in that it could be interpreted as an institutional guarantee of traditional social insurance systems. Article 46(2) of the EC Treaty, which is confined to 'coordination', does not allow this.

Paragraph 2 requires provision to be made for social assistance and housing benefit. Here too, there is no obvious legal basis enabling the EU to lay down provisions concerning such entitlements. The provision is also superfluous as an aid to interpretation and application for the EU and its institutions, since the requirement to provide minimum means of subsistence is already covered by the obligation to respect human dignity.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

Instead of a detailed enumeration of the types of protection, 1 that paragraphs 1 and 2 are replaced by a general, descriptive provision as follows:.

Social protection and social security under the individual Member State's own provisions shall guarantee the individual an acceptable basic standard of living and a dignified life.

Reasons:

The present wording of the provision is too specific and selective.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 41

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The public authorities shall operate a social security and social assistance system, in terms to be specified by the law of each Member State, in order to guarantee sufficient assistance and welfare benefits in situations of need.

Reasons:

This alternative wording is proposed in line with the remarks made earlier on the distinction between individual rights, on the one hand, and guiding principles which should orientate the work of the legislator, on the other.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text: Social security and social advantages

- *For Part A, “Proclamation of Rights”:*

Workers who are nationals of a Member State who reside in another Member States, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.

- *For Part B, “Definition of Rights”:*

The rights in Article 41 are the rights provided for in the provisions of Article 42 of the Treaty establishing the European Community, and of the relevant secondary legislation adopted by the Community and is subject to the limitations and derogations specified in those provisions and in any national measure to give them effect.

Reasons:

Article 41 as drafted purports to impose new obligations on Member States. Further, it deals with matters which are essentially matters of national competence and therefore outside the intended scope of the Charter. The requirement to “guarantee a decent existence to anyone lacking sufficient resources” could entail new rights of uncertain meaning for Member States, with potentially significant financial implications for them.

My proposal, however, gives effect to important rights, deriving them from the Union for the nationals of Member States to enjoy social security benefits and advantages when in other Member States. It is convenient to deal at the same time with access to health care on the same basis.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Win Griffiths, MP

Proposed text:

Everyone shall have the right to social security benefits as established in the law of Member States.

Reasons:

If this article is included in the Charter it needs to be clear that Member States are responsible for implementing social security legislation. Clarification of this right could be made in Part B.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Provision shall be made in accordance with each Member State's rules for social benefits providing protection in the event of maternity, illness, dependence, disability or old age and in the event of unemployment or incapacity to resume work.

Reasons:

The Praesidium's proposal draws a distinction between social security and social assistance which would seem to be based essentially on the different types of funding (contributions or tax) but which may vary according to each Member State. It therefore seems preferable to reduce this article to a single general paragraph.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Andrew Duff MEP

Proposed text:

Article 41. Social *welfare*

- Everyone in need has the right to social welfare

Reasons:

The draft article is not framed as a fundamental right. The new formulation to protect those 'in need' is less of a value judgement (and better English) than the draft 'guarantee a decent existence'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 41. *The right to social security and to guaranteed means of subsistence*

1. *Everyone has the right to social security and guaranteed means of subsistence. Social security benefits shall be provided in accordance with each Member State's legislation. Everyone shall be guaranteed the right to basic means of subsistence in the event of unemployment, illness, incapacity for work or old age and on account of the birth of a child or loss of the breadwinner.*

2. *Everyone who cannot attain the security required for a decent existence has the right to the essential means of subsistence and maintenance.*

Reasons:

The amendment is inspired by Articles 12 and 13 of the revised European Social Charter and by the European Code of Social Security. This principle should be applied in accordance with national legislation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

- 1. The Union shall take steps to ensure that persons legally resident or working in the Union are entitled to appropriate social security benefits in the event of maternity, illness, death or old age, inability to work and unemployment, which shall satisfy the standards laid down in the Revised European Code of Social Security.**
- 2. The Union shall take steps to ensure that persons legally resident in the Union and who, for reasons beyond their control, do not have the requisite resources for a decent existence receive appropriate social and medical assistance and/or housing benefit.**

Reasons:

The proposed text creates greater clarity concerning the type of persons who can claim appropriate social security and social assistance. The reference to national legislation and practice has been deleted since the provisions of the Charter are directed essentially towards the Union. There is therefore no need for a reference to national practice. The requisite policy area in this respect is created by the addition of the word 'appropriate'.

In the first paragraph addition of the last clause clarifies the level of the social benefits, since they must at least satisfy the agreement in question which was concluded within the Council of Europe and which contains minimum standards.

The following remarks concern a list of the risks to be covered by social security. The English text uses the term 'dependence'. This is not easy to translate into Dutch. The Dutch term 'afhankelijkheid' is not correct. On the assumption that this is what is intended, the proposed text therefore uses the Dutch word 'overlijden'. The amendment also proposes replacing the term 'unemployment' with the term 'inability to work and unemployment' because the rules on these sorts of risk differ and it would therefore be better to bring them under one denominator.

The proposed text of the second paragraph reflects customary practice in the Member States and is in line with what the Annex to the Revised European Social Charter (ESC) has to say about the scope of most provisions of the Revised ESC, including the right to social and medical assistance in Article 13(1).

In addition to social assistance and housing benefit, this clause includes medical assistance, not least to tie in more closely with the abovementioned Article 13(1) of the Revised ESC.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article: 41(1)

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Any person lawfully employed within the Union shall enjoy protection in the event of maternity, illness, dependence or old age and in the event of unemployment.

Reasons:

This article is not concerned with an exclusive competency of the Member States, as the existing text suggests. Furthermore, this right is granted to non-Union citizens, too.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Jo Leinen

Proposed text:

Article 41: Social security

1. In accordance with each Member State's rules, *everyone has the right to social security and access to social services which ensure a dignified existence, particularly in the event of maternity, illness, dependence or old age and in the event of unemployment.*

Reasons:

The right to social benefits should consistently be formulated as an individual right. A few stylistic abridgements are proposed and clearer reference is made to the dignity of the human person as referred to in Article 1. The right to housing is included in a separate article in accordance with the general consensus within the Convention and by analogy with Prof. Meyer's proposal.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Reword the first paragraph to read as follows: ‘Everyone shall be entitled to receive the social security benefits guaranteed in accordance with each Member State’s rules and providing protection in the event of maternity, illness, dependence or old-age and in the event of unemployment’.

***Translator’s note:** the proposed amendment to the second paragraph does not affect the English text.

Reasons:

The aim is to ensure a higher level of protection than that implied by the existing wording of the text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to benefit from social security providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment, under the conditions laid down by the internal laws of the Member States and coordinated at Community level.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Guy Braibant

Proposed text:

1. Everyone is entitled, in accordance with each Member State's rules, to social security benefits providing adequate protection in the event of maternity, illness, dependence, or old age and in the event of unemployment.
2. (Amendment does not affect the English version of this paragraph.)

Reasons:

This amendment seeks to restore an intermediate drafting proposal whose wording was more satisfactory and to include a minimum specification - ('adequate') - regarding the level of protection to be guaranteed in the five areas of social security

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

(This article should be split up into three new articles)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 41. Social security

Social security benefits *shall be guaranteed* in accordance with each Member State's rules in order to provide *individual* protection in the event of maternity, illness, dependence or old age and in the event of unemployment.

Reasons:

It is important to individualise social security rights, especially in the case of women whose rights sometimes only exist through their husband.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 41(1): Social security and social assistance

Submitted by: Piero Melograni

Proposed text:

Delete 'in accordance with each Member State's rules'.

Reasons:

The words deleted apply to almost all of the rights guaranteed by the Charter and their substance would be made implicit by means of the insertion in the general clauses of a reference to the subsidiarity principle (see the proposed amendment to Article 46).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

First proposed amendment to: Article 41

Submitted by: Einem/Holoubek

Proposed text:

1. Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, *accident*, dependence, *disability* or old age and in the event of unemployment *or invalidity*.

Reasons:

In Article 41, first paragraph, it is proposed that the group of cases in which the provision of social security benefits must be provided for is extended to cover accident, disability and invalidity. All three situations are part of the recognised standard provision in the Member States and should therefore be binding provisions particularly vis-à-vis the European Union. Accident and invalidity, furthermore, are also mentioned in Article 4 of Regulation 1408.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It should have been made clear in these and other articles of similar content – which we shall not amend explicitly so as to avoid repetition – that they have the character of guiding principles or, better still, a separate chapter should have been reserved for them.

The following wording is proposed for paragraph 1: ‘Provision shall be made in accordance with each Member State’s rules for social security benefits providing protection in the event of maternity, illness, dependence, old age or disability and in the event of unemployment.’

Reasons:

See the reasons for the amendment to Article 31 (first paragraph).

The intention in amending paragraph 1 is to cover the situation of people with disabilities who do not meet the conditions for being classed as dependant but require benefits. This addition will not duplicate Article 43, since disability involves different aspects of social and vocational integration.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Retain para 1.

1. Rephrase para 2 to read: '... in accordance with each Member State's rules for... '

Reasons:

Whereas a reference is made in the first paragraph, it is left out in the second. For the sake of clarity and consequence, I suggest that the reference be made in both paragraphs.

Alternatively, paras 1 and 2 could be merged in order to ensure that Member States' rules apply in all situations.

I would also suggest that a reference be made to the revised European Social Charter, Articles 12 and 14 in the 'Statement of reasons'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 41. Social security and social assistance

- 1. Provision shall be made in accordance with each Member State's legal rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.**

- 2. Provision shall be made in accordance with each Member State's legal rules for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.**

Reasons:

The wording 'in accordance with each Member State's legal rules' makes clear - as the Presidium's Statement of Reasons says - that national legislation is meant, and not Community rules which merely take account of the peculiarities of individual Member States. This clarification is particularly necessary in paragraph 2.

There is no need to refer to 'housing benefit' since this is merely a sub-category of 'social assistance'.

Finally, it is important to leave untouched in the scope of paragraph 2 the principle of individual responsibility and to treat the social benefit referred to in it as a subsidiary benefit. It is also necessary to make clear that although individual Member States can certainly guarantee the legal framework for this to be effective, they cannot in every case guarantee the actual - in particular the economic - framework.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Heinrich NEISSER

Proposed text:

Article 41. Social security and social assistance

1. *Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.*
2. Provision shall be made for social assistance ~~and housing benefit~~ in order to guarantee a decent existence to anyone lacking sufficient resources.

Reasons:

The concept of housing benefit should not be included in Paragraph 2 because it describes only one form of social assistance.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 41: Social security and social assistance

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

2. Provision shall be made for social assistance, housing benefit and assistance in obtaining adequate food in order to guarantee a decent existence to anyone lacking sufficient resources.

Reasons:

The right to adequate food is included in an international code drawn up following the World Food Summit held in Rome in 1996. This right is referred to in Article 11 of the International Covenant on Economic, Social and Cultural Rights. Furthermore, Article 24 of the Convention on the Rights of the Child stipulates that States Parties must combat malnutrition in children. The international code is in the process of being ratified. The inclusion of this right, which forms an integral part of the right to an adequate standard of living, is intended to ensure that everyone may live in conditions respectful of their human dignity. It is inadmissible for anyone in today's single market to be suffering from hunger.

Adequate food means a healthy diet which meets the nutritional needs of the individual. This right plays a part in eradicating poverty and meeting fundamental needs.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 41****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to social protection:**

Everyone has the right to social protection, including an adequate level of social security benefits, amongst others in the event of maternity, illness, dependence or old age and unemployment.

Any person who is without adequate resources, especially if he or she is unable to gain access to paid employment, has the right to a minimum income enabling him/her to live in dignity.

Everyone has the right of access to high-quality services and to protection against poverty and social exclusion.

Reasons:

Social protection is a broader concept, covering different elements of social security and social assistance. Under this title even the articles on healthcare and housing may be merged in the final text.

In the content of the article the right to a minimum income is introduced, being a more general and more advanced and modern formulation than social assistance and specific benefits. Access to high quality services, and protection against poverty and social exclusion is added.

Reference should not only be made to national legislation, but at least to articles 12, 13, 14 and 30 of the Revised Social Charter. It may be considered to also refer to relevant ILO conventions in this field.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 41

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 41 to read:

Article 41. Right to social security and social assistance

1. Every individual has the right to social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.
2. Social security entitlements acquired in one Member State shall be maintained in all the other Member States.
3. Every individual lacking sufficient resources has the right to social assistance and housing benefit enabling him or her to lead a decent life.

Reasons:

The text has been recast so as to place the emphasis on the beneficiaries of the right, as is the case throughout the Charter. Furthermore, the 'maintenance principle', which is enshrined in Community law, has been included in paragraph 1.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41 SOCIAL SECURITY AND SOCIAL ASSISTANCE

Submitted by: JORDI SOLÉ TURA

Proposed text:

1. *In accordance with each Member State's rules the social security benefits which are necessary to provide workers with proper protection in the event of unemployment, maternity, illness, dependence or old age shall be created.*
2. *A social assistance fund and a housing benefit fund shall also be set up in order to guarantee a decent existence to anyone lacking sufficient resources.*

Reasons:

Improvements to the wording.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Mr François Loncle

Proposed text:

This amendment is a grammatical correction and does not affect the English version.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 41

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Add the following to Article 41:

- 1. Everyone has the right, in accordance with each Member State's rules, to benefit from a social security system.**
- 2. That system shall in all cases provide social security benefits affording adequate protection in the event of (rest unchanged).**

Reasons:

The universality of the social security system must not be called into question by the wording Article 41.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 41****Submitted by: Johannes Voggenhuber****Proposed text:****New Article 44****Reasons:**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 41. Limitation of guaranteed rights

- 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits which are necessary for the protection of legitimate interests in a democratic society and which are compatible with the nature of those rights.**
- 2. Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in this Charter.**

Reasons:

Article 41(1) takes over much of the wording of the Presidium's proposal (Article 47, Convent 34) and paragraph 2 is identical to the proposal for Article 50 (Convent 34). In paragraph 1 the phrase 'which are compatible with the nature of those rights' has been added to the Presidium's proposal. This is intended to define the limitation more precisely and is taken from Article 4 of the ICESCR.

Article 41 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41a (new)

Submitted by: Pervenche BERÈS

Proposed text:

- Article 41a. Minimum wage

Every individual who lacks sufficient resources, in particular because he is unable to obtain gainful employment, has the right to a minimum wage enabling him to live in dignity.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: new article (after Article 41)

Submitted by: Jo Leinen

Proposed text:

Right to appropriate housing

Everyone has the right to appropriate accommodation which permits them a dignified existence.

Reasons:

In accordance with the general consensus expressed in the Convention debates, it is proposed that a right to appropriate accommodation be incorporated in the Charter in a separate article. The reference to the dignity of the human person as guaranteed in Article 1 is very important for the interpretation of the concept 'appropriate'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41a (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 41a. Housing benefit

The right to decent housing shall be guaranteed, if necessary, through benefits granted to anyone lacking sufficient resources.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed Article 41b (new)****Submitted by: Pervenche BERÈS****Proposed text:**

- Article 41b. Right to housing

*Everyone has the right to decent and appropriate housing.***Reasons:**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41b

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 41b. Right to protection against exclusion and poverty

Protection against exclusion and poverty shall be guaranteed.

Reasons:

Mention must be made of exclusion and poverty, as a specific issue and something which is unacceptable in an affluent society.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Second proposed amendment to: Article 41

Submitted by: Einem/Holoubek

Proposed text:

The following new article to be inserted after Article 41:

Article XX: Rights of the elderly

All elderly people shall have the right to lead independent, well-regulated lives. They must be able to take a full part in political, social and cultural life.

All employees and their entitled dependants shall be entitled to receive an old-age pension guaranteeing them an appropriate, independent standard of living.

Reasons:

In view of the special significance of elderly people in today's society, there should be a systematic link between the provisions on social security and social protection and a provision on the right of elderly people to self-determination and the social protection which will make it possible. The text of the article is based on that of Mrs Berès, Mrs Paciotti and Mrs van den Burg (doc. Charte 4328/00-Contrib 111).

=====

Article 42

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42. Health protection

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all (but see amendment to Article 41 above)

Reasons:

There is no general right to health care in the ECHR or the Treaties. These are matters essentially for national competence and I am not persuaded that they have a place in a Charter principally addressed to the EU Institutions in the exercise of their competences.

However there are EC Regulations giving citizens of one Member State social security entitlements (including health care) while working in another Member State. These are important rights and covered by my amendments to Article 41.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42: Health protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic, independent fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The provision is, in principle, already implicit in Article 41. Moreover, its purpose is already served by the fundamental right to human dignity.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42. Health protection

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

Access to medical care is automatically covered by Article 41 which guarantees access to social security benefits.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 42

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The public authorities shall, in terms to be specified by the law of each Member State, organise and supervise public health provision, including prevention and medical care.

Reasons:

This alternative wording is proposed in line with the remarks made earlier on the distinction between individual rights, on the one hand, and guiding principles which should orientate the work of the legislator, on the other.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42 Health protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall promote improvements in public health, the prevention of human illness and diseases and the obviating of sources of danger to human health by ensuring a high level of human health protection in the definition and implementation of all Union policies and activities.

Reasons:

The above version is derived from Article 152 of the EC Treaty, and seeks to avoid raising unrealistic expectations that the Union will act to promote facilities such as access to medical-care when it will in practice be unable to do so.

The foregoing is consistent with the more general wording used in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

Article 11 of the Revised European Social Charter also refers, not to access to medical care, but to the promotion of health and preventing ill-health, diseases and accidents.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 42. Health protection

1. The Union shall promote improvements in public health, prevention of human diseases and disorders and the elimination of hazards to human health;
2. *The Union shall take measures to ensure that everyone who is lawfully resident within the Union has access to health care.*

Reasons:

The proposed text is more comprehensive and less noncommittal than the text proposed by the Praesidium; access to care, in particular, should be more strongly guaranteed: untreated patients may constitute a public health hazard, including in other countries.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

I support Mr M. Patijn's amendment.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 42 to read:

Everyone must be able to benefit from preventive health protection provisions and to gain access to the health care required by his condition, in accordance with each Member State's rules.

Reasons:

1. *To make the article clearer.*
 2. *To ensure the universality of the recognised rights.*
 3. *The wording is closer to that used in the Community Charter of Social Rights.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42 HEALTH PROTECTION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Everyone shall have access to medical care and prophylactic measures (*rest deleted*).

Reasons:

There are two reasons for deleting the words ‘in accordance with each Member State’s rules’. The first one is that if everyone has the right to such access, it will be in one of the Member States and the medical care and prophylactic measures which the individual receives will therefore be those of that particular Member State. The second reason is that including the words ‘in accordance with each Member State’s rules’ would allow one or more Member States to have weaker rules than the others and not to be under any obligation under EU law to improve its (or their) standard of care.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Pervenche BERÈS

Proposed text:

- *Article 42.* Right to health care

Everyone is entitled to have access to appropriate medical care and prophylactic measures.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Andrew Duff MEP

Proposed text:

Article 42. Health care

Everyone *has the right to health care*

Reasons:

The draft article has a repetitious reference to Member States' rules; and its 'medical care and prophylactic measures' is an exceptionally cumbersome formulation.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 42 to read:

Every individual has the right to prophylactic measures and appropriate medical care.

Reasons:

The article has been recast so as to place the emphasis on the beneficiaries of the right, as is the case throughout the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42. Health protection

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words ‘shall have access’ by the words ‘shall have guaranteed access’.

Reasons:

The aim is to ensure a higher level of protection than that implied by the existing wording of the text.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 42. Health Protection

Everyone shall have access to existing medical care in accordance with each Member State's rules.

Reasons:

Since essentially this principle is to be transposed through the legislation of the individual Member States, this should be made clear in the article itself.

It is also necessary to clarify that access to medical care can be granted only in the context of existing capacities, which is why the word 'existing' is proposed. The additional phrase 'and prophylactic measures' can be dispensed with, since it is already covered by Article 41.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 42: Health protection

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Everyone shall have access to medical care and prophylactic measures.

Reasons:

The words 'in accordance with each Member State's rules' should be deleted for the same reason as that given in point 3.2. above.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 42****Submitted by: Ieke van den Burg****Proposed text:****Delete: "in accordance with each member states' rules"****Reasons:**

Also this article may be derived from international (and national) standards as a general fundamental right. As with other articles of the Charter (and not only the articles dealing with social and economic rights) of course every Member State has its own rules and practices. It is not necessary to state that in the article.

In the Reasons reference should be made to art. 12 of the UN International Covenant of Economic, Social and Cultural Rights, .. of the Community Charter, and to art 11 and 13 of the RESC.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 42: Health protection

Submitted by: Piero Melograni

Proposed text:

Insert the following at the beginning of the article: **'Everyone has a right to health protection.'**; delete: **'in accordance with each Member State's rules'**.

Reasons:

The sentence inserted makes the general statement that everyone has a right to health protection. This right has now been enshrined in many national constitutions and is the subject of a large body of national case law. The words deleted apply to almost all of the rights guaranteed by the Charter and their substance would be made implicit by means of the insertion in the general clauses of a reference to the subsidiarity principle (see the proposed amendment to Article 46).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Charlotte Cederschiöld

Proposed text:

Everyone shall have access to medical care in all countries.

Reasons:

The reasons apply to the Swedish text only.

Article 42 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 42 bis new****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to housing:****Everyone has the right to decent and appropriate housing****Reasons:**

This article may not be missing in the Charter, as it belongs to the core social rights included in the UN International Covenant (art 11), and the Revised Social Charter of the Council of Europe (art. 31). Particularly in the context of the battle against poverty and social exclusion, the problem of homeless is a focal issue.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: The three signatories endorse the text set out in new Article 42a proposed by Mrs van den Burg.

Article 43

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

Naturally, measures to promote the disabled's' possibilities should be developed further. This is an important national task.

However, the work in the Convent aims to create a Charter at the highest level in the Union's legal hierarchy. There is thus no possibility of including specific references to every secondary regulation.

Instead, a prohibition of discrimination on any ground, including that of disability, should be - and already is - included in the Charter in Articles 1 and, above all, 22 in Convent 28.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

The United Kingdom has adopted advanced legislation (the Disability Discrimination Act 1995) designed to protect persons with disabilities from unjustified discrimination in the workplace and in other contexts, and to require employers to make reasonable adjustments to help accommodate disabled workers. I understand this goes beyond rights in some other Member States. However, there is no existing European law. Proposals are currently under discussion for a framework directive under Article 13 which will include combating discrimination on the grounds of disability in relation to employment, occupation and vocational training.

The issues in this area are important, complex, and require detailed consideration and sensitive handling. This Charter is intended to state the restrictions, deriving from existing rights, on the legislation and acts of EU Institutions acting within their competences. I do not think it is appropriate for the Charter to attempt to define rights which ought to be accorded through carefully formulated national legislation drafted to take account of any Community action under Article 13 TEC. The inadequacy of the proposed Article only goes to demonstrate this.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43: The disabled

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The proposed formulation suggests a competence which the Union does not possess.

We endorse the objective underlying the formulation, namely to create equivalent living conditions for the disabled. However, we have reservations about this specific clause in the context of a charter of fundamental rights. The proposal goes far beyond the ESC/EC Treaty, so that it might arouse expectations which cannot be fulfilled. Moreover, the relationship of this provision to Article 22 (1) and (3) is unclear. There it is laid down that the EU will seek to eliminate inequalities (Convention 28, Charte 4284). The same matters seem to be dealt with here.

In addition, if this clause were intended to confer individual rights, extremely far-reaching entitlements might be derived from it which could not be fulfilled on budgetary grounds.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be deleted or, otherwise, that it be included in a chapter devoted to principles.

Reasons:

See the reasons for the amendment to Article 31 (first paragraph).

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43 The disabled

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed title:

Article 43 Integration of the disabled

Reasons:

The new version of the title proposed here provides a more specific indication of what is contained in this provision.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43 The disabled

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall promote, pursuant to Article 15 of the Revised European Social Charter, the integration into society of disabled persons through participation in occupational, social and cultural life.

Reasons:

Integration into society means being able to take part in all kinds of activities in society. For that reason the wording of the amended version has been made more specific with the addition of the concluding phrase. The connection that it is intended to establish with Article 15 of the Revised European Social Charter has also been made explicit.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 43. The disabled

The Union shall promote the integration of the disabled into society and working life and their access to public facilities.

Reasons:

Positive action to assist the disabled should unambiguously include access to buildings with a public function, public transport and ICT-related services.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

I support Mr M. Patijn's amendment.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Win Griffiths, MP

Proposed text:

All disabled people have the right to lead their lives free from discrimination based on their disability and enjoy equal civil rights with the rest of society.

Reasons:

This text is more positive and declaratory of the rights of disabled people than the original text without being over-long.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 43. Rights of the disabled

The rights of the disabled in respect of social and vocational integration shall be guaranteed.

Reasons:

A question of wording: rather than talking about measures, the article should specify the underlying right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Andrew Duff MEP

Proposed text:

Article 43. *Rights of the disabled*

- Disabled persons have the right to special employment measures

Reasons:

Again, the draft needs to be reformulated as a right. Reference to Article 13 of the Treaty has already been made. Here it is only necessary to refer to Article 137(1) which concerns integration into the labour market.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the existing text by the following words:

‘Every disabled person must have the possibility of taking advantage of special measures to facilitate his social integration and participation in working life.’

Reasons:

The aim is firstly, to ensure a higher level of protection than that implied by the existing text, and secondly, to ensure that disabled persons can participate in the world of work.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 48 (new).

People with a disability have a right to social and vocational integration measures (three words deleted).

Reasons:

We are drafting a Charter of Fundamental Rights. Wherever possible, its provisions should therefore be couched in terms of 'rights'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Einem/Holoubek

Proposed text:

People with disabilities

People with disabilities shall have the right to full social and vocational integration.

Reasons:

The wording of the text proposed by the Presidency is not sufficiently binding. Provision should be made for people with disabilities to be entitled to absolutely equal social and vocational treatment. Our proposed text is intended to achieve this. It is also intended to respond to the justified criticism of the European Disability Forum.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 43 to read:

Article 43. Rights of the disabled

Every disabled person has the right to benefit from appropriate measures to foster the free development of his or her personality and his or her vocational and social integration.

Reasons:

The article has been recast so as to place the emphasis on the beneficiaries of the right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 43****Submitted by: Ieke van den Burg****Proposed text:****Title: Rights of persons with disabilities to social and professional integration****Every person with disabilities, whatever their origin and nature, has the right to additional specific measures aimed at social and professional integration, concerning in particular, vocational training, ergonomics, accessibility, mobility, means of transport and housing.****Reasons:**

The wording of the article comes from Article 26 of the Community Charter, but may also be referred to art. 15 of the RESC, and is recognised in several Member States' constitutions.

Declaration 22 annexed to the Treaty of Amsterdam appealed to the Community Institutions to take account of the specific rights of persons with disabilities.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Pervenche BERÈS

Proposed text:

- *Article 43. Integration of the disabled*
- **All disabled persons, whatever the nature of their handicap, must have access to specific additional measures to promote their professional and social integration. These enhancing measures should, depending on the capacities of those concerned, relate to vocational training, ergonomics, accessibility, mobility, transport and housing.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Jo Leinen

Proposed text:

Article 43: *The right of disabled people to social and vocational integration*

All disabled people, irrespective of the cause and nature of their disability, have the right to social and vocational integration. To this end, measures may be taken, in particular, to ensure that all disabled people have full access to the rights guaranteed in this Charter.

Reasons:

The Praesidium's draft concerning this right was inadequate, both in formulation and in substance. Organisations representing the disabled (the European Disability Forum at the hearing on 27 April 2000) pointed out that, at all events, the expression 'disabled people' was preferable. Moreover, the rights referred to here ought to be clearly formulated as individual rights. The second sentence is based on the proposals of the European Disability Forum but without incorporating the detailed list of fields in which special measures are possible and necessary. The third sentence reflects the fundamental problem that it may possibly be necessary to take special measures (for example with regard to the provision of information) to afford disabled people access to the rights covered by the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 43

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Provision shall be made for social and vocational integration measures for the disabled *in such a way as to ensure that they are fully enabled to enjoy the rights recognised in this Charter.*

Reasons:

The aim is to reinforce the intention behind this article by encouraging the adoption of positive measures which will contribute to creating conditions that will enable persons having a physical or mental disability to enjoy the rights of the Charter on a basis of true equality.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. THE DISABLED

Submitted by: JORDI SOLÉ TURA

Proposed text:

All disabled people shall have the right to live free from any discrimination based on their disability and to exercise the same rights and fulfil the same obligations as the rest of society. To this end the necessary steps shall be taken to ensure that disabled people are fully integrated both socially and vocationally and that they have access to the necessary information which will enable them to secure a job and exercise their rights.

Reasons:

The purpose of this amendment is to extend the text and improve the wording, and also to introduce the concept of 'necessary information' which is demanded by all organisations for the disabled.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. *Discrimination based on a physical or mental disability shall be prohibited.*
2. *Physical or architectural barriers preventing disabled persons from moving around or from entering public buildings shall be removed.*
3. *Provision shall be made for special teaching and for social and vocational integration measures for the disabled.*

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Rephrase the title to read: '**Article 43. Persons with disabilities**'

and replace the current draft text by the following: '**Provision shall be made for the independence, social and vocational integration and participation in the life of the community of persons with disabilities.**'

Reasons:

The term 'persons with disabilities' is the wording used in all international documents today, including the European Social Charter. My proposal is based on Article 15 of the revised Social Charter which in turn is inspired by the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (adopted by the General Assembly in 1993). Article 13 of the EC Treaty authorises the adoption of positive measures to prevent discrimination on grounds of disability.

Article 43 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 43 bis new****Submitted by: Ieke van den Burg****Proposed text:****Title: Rights of elderly persons****Every elderly person has the right to lead an independent and decent life, and to be able to play an active part in political, social and cultural life.****Every worker has the right to enjoy a pension for him/her and his/her dependants that guarantees a decent and independent standard of living.****Reasons:**

A special article on elderly persons/pensioners is missing in the Charter. This article (as proposed earlier in Contribution 111) takes the essential elements of art. 23 of the RESC, which are not just covered in general articles about social protection, healthcare etc.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 43:

Article 43a. Rights of the elderly

Every elderly person has the right to an independent and decent existence and to take a full part in political, social and cultural life.

Reasons:

Owing to demographic trends in the EU Member States, special attention must be paid to the rights of the elderly. The provisions are based on Article 23 of the European Social Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 43a (new)

Submitted by: Pervenche BERÈS

Proposed text:

- Article 43a. Access to services of general interest

Everyone has the right to services of general interest providing quality facilities in all areas which have a bearing on the quality of life, sustainable development and, more generally, respect for fundamental rights. The provision of services of general interest shall be based on the principles of equal access, universality, continuity, democratic control and transparency.

Reasons:

Article 44

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

The aim of a good and healthy environment is an obvious objective to us all. However, the Charter is not the suitable level in the legislative hierarchy to deal with, and promote, environmental protection.

It is very unclear how such a "right" could be guaranteed by the Union. It is more to be regarded as a wish.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44: Environmental protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The substance of the Charter must be confined to rights which can be invoked at law. Accordingly, mere definitions of objectives and programmatic statements should not be included. Otherwise, the public will be disappointed in its expectations of the Charter. In the case of environmental protection, no precedent should be set, and the provisions of the EC Treaty are deemed adequate. Moreover, if objectives are set there is a danger that the CJEC might interpret them as individual rights, should the Charter become legally binding, and the legal and budgetary consequences of this are unpredictable.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44 Environmental protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

Article 44 A clean and healthy environment

Reasons:

The new version of this title proposed here is more specific than that drafted by the Praesidium.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44. Environmental protection

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

2. Union policies shall *contribute to* environmental protection...

Reasons:

My proposal follows the wording of Article 174 of the EC Treaty which does not use the word 'ensure'. My proposal would also bring the draft text into line with Article 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 44

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The definition and implementation of the Community's policies and actions shall incorporate the requirements of environmental protection, namely preserving, protecting and improving the quality of the environment, protecting human health and the prudent and rational utilisation of natural resources.

Reasons:

The aim is fidelity to Articles 6 and 174 of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44 Environmental protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall *ensure* the protection and preservation of a clean and healthy environment and *shall promote* the improvement of the quality of the environment, *taking into account* the principle of sustainable development.

Reasons:

The following can be stated with regard to the concluding part of the above sentence: 'Sustainable development' is one of the principal objectives of EU policy (Article 2 of the EU Treaty and Article 2 of the EC Treaty), It entails that the environment at human disposal must only be used so as to ensure that succeeding generations can continue to enjoy equivalent use of it. 'Prudent and rational utilisation of natural resources' (version proposed by the Praesidium) is an integral part thereof, but does not cover it completely. The principle of sustainable development has been enshrined in international law by way in particular of the 1993 UN Conference on the Environment and Development (UNCED) in Rio de Janeiro and consolidated into the case law of the International Court of Justice. It is precisely because that terminology has become common international property that preference should be given to using it here. The right of all present and future generations to live in a healthy and clean environment was further confirmed in 1998 in Article 1 of the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44. Environmental Protection

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text:

- For Part A, “Proclamation of Rights”:

Everyone has the right of access to environmental information, and to participate in environmental decision making.

- For Part B, “Definition of Rights”:

The rights in Article 44 extend so far as is required by the relevant secondary legislation adopted by the Community under Article 175 of the Treaty Establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

Rather than including statements of policy as the proposed Article does, I propose a reference to the important existing rights of individuals under EU legislation. The policy objective of the Union remains as stated under Article 174 of the Treaty and need not be restated.

The definition of these rights under Part B is, as always, essential.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Win Griffiths, MP

Proposed text:

Everyone is entitled to expect the European Union to implement policies to defend and improve the quality of the environment.

Reasons:

I prefer this right to be expressed in terms of individual expectation of European Union policies in this field.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Andrew Duff MEP

Proposed text:

Everyone has the right to the enhancement of the natural environment.

Reasons:

The draft article needs to be reformulated as a right, and should reflect the Treaty accurately. Under Article 174, the Union shall 'contribute' towards and not 'ensure' an improved environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 44. Right to a clean and healthy environment

Everyone has the right to live in a clean and healthy environment and the duty to protect the quality of the environment for present and future generations.

Reasons:

This wording focuses on a fundamental right rather than a declaration of intent.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44. ENVIRONMENTAL PROTECTION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Everyone shall have the right to a suitable environment and the duty to protect it. Union policies, together with the law and collective solidarity, shall ensure environmental protection and preservation and improvements to the quality of the environment, the protection of human health and prudent and rational utilisation of natural resources.

Reasons:

The purpose of this amendment is to improve the wording of the text and, in particular, to stress people's right to a suitable environment and their duty to conserve it through collective solidarity.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 44****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to a clean and healthy environment****Everyone has the right to a clean and healthy environment, ensured by environmental protection, which involves preserving ...etc****Reasons:***The article is reformulated in the form of a right for everyone, as the other rights.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 44 to read:

Article 44. Right to a healthy environmental

1. Every individual has the right to live in a healthy, clean environment, and a duty to safeguard the quality of the environment for present and future generations.
2. **The Union shall ensure that the environment is protected and used in ways that do not conflict with the interests of society and that enable the quality of the environment to be protected and improved, health to be protected and natural resources to be used in a prudent and rational manner.**

Reasons:

The first paragraph establishes the fact that every individual has a right and a duty in relation to the environment. The second recasts the article, laying down the action to be taken by the Union with a view to implementing the right to a healthy environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 49 (new).

Everyone has the right to a clean and healthy environment. Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Reasons:

We are drafting a Charter of Fundamental Rights. Wherever possible, its provisions should therefore be couched in terms of 'rights'.

The right which we propose is already recognised as such, inter alia, in the Spanish and Belgian constitutions. Article 1 of the Aarhus Convention, which has been signed by the Community and all 15 Member States, likewise recognises 'the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 44: Environmental protection

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Every person of present and future generations has the right to live in an environment adequate to his or her health and well-being. To that end, the European Union shall ensure a high level of environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Reasons:

The first sentence is copied from Article 1 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which has been signed by the 15 Member States. Since the Stockholm Declaration of 1972 the right to a healthy environment has been included, inter alia, in the constitutions of a large number of States (including Belgium) and the Treaty establishing the European Community (Articles 6 and 174). In its report on the drafting of a European Union Charter of Fundamental Rights (A5-0064/2000, p. 8) and the resolutions it has adopted (report by Claudia Roth, 1997), Parliament clearly emphasised the importance of adopting such a right.

The reference to a high level of protection is justified by the wording of Article 95 (ex Article 100a) of the EC Treaty, which stipulates that 'The Commission, in its proposals (...) concerning (...) environmental protection (...) will take as a base a high level of protection'. It should therefore be included here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Einem/Holoubek

Proposed text:

Union policies shall ensure *a high level of* environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Reasons:

Like Article 174(2) of the EC Treaty, the Charter must stress that the Community must provide a high level of environmental protection. There is no discernible reason to deviate from Article 174(2) of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Heinrich NEISSER

Proposed text:

Article 44. Environmental protection

In the field of environmental protection, Union policies shall ensure a high level of protection. This shall include preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

~~Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.~~

Reasons:

It seems desirable to harmonise Articles 44 and 45 as regards the use of the phrase ‘high level of protection’, since individuals have a very strong interest in a high level of protection in the field of environmental protection as well.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44 (CONVENTION 34)

Submitted by: Hans-Peter MARTIN

Proposed text:

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves *in particular* preserving, protecting and improving the quality of the environment, protecting human health and *sparing, sustainable* and rational utilisation of natural resources.

Reasons:

The preamble to the Treaty on European Union refers to the principle of sustainable development. There should be no regression from this. The mention of the principle of sustainability is also necessary in order not to undermine the Community's negotiating position and arguments in bilateral and multilateral trade relations and conflicts in which reference is made to international environmental agreements (for example under the aegis of the WTO). In this regard the European Union is also assured of wide support from European public opinion.

The other conceptual corrections are intended to indicate that the list of fields of environmental protection is not complete and to stress more clearly that natural resources should be used in an environmentally sound manner.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Paavo Nikula, Gunnar Jansson and Tuija Brax

Proposed text:

Article 44. Environmental protection

1. *Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.* Everyone is responsible for nature and its diversity, environment and cultural tradition.
2. Everyone shall be guaranteed the opportunity to influence decision-making concerning their environment.

Reasons:

The aim is to increase the element of responsibility and thereby stress the fact that protection of nature and of other aspects of the environment is based on the inherent value of nature and on the fact that a right is at stake here which is indivisibly vested in all human beings, including future generations. Broad cooperation is needed among various parties in order to safeguard this right. This also requires that everyone should have the right to participate in decision-making concerning their own environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I propose a new paragraph 2, as follows:

Everyone shall be guaranteed the right of access to information on the environment and public participation in environmental decision-making processes.

Reasons:

The right of free access to information on the environment is based on Directive 90/313/EEC on the freedom of access to information on the environment, and on the Convention on citizens' environmental rights, the Århus Convention on access to information, public participation in decision-making processes and access to justice in environmental matters, to which the Community acceded in June 1998. The objective of the Convention is to assist in safeguarding the right of every person in this and coming generations to live in an acceptable environment for his or her health and wellbeing by guaranteeing everyone the right to access to information on the environment and public participation in decision-making on environmental matters.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and responsible utilisation of natural resources.

Reasons:

'Rational' replaced with 'responsible'. Editorial change.

Article 45

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

The promotion of consumer protection is an important aim. However, secondary legislation is the suitable level in the legislative hierarchy to deal with, and promote, this sort of protection.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Deleted.

Reasons:

The objective of consumer protection is not a problem as such, but the contents of the Charter must be restricted to what can be enforced in the courts. Accordingly, what are pure objectives and programmes should not be included in the Charter. Moreover, the proposed article appears too specific and, given the provisions of the EC Treaty, superfluous.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. Consumer Protection

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

Like other Member States the UK recognises the need to protect the consumer. However, the text in this article is so vague as to provide no sensible restriction on the Institutions or any assistance to individuals in informing them of their rights. The Union already has obligations of this kind under Article 153 of the Treaty and there is no need for a further statement of aspirations here in the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45: Consumer protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

In principle, the objective is not problematic. However, the substance of the Charter must be confined to rights which can be invoked at law. Accordingly, mere definitions of objectives and programmatic statements should not be included. Otherwise, the public will be disappointed in its expectations of the Charter. In the case of consumer protection, no precedent should be set, and the provisions of the EC Treaty are deemed adequate. Moreover, an effort should be made to keep the Charter of Fundamental Rights concise.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45: Consumer protection

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

3. Union policies shall *contribute to* a high level of...

Reasons:

My proposal follows Article 153 of the EC Treaty which does not use the word 'ensure". My proposal would also bring this draft text into line with Article 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45 Consumer protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to consumer information, education and to organise themselves in order to safeguard their interests.

Reasons:

The above wording is derived from Article 153(1) (consumer protection) of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Win Griffiths, MP

Proposed text:

Consumers are entitled to expect the European Union to provide high standards of protection where the European Union has responsibilities.

Reasons:

See Article 44.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Andrew Duff MEP

Proposed text:

Everyone has the right to an enhanced level of consumer protection

Reasons:

The draft article needs to be reformulated as a right. As the Union's powers are similar to those in the field of environment policy, it is best to follow Article 44.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. CONSUMER PROTECTION

Submitted by: Jordi Solé Tura

Proposed text:

Union policies shall ensure *protection of the health, safety and legitimate interests of consumers and users, shall promote the provision of information and education for consumers and users and shall promote consumers' and users' organisations.*

Reasons:

The purpose of this amendment is to improve the wording and to extend the framework and the concept of protection.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

Article 50 (new).

Consumers have a right to a high level of protection as regards their health, safety and other interests (two words deleted).

Reasons:

We are drafting a Charter of Fundamental Rights. Wherever possible, its provisions should therefore be couched in terms of 'rights'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 45****Submitted by: Ieke van den Burg****Proposed text:**

Everyone has the right to be protected as a consumer against health and safety risks, and has the right to defend his/her interests individually and collectively.

Reasons:

The article is reformulated in the form of a right for everyone, as the other rights. With respect to the protection of consumers' interests the formulation of the Presidium is too general.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 45

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Replace 'Union' by 'Community'

Reasons:

'Union' should be replaced by 'Community' since what is referred to here is Article 153 of the EC Treaty, which concerns specifically Community policies.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45 (CONVENTION 34)

Submitted by: Hans-Peter MARTIN

Proposed text:

Article 45. Consumer protection

Consumers have the right to expect that Union policies will ensure a high level of protection as regards the health, safety and interests of consumers. Account shall be taken of the precautionary principle.

Reasons:

The mention of the precautionary principle is essential in order not to undermine the Community's negotiating position and arguments in bilateral and multilateral trade relations and conflicts (for example with the USA concerning hormone-treated beef or genetically modified organisms). The European Union has always invoked the precautionary principle in such conflicts, which has been politically and economically expensive for it but has been widely supported by European public opinion, and has also defined this principle in a communication of its own (COM(2000) 1). This non-discriminatory basic principle of the Community's consumer policy should therefore be laid down explicitly in the Charter for the sake of the credibility of its external economic policy. Otherwise there is a danger that the absence of a basis for it in the Charter may be used against the Community in legal proceedings connected with trade disputes.

By analogy with other articles, the introductory active formulation is intended to stress linguistically as well that it is consumers in whom an individual right is vested here.

Legal bases and other grounds for the precautionary principle can be found in Community law and case law, in political guidelines of the Community and in international law: e.g. in Art. 174(2) of the EC Treaty (environmental protection), Art. 95(3) of the EC Treaty (health, safety, environmental protection and consumer protection), the judgment given by the Court of Justice of the European Communities on 5 May 1998 concerning BSE (Cases C-157/96 and C-180/96, paras. 99 et seq.), a judgment given by the Court of First Instance on 16 July 1998 concerning consumer protection (Case T-199/96), the decision of the President of the Court of First Instance of 20 June 1999 (Case T-70/99), various communications from the European Commission and resolutions of the European Parliament, a Council Resolution of 13 April 1999 addressed to the Commission, the UNCED Rio Declaration of 1992 (15th principle), the preamble to the Biodiversity Convention of 1992 and Article 3 ('Principles') of the Convention on Climate Change of 1992.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. Consumer protection

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Reword the article to read as follows: 'Union policies, which shall embody the precautionary principle, shall ensure a high level of protection as regards the health, safety and interests of consumers'.

Reasons:

The introduction of measures to guarantee consumer protection is conditional on the prior application of this essential principle.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

First proposed amendment to: Article 45

Submitted by: Einem/Holoubek

Proposed text:

A high level of consumer protection, which includes in particular the protection of their health, safety and economic interests, shall be ensured by the Union's policies. In order to guarantee the rights of consumers to information and education, the Union shall promote the formation of associations to protect consumers' interests.

Reasons:

The wording of this article should not deviate from that of Article 153(1) of the EC Treaty or give the misleading impression that the obligations arising from Article 153(1) of the EC Treaty have been toned down. It is therefore proposed that the wording of Article 153(1) should be adhered to more closely, and particularly that the founding of organisations to protect consumer interests should be specifically mentioned.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 45 to read:

Article 45. Consumers

- 1. Every individual has the right to goods and services of a quality that will ensure a high level of protection for their health and safety, with due respect for the principle of sustainability and the interests of future generations.**
- 2. Consumers have the right to comprehensive information on the quality of goods and services and to advertising that is not misleading and that meets the criteria of transparency and truthfulness.**

Reasons:

The article has been recast in line with the principles that underpin European Union policy.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. Consumer protection

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

- 1. Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.*
- 2. Consumers must be provided with full, comprehensible information on the features and the hazards of each product. Misleading advertising shall be prohibited.*

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 45 to read:

1. Everyone has the right to safe products and safe services.
2. Consumer safety entails inter alia the provision of comprehensive, accurate and comprehensible information on the nature of products sold and services provided to the public.
3. The Member States and, by default or where the law so provides, the Union, shall take the necessary steps to establish and enforce such safety standards.

Reasons:

Over recent years there have been so many lapses in the protection of consumer safety and those lapses and their repercussions have become so serious that the Charter must clearly and forcefully affirm a right which is now less unquestionable than it was in the past and which is likely to come under renewed threat in the future.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 45(4) (new)

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Take over the proposed amendment by Mrs Berès, Mrs Paciotti and Mrs van den Burg on services of general interest, and add the following:

Everyone must have access to services of general interest such as water and energy distribution and postal and telephone services.

Reasons:

The provisions of Article 16 of the EC Treaty and the reference made therein to 'the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion' and the fact that 'the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions' fully justify the inclusion of this provision in the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: New article

Submitted by: Johannes Voggenhuber

Proposed text:

Article 45

Every worker has the right to equal pay for equal work.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Jens-Peter Bonde

Proposed text:

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

Reasons:

It is important for there to be a reference to the case law of the European Court of Human Rights where rights are concerned which stem from the European Convention for the Protection of Human Rights. This is the only way of ensuring that future interpretation of the Charter is consonant with the way rights are interpreted by the European Court of Human Rights.

We also need to ensure that the Charter does not limit the rights flowing from the international agreements individually acceded to by the Member States. There can be no question of their being only agreements to which all Member States are party, as this would encroach on the Member States' sovereign right individually to be party to international agreements.

Article 45 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 45a (new)

Submitted by: Guy Braibant

Proposed text:

Article 45a. Right of access to services of general interest

Everyone has the right to free and equal access to services of general interest.

Reasons:

This amendment is based on Article 16 of the EC Treaty, which specifically mentions the role of services of general interest in the shared values of the Union. The purpose of the amendment is to make it clear that, where services of general interest exist, people should have free and equal access to them, without prejudging whether they should be public or private or whether they should be free of charge

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 45 (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 45 (new). Right to equal access to services of general interest

The right to have access to quality services of general interest in the fields of education, culture, communications and health shall be guaranteed in accordance with each Member State's rules.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of an article on the right to services of general interest

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

‘Everyone has a right to services of general interest. The provision of services of general interest is based on the principles of equal access, universality, continuity, democratic control and transparency, and guarantees the exercise of fundamental rights’.

Reasons:

The aim is to guarantee that everyone has an equal right of access to services of general interest.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article : Right to a universal service

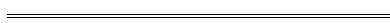
Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Everyone shall have a right to high-quality services of general interest in all areas that have a bearing on quality of life and sustainable development and, in general, on respect for fundamental rights. The provision of services of general interest shall be based on the principles of equality of access, universality, continuity, democratic control and transparency.

Reasons:

The Member States must ensure that citizens are able to enjoy the rights set out in the Charter, such as education, medical care and legal aid. The existence of structures enabling them to do so, namely services of general interest, must therefore be guaranteed.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 45:

Article 45a. Right to services of general interest

Every individual has the right to services of general interest that provide the facilities required to guarantee an appropriate quality of life and access to employment. The provision of services of general interest shall be based on the principles of equal access, universality, continuity and transparency.

Reasons:

The proposed amendment is intended to recognise the right to benefit from services of general interest, inter alia as part of the promotion of social and territorial cohesion within the Union provided for in Article 16 of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45 bis new

Submitted by: Ieke van den Burg

Proposed text:

Title: Access to services of general interest

Everyone has the right to high-quality services of general interest in all areas that are essential to the quality of life, sustainable development and, more generally, the protection of fundamental rights. Services of general interest are to be based on principles of equal access, universality, continuity, democratic scrutiny and transparency.

Reasons:

Reference for this right in art. 16 of the Amsterdam Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Second proposed amendment to: Article 45

Submitted by: Einem/Holoubek

Proposed text:

The following new article to be inserted after Article 45:

Article XX: The right of access to public-interest services

Every person shall have the right to equal, affordable access to public-interest services which provide qualitative services in all areas that contribute to the quality of life, sustainable development and in general to the guaranteeing of fundamental rights. Public-interest services shall be based on the principles of equal access, universality, continuity, democratic accountability and transparency.

Reasons:

Because of their supreme importance for the unrestricted development of the human personality, it is important that the Charter should specifically guarantee equal, affordable access to public-interest services. The principle is already acknowledged in Article 16 of the EC Treaty.

This proposal follows in principle that of Mrs Berès, Mrs Paciotti and Mrs van den Burg in the Document Charte 4238/00-Contrib 111. The wording proposed by us only clarifies the point that what is meant here is the right of access, a practical entitlement to equal and affordable access.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed new Article 45a

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

The right to housing shall be guaranteed.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article:

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Add the following article:

Right to self-determination

Every individual has the right to decide freely on matters relating to his or her own life and person, free of any form of coercion, discrimination or violence and with full respect for gender equality.

Reasons:

This fundamental right has now become a common principle of the constitutional law of the EU Member States and is recognised in documents drawn up under the aegis of the United Nations (see paragraph 96 of the Beijing Conference document).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article:

Submitted by: Rodotà and Paciotti

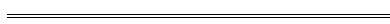
Proposed text: Add the following article:

Right to sexual freedom

Every individual has the right to decide freely on matters relating to his or her sexuality, which includes the right to sexual and reproductive health guaranteed against all forms of coercion, violence and discrimination between women and men.

Reasons:

The proposed article is based on Article 96 of the UN's Beijing Platform. The location of this article will depend on the final shape given to the Charter.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of additional article after Article 45: Fundamental duties.

Submitted by: Hubert HAENEL

Proposed text:

Article 45a

Fundamental rights imply the fulfilment of those duties which are necessary, in a democratic society, for public safety, for the protection of public order, health or morality, for sustainable development or for the protection of rights and liberties.

Reasons:

It appears to be highly desirable to devote an article of the charter to the subject of duties, as there can be no freedom without duty, no democracy without public-spiritiveness, no citizenship without responsibility.

Some people might take the view that this reminder is superfluous, or that it could appear solely in the preamble, as fundamental duties are the corollary of rights, and so affirming the latter amounts to implicitly affirming the former. For example, affirming the right to dignity could be taken as affirming the right to respect the dignity of others.

This argument is not, however, wholly convincing.

Firstly, because certain fundamental duties cannot easily be linked to a particular right: for example, the duty to take part in the defence of the nation, or the duty to pay taxes.

Secondly, because it is only true to say that one person's rights are another person's duties only in the context of relations between individuals, i.e. social relations. The right to work undoubtedly implies the duty to respect other people's right to work. But that distracts attention from the fact that, at the level of the individual, a right can imply a duty: the right to work implies the duty to work when one can. Similarly, the right to vote certainly implies respecting other people's right to vote (which goes without saying), but also the duty to vote, which is a moral duty in certain States and a legal obligation in others. If this is not spelt out, will not the legal obligation to vote imposed by certain States be condemned, as it could be argued that the right to vote implies the right not to vote?

Finally, more generally, we should not forget that we are seeking to send a strong, cogent and clear message to the citizens of Europe, and that we shall not succeed in doing so if we do not spell out all the implications.

We should, therefore, devote an article to duties, as does the Universal Declaration of Human Rights. The text proposed in this amendment is mainly inspired by the European Convention on Human Rights; it adds the notion of sustainable development, however.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I propose that the reference to the Member States be deleted and that paragraph 1 should read:

1. **The provisions of this Charter shall be respected by the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties.**

Paragraph 2 to read:

2. **This Charter does not establish any new competence, tasks or *objectives* for the Community.**

Reasons:

The primary objective of the Charter is to establish the fundamental rights governing relations between citizens and the EU's institutions and bodies. This formulation is in line with Article 6(2) and Article 46(d) of the EU Treaty, which were incorporated through the Amsterdam Treaty. The question of the involvement of the Member States should be deferred until subsequent consideration of whether and, if so, how the Charter should be incorporated fully or partially into the Treaties and thereby be given a legally binding form, cf. the Cologne mandate.

As regards the addition to paragraph 2, it is logical to refer to both tasks and objectives, as both these concepts ensue from Article 2 of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Jens-Peter Bonde

Proposed text:

The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties.

Reasons:

See reasons quoted in Amendment 434 to Article 31.

Article 46

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46. Scope

Submitted by: Lord Goldsmith QC

Proposed text:

. Amend paragraph 1 to read:

“The provisions of this Charter apply to the Institutions of the Union and bodies established by the Treaties or secondary legislation within the scope of application of the Treaties.”

Retain paragraph 2: “This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties”.

Add paragraphs (3) and (4):

“3. Subject to paragraph (4), this Charter applies to the Member States when implementing Community law.

4. The provisions corresponding to rights in the ECHR or its Protocols apply to a Member State only to the extent to which it has consented to be bound in relation to the Convention or its Protocols and subject to any reservations and derogations in force for that Member State.”

Reasons:

As I have previously commented, “addressed to” is vague and may give wider scope than intended. I prefer “apply to”.

The Convention has noted the problems of definition and uncertainty about “bodies of the Union”. It would clearly be preferable to clarify what is meant. We should be as clear as possible about the application of the Charter and leave no room for doubt about the bodies to be covered.

“Framework of the powers” is an unusual expression and could imply that there is legality to be found which is greater than the sum of the specific individual powers. For the sake of clarity, I would prefer to refer simply to “the powers”, and to delete “on them”, but this is unnecessary if my amendments are accepted.

I am entirely content with paragraph 2 of Article 46.

I agree with the general sense of the last phrase of Article 46(1) - the words following the final comma in the English version - but I consider that more should be said to clarify the position. I think that can best be done by way of separate provisions.

*I consider it important that specific horizontal provision is made to safeguard the position of the Member States regarding their existing ability to derogate from or enter reservations according to national circumstances. This ability is a vital feature of sovereignty and subsidiarity and should not be prejudiced by application of the Charter. I deal with limitations in the Part A/Part B approach I have recommended, and in my amendment to Article 48 below. My proposed new paragraph (4) addresses reservations and derogations. They avoid asserting that the **Union** should adopt the lowest common denominator in these matters. Under my proposal, the standard of protection across the EU need not automatically be lowered simply because one Member state entered a derogation in respect of a particular right. I think that is a constructive step forward in this sensitive and difficult area.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Heinrich NEISSER

Proposed text:

Article 46. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union ~~within the framework of the powers conferred on them by the Treaties~~, and to the Member States exclusively within the scope of Union law.
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Reasons:

The amendment is intended to render the Article clearer and more concise.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46. Scope

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

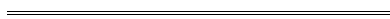
Move this article to the beginning of the Charter.

In para 1, replace the term '**Union law**' with '**Community law**'.

Reasons:

This article is of decisive importance for the interpretation of the whole Charter. It should therefore be placed among the first articles of the Charter.

It is not clear what is meant by 'Union law'. It seems preferable to stick to the established language: 'Community law'.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46. Scope

Submitted by: Guy Braibant

Proposed text:

1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the treaties, and to the Member States exclusively when they implement Community law.

2. Unchanged

Reasons:

This amendment seeks to specify, as in the amendment to Article 31, that the Charter is addressed to the Member States only insofar as they implement Community law and not when they act 'within the scope of Union law' which would be too extensive and vague

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46(1)

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Community law.

Reasons:

The aim is fidelity to the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 46. Scope

The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively in the transposition and implementation of Community law.

Reasons:

The proposed wording 'within the scope of Union law' risks making provisions too binding on Member States, in particular in instances where the Union has not yet exercised its right to take action.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46: Scope

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States *insofar as they directly apply Union or Community law.***
- 2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Reasons:

The version of the ‘scope’ clause proposed in CHARTE 4316/00 is different from the previous version (document 4235/00, Article H.1). As far as action by the Member States is concerned, the field covered by the Charter is now no longer the ‘application of Community law’ but ‘the scope of Union law’. This could be taken to mean that Member States were bound by the Charter not only for the purpose of the direct application of EU law but also in the domestic sphere in fields where the EU has powers or even to which the EU merely lays claim de facto.

The definition of ‘the scope of Union law’ therefore seems uncertain and open to misinterpretation. It could be clarified in the manner proposed above.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46(1)

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

1. **The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by Treaty or for the implementation thereof, as well as to the institutions or bodies active on the territory of the Union on the basis of a measure adopted by the Council, and to the Member States exclusively within the scope of Union law.**

Reasons:

The proposed version makes it clear that the provisions of the Charter also apply to the second and third pillars of the EU Treaty, viz. common foreign and security policy, and police and judicial cooperation in criminal cases. The Charter should consequently also be directed to the institutions, special units and bodies, as laid down in rules and regulations in force in Union territory, such as the Schengen Agreement. The phrase as well as to the institutions or bodies active on the territory of the Union on the basis of a measure adopted by the Council is added to allow institutions or bodies such as Europol to be included under the protection afforded by the Charter. The provision moreover makes it clear that the Charter will also apply to any new powers that may be acquired by the Union in future.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Pervenche BERÈS

Proposed text:

Article 46. Scope

1. *Respect for the rights and implementation of the principles set out in this Charter are binding on the institutions and bodies of and the entities established within the Union within the framework of the powers conferred on them by the Treaties, on the Member States and the social partners within the scope of Union law, and on private persons acting with the agreement or consent of the Member States.*
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 50

Delete Paragraph 2

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46(2)

Submitted by: Hanja Maij-Weggen

Proposed text:

Delete Article 46(2).

Reasons:

This article is unnecessary and, furthermore, harmful with regard to public opinion.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46: Scope

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

2. This Charter does not establish any competence or any new task for the Union or modify competences and tasks defined by the Treaties.

Reasons:

There is no need to mention the Community directly, as the reference to the Union covers the Community as well. The words 'the Community or' should therefore be deleted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46(2):

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

This Charter does not, either explicitly or implicitly, establish any new competences for the Union, the Community or their institutions, or extend the existing competences or objectives of the Community and its institutions.

Reasons:

The aim is to improve the wording while also reinforcing the point that the Charter does not, either explicitly or implicitly, modify the competences of the Community [remainder of justification concerns only the Spanish text].

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Ieke van den Burg

Proposed text:

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, as well as to the Member States and to the social partners, acting in the scope of Union and Community law.**
- 2. This Charter does not in itself establish any competence or any new task for the Community or the Union unless explicitly formulated. (rest delete)**
- 3. Member States of the EU are bound to the content of this Charter by their own Constitutions, and by the international Conventions and Charters referred to in this Charter. Adoption of this Charter once more stresses their commitment to these broadly recognised fundamental rights and standards.**

Reasons:

- 1. In the first part the reference to social partners, that was proposed by the Presidium in a separate article 31, is included. A separate horizontal article referring only to the social and economic rights is not necessary and contrary to the principle of indivisibility of rights. Further refinements and possibly distinct treatment with respect to the justiciability of different rights may be necessary, but should not be dealt with by making different sets of rights with different status, scope and meaning.**
- 2. The addition of "in itself" and "unless explicitly formulated" is meant to keep open the possibility that in the final draft of and decision about this Charter some provision may be included that explicitly gives a new task or competence; for instance a provision giving the EU the task to make the Charter well known to the general public, to publish it, to evaluate it, or something similar.**
- 3. The addition of this third part is formulating the relationship that Member States have with respect to this Charter. In fact this relation is simply built upon their already existing commitment to the national and international standards of fundamental rights which form the basis of the Charter.**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46 (insertion of a new paragraph 3). Scope

Submitted by: Hubert HAENEL

Proposed text:

“3. This Charter shall uphold the principle of subsidiarity.”

Reasons:

The purpose of the Charter is to affirm the common values which underly the European Union. The aim of affirming respect for the principle of subsidiarity is both to draw attention to that principle and to render it enforceable in the courts.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46: Scope

Submitted by: Piero Melograni

Proposed text:

Insert a new paragraph 3, to read: '**3. The Union shall take action to implement the provisions of this Charter in accordance with the principle of subsidiarity laid down in Article 5(2) of the Treaty establishing the European Community**'.

Reasons:

This new third paragraph includes in the Charter the subsidiarity principle under which the Union shall take action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 46:

Article 46a. Social rights and principles

The Union institutions and bodies and the Member States, when acting within the scope of Union law, and the social partners at Union level, acting within their respective powers, shall apply the social principles and respect the rights recognised by this Charter, and shall promote the conditions for their implementation in accordance with the principle of solidarity.

Reasons:

The proposed article is intended to clarify the scope and limits of fundamental social rights with respect to the powers of those involved in implementing Union law. This article is intended to serve as a 'general' clause and its substance is therefore deemed implicit in all the following articles which lay down social and economic rights, without the need to refer repeatedly to individual provisions.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Supplementary proposal on bodies enjoying fundamental rights

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

The rights and freedoms listed in the Charter shall also apply to legal entities and other associations with registered offices in the territory of the community provided that they are so applicable by their nature.

Reasons:

The bodies enjoying fundamental rights are, in the first instance, natural persons but also, to a certain extent, legal entities and other associations. The proposed horizontal provision is intended to clarify this. The key element is registered offices in the territory of the Community. However, this is determined less by the registered offices pursuant to the articles of association and more by the actual offices, the 'self-appointed centre of activity' of the association .

Article 47

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

My proposals for drafting the substantive rights in the Charter include references to limitations and qualifications on a right by right basis. I disagree that it is possible to provide satisfactorily for that in a single horizontal clause. I deal with limitations in the two-part 'Proclamation'/'Definition' I have recommended and in my amendment to Article 48 below. I have a number of difficulties with the drafting of the Praesidium text in any event:

- ◆ *“competent legislative authority” may exclude the common law*
- ◆ *“actual substance ... must be respected” appears to exclude the possibility of lawful derogations and reservations by competent national authorities. Limitations could not lawfully be used wholly to negate a right, so the second sentence seems unnecessary.*
- ◆ *“subject to the principle of proportionality ... democratic society” seems unnecessary given the definition of the rights, article by article.*
- ◆ *“limitations” fails to capture “formalities”, “interferences”, “restrictions”, “penalties” etc as provided for expressly by the ECHR.*
- ◆ *“permitted by the [ECHR]” excludes limitations permitted by the Treaties or elsewhere.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be replaced by specific limitations for each right.

Reasons:

In keeping with the position which Spain has been upholding for reasons of legal certainty, it is proposed that the rules governing each right should include the corresponding limits.

Enshrining the limits to rights in a general clause which, moreover, refers to the limits provided for under another international law or Treaty runs counter to all the techniques of law-making. Furthermore, I believe that the Charter should avoid any wording which might be understood as a cross-reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 47

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The fundamental rights guaranteed by this Charter are not absolute privileges, and their exercise may be restricted by limitations justified by law on the grounds of the objectives of general interest pursued by the Community, provided such limitations do not constitute, with regard to the aim pursued, disproportionate or unreasonable interference undermining the very substance of those rights. Limitations may in no circumstances exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

This article is explained in the explanatory statement as the result of a decision to include a single general limiting clause, applying to all of the rights, thus removing the need to specify limitations for each right in turn. This option does not, however, eliminate the disadvantages of not spelling out what the limitations are for each right. Should the limitations be expressly introduced by law (and how would this be transposed to the Community context)?, and until the law concerned existed, would the rights concerned be unlimited? How can a quasi-constitutional legal text like the Charter be limited by an instrument of lesser rank (directive, regulation, even national law), should it obtain the status of primary law? Who would rule, and how, whether the limits introduced respected the essential nature of the rights concerned and were proportionate? Finally, what would become of the economic and social rights not taken up by the Rome Convention? As the representation of the Spanish Prime Minister has stressed on numerous occasions, the limitations on particular rights should be part and parcel of their definition: each right should include the specification of its own limits, which, in many cases, arise out of other fundamental rights. From such a perspective, this article cannot be considered acceptable.

Another question is whether this clause should merely complement, rather than exclude, the specification of the limits on the various rights in the individual articles. Should this be the case, the clause may be accepted in the sense that, while its further development is a matter for the law, it lays down certain criteria which must be respected.

In any case, what is proposed here is an alternative wording, aimed at improving the drafting from the technical viewpoint. This does not mean that it should be considered unnecessary or superfluous to set out the limitations on the exercise of certain rights, as proposed in our amendments to the Charter.

The text proposed brings together the principles concerning limitations on the exercise of fundamental rights which have been recognised by ECJ case-law. See the following cases: 5/88 Wachauf, decision of 13 July 1989, ECR 1989, p. 2609; Case C-44/94, The Queen vs. Ministry of Agriculture, Fisheries and Food, Decision of 17 October 1995, ECR 1995 I, p. 3115. Case C-84/95, Bosphorus Hava Yollari Turizm Ve Ticarte AS vs. Ministry of Transport, Energy and Communications, Decision of 30 July 1996, ECR 1996 I, p. 3953; Case C-368/95, Vereinigte Familiapress Zeitungsverlags Und Vertriebs GmbH vs. Heinrich Bauer Verlag, Decision of 26 June 1997, ECR 1997 I, p. 3692; Case T-113/96, Édouard Dubois vs. Council and Commission, Decision

of 29 January 1998, ECR 1998 II, p. 125; Case C-200/96, Metronome Musik GmbH vs. Music Point Hokamp GmbH, Decision of 28 April 1998, ECR 1998 I, p. 1953; and Case C-292/97, Kjell Karlsson, Decision of 13 April 2000 (still unpublished).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47, first sentence

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by statute.

Reasons:

This ties in better with the European Convention on Human Rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for, *under the terms of the Treaties*, by the competent legislative authority, (*rest unchanged*)

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Mr François Loncle

Proposed text:

Amend the first two sentences as follows:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. The actual substance of those rights and freedoms may not be undermined.

Reasons:

The new wording of the first sentence concerning limitations on the exercise of rights and freedoms refers to the law because the concept of a legislative authority is unsuited to the European Union framework. It would seem preferable to use the term 'law', in the sense of a general and abstract norm. The change in the second sentence is an amendment to the wording.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Win Griffiths, MP

Proposed text:

Any limitation on the exercise of the rights of freedom recognised by the Charter must be provided for by the competent legislative authority. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedom.

Reasons:

This text is more concise. Detailed criteria, if needed, could be considered in Part B.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. (19 words deleted). It must remain *proportionate* to the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

- The deleted phrase ('the actual substance of those rights and freedoms must be respected') was unnecessary since the following sentence states that limitations must remain proportionate to the protection of legitimate interests in a democratic society. It should be borne in mind that, even in a democratic society, certain rights may need to be suspended in the event of a crisis threatening the survival of a nation, e.g. in war time.

 - The amendment also rephrases the third sentence to make it more concise.
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 47. Limitation of guaranteed rights

The essential nature of the rights and freedoms recognised in this Charter is inviolable. These rights and freedoms may only be restricted by the competent legislative authority. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. The level of protection of the European Convention for the Protection of Human Rights and Fundamental Freedoms must not be reduced by such limitations.

Reasons:

The guarantee of the essential nature of the fundamental rights should come at the beginning since no limitations are permissible here. Recasting the second and fourth sentences is intended to make clear their intention.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47: Limitation of guaranteed rights

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Any limitation on *(three words deleted)* the rights and freedoms recognised by this Charter *may only* be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality *and with due regard for the European Convention on Human Rights and Fundamental Freedoms*, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. *This shall be without prejudice to Article 48. The fundamental right which is limited must be named.*

Reasons:

A general and rigid link with the limitations provided for by the ECHR, as proposed in Article 47, fourth sentence, of CHARTE 4316/00, is problematic – if for no other reason – because the substance of the rights conferred by the Charter does not fully correspond with the substance of the ECHR. Moreover, a de facto link to the case law of the European Court of Human Rights would call into question the independence of the Charter; from the outset, the Charter would not be a self-contained whole, capable of interpretation without reference to any other source, as seems highly desirable in the interests of intelligibility to the public and effectiveness. It would also hamper the development of an autonomous doctrine of fundamental rights under EU law, in which case the Charter could fail to achieve one of its essential objectives.

On the other hand it ought to be made clear that the values enshrined in the ECHR will also have to be taken into account in determining limitations (cf. Article 6(2) of the Treaty on European Union). It is therefore proposed that the third sentence be amended as shown above.

In order to clarify the relationship with Article 48, a new fourth sentence should be inserted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Guy Braibant

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. Subject to the principle of proportionality, it must remain within the limits necessary for the protection of legitimate interests in a democratic society. The actual substance of the rights and freedoms must be respected.

Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

This amendment replaces the phrase 'by the competent legislative authority' with 'by law', a term which is frequently used in the other articles of the Charter and is much less ambiguous, particularly in the light of the case law of the European Court of Human Rights concerning the concept of law

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 47

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected.

Reasons:

In previous amendments it was proposed that powers for imposing restrictions should be specified article by article, and the conditions also laid down under which restrictions could be imposed on fundamental rights. Only by thus specifying article by article the powers for imposing restrictions and the conditions under which restrictions would be admissible could discrepancies between the EU Charter and the ECHR be prevented from arising. It consequently cannot be recommended that a general restrictions clause, such as that included in Article 31 of the European Social Charter, should be drawn up. Both traditional and social fundamental rights will be better served if the restriction clauses are worded as accurately as possible as they apply to each specific right. It should be possible for both kinds of rights to be restricted in the interests of other fundamental rights (e.g. by way of a clause on the protection of other rights). In that way, troublesome discrepancies between traditional and social fundamental rights can be prevented from arising.

The first sentence is retained to make it clear that restrictions can be applied only by the competent legislative authority. What precisely the competent legislative authority is in a particular case will depend on the relevant Treaty provisions. The second sentence consolidates European Court case law relating to human rights.

Alternatively, in the event that the amendments calling for restrictions to be specified separately by fundamental rights are rejected:

Alternative text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter may not be more extensive than those that have been authorised under the European Convention on the Protection of Human Rights and the Revised European Social Charter. Such limitations may be applied only by the competent legislative authority. The actual substance of the rights and freedoms concerned must be respected. Any such limitation must, having regard to the principle of proportionality, remain within such limits as are necessary to upholding legitimate interests in a democratic society.

Reasons:

On account of its great importance, the article begins with a reference to the limitation provisions in the ECHR and the ESC. The limitation provisions in the revised ESC (see Article G thereof) are equivalent to those in the ECHR.

By way of adaptation to Union law, the words by the competent legislative authority are added. What precisely the competent legislative authority is in a particular case will depend on the relevant Treaty provisions. It will also be necessary to comply with the requirements that the ECHR (as interpreted by the Revised ESC) attaches to the words as is in accordance with the law. The term 'law' has at all events a wide meaning in the ECHR (it can also include unwritten law), provided that the requirements that the ECHR and the European Court of Human Rights apply to such limitations are complied with (the law in question must in particular meet the requirements of accessibility and predictability). The criteria specified as objectives in the ECHR should to some extent be attributed to the EU. Article 8(2) of the ECHR could then be worded as follows:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of the security of the Union, public safety or the economic well-being of the Union, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 47****Submitted by: Ieke van den Burg****Proposed text:**

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms may not be affected. Subject to the principle of proportionality, any limitation must remain within the limits necessary (...) in a democratic society for the protection of the rights an freedoms of others or for the protection of public interest. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Revised European Social Charter. The restrictions permitted under this Charter to the rights and freedoms set forth herein shall not be applied for any purpose other than for which they have been prescribed.

Reasons:

- *"may not be affected" is a clearer formulation in this context than "must be respected".*
- *Reformulation of the limits according to art. G 1 of the Revised European Social Charter (or art. 31 of the original Charter of 1961). This adds a reference to the possibility of conflicting rights.*
- *Addition of the reference to the Revised European Social Charter is essential, since in many articles references to this Charter are included.*
- *The last sentence is added as an extra element, and is based also on the general restrictions' article G (2nd part) of the RESC.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 51 (new).

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms *and its interpretation by the European Court of Human Rights.*

Reasons:

The insertion reduces the risk of disparate judicial interpretations of the ECHR. See also the statement of reasons for Article 49 in document CHARTE 4136/00 CONVENTION 34.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

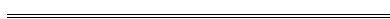
Add, in fine: '*as interpreted by the European Court of Human Rights*'.

Reasons:

All limitations must be spelled out in the respective articles. In the light of the many different rights guaranteed, and the very different nature of those rights, it is simply not possible to deal with all limitations in one place. It may be that each article thereby becomes longer but any other drafting method will defeat the main purpose of the Charter, i.e. to present the rights in a manner in which they will be understood without far-reaching references to other texts.

Draft Art. 47 should supplement such limitations in the various articles of the Charter.

Reference should also be made to the case-law of the ECHR.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Einem/Holoubek

Proposed text:

Any limitation on *(3 words deleted)* the rights and freedoms recognised by this Charter must be *expressly* provided for by the competent legislative authority. *(11 words deleted)*. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of *public* interests in a democratic society. Limitations may *in any case* not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

Some of the fundamental rights guaranteed by the Charter should not be subject to limitation, or should be less subject to limitation than is provided for in the general limitation clause in Article 47. This should be expressly added to the articles in question (e.g. Articles 2, 4 and 5; see the proposals for amendments to these articles by Einem/Holoubek).

As to the wording of Article 47, our proposal contains the following changes to the text proposed by the Presidency:

The words 'the exercise of' after 'limitation on' in the first sentence have been deleted, since they are expendable and might in any case be open to misinterpretation.

Sentence 2 on the substance should be deleted entirely. Its protective effect is sufficiently well covered by the following sentence, which adheres to the generally acknowledged standard for legal limitations on fundamental rights. Any other generally applicable interpretations which might possibly be linked to the idea of 'substance' are extremely vague and more confusing than helpful.

Instead of 'legitimate' interests, the text should refer to 'public interests', in order to make it clear, in accordance with a generally accepted understanding of the concept, that the interests in question must be public interests. These of course include protection for the rights of third parties, as the ECHR's substantive provisos make clear.

Adding the words 'in any case' in the last sentence of Article 47 is intended to clarify specifically the fact that Article 47 does not make possible any limitations over and above the ECHR provisos, but that it is possible, conversely, for the Charter to allow limitations only to a more limited extent than the ECHR provisos.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. LIMITATION OF GUARANTEED RIGHTS

Submitted by: Jordi Solé Tura

Proposed text:

Limits may be imposed on the exercise of the rights and freedoms recognised by this Charter only if this has previously been provided for by the competent legislative authority and the actual substance of those rights and freedoms must in all circumstances continue to be respected. (Six words deleted) Any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society and limitations may not under any circumstances exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

The purpose of this amendment is to improve the wording and to define concepts more accurately.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 47. Limitation of guaranteed rights

Replace last sentence with: *The rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms shall be exercised in accordance with the conditions and limitations laid down in that Convention.*

Reasons:

This amendment is intended to make it clear that – as regards fundamental rights and freedoms – the codification and case law pursuant to the ECHR are the prime yardstick for the application and interpretation of the Charter. This could also avert the danger of competing interpretations by the Courts in Luxembourg and Strasbourg. The formulation corresponds with that of Article 48 dealing with rights enshrined by the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 47: Limitation of guaranteed rights

Submitted by: Piero Melograni

Proposed text:

Insert a new second subparagraph, to read: 'No limitations may be placed on the rights and freedoms recognised in Articles 1(1), 4 and 5(1) of this Charter.'

Reasons:

The inclusion of the new subparagraph draws attention to three rights (the inviolability of human dignity, the ban on torture and inhuman and degrading treatment, and the ban on slavery) which may never be limited by the competent legislative authority, even for the purpose of protecting legitimate interests in a democratic society.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 47

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 47:

Article 47. Guarantee of the rights and freedoms set out in the Charter

- 1. Further provision may be made by the competent legislative authority for the rights and freedoms recognised by this Charter, with due respect for their basic substance set out in the Charter and for the principle of proportionality between the interests being protected.**
- 2. The rights and freedoms recognised by this Charter which are already provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms may not be made subject to limitations that exceed those permitted by that Convention.**
- 3. The rights and freedoms recognised by this Charter which are already provided for in the Union Treaties shall be exercised under the conditions and subject to the limitations laid down by those Treaties.**

Reasons:

The proposed recasting of Article 47, which now incorporates Article 48, is intended to bring within one article the three instruments guaranteeing the rights and freedoms recognised by the Charter. Firstly, any further provision for those rights and freedoms is made subject to respect being shown for the principles of legality and proportionality; secondly, the principle of a level of protection no lower than that provided by the European Convention is established; and thirdly the principle of a level of protection no lower than that provided by the Treaties is also established.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I refer to my general remarks (2) to Convent 28. Greater precision and legal certainty is achieved by stating the specific limitations in direct relation to the relevant articles.

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Article 48

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Jo Leinen

Proposed text:

Delete article.

Reasons:

The limitations referred to in this article are superfluous, as the Charter as a whole, once incorporated in the Treaty, will already be limited by virtue of the definition of its scope in Article 46. Moreover, the formulation in Article 48 could give the impression that the individual rights in the Charter are bound by the provisions of the Treaty, which is not the case, since the rights to which it refers are universal fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Einem/Holoubek

Proposed text:

Article 48 to be deleted.

Reasons:

The meaning of this article is unclear. If it is intended only to indicate that the rights arising from the EC Treaty which are not enshrined in the Charter will of course continue to apply, this is in any case quite clear, without specific mention of it needing to be made in the Charter.

If, on the other hand, it is intended to mean that rights which are enshrined both in the Charter and in the EC Treaty are to continue to be limited in accordance with the EC Treaty, then such an article should definitely be rejected. It is aimed directly at the exercise of powers under the EC Treaty. A more extensive possibility of limiting rights than that allowed by the Charter on the basis of the EC Treaty would render the Charter worthless.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 48

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

Deleted

Reasons:

This article is superseded by Article 46(2).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 48

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Delete article.

Reasons:

The substance of Article 48 is incorporated in the third paragraph of the recast version of Article 47.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 48****Submitted by: Ieke van den Burg****Proposed text:*****Delete*****Reasons:****Not necessary and already included in the proposed article 46.**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Deleted.

Reasons:

Article 48 adds nothing to Article 47. The EC Treaty must not be regarded as a source of blanket limitations on competencies.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 48:

Submitted by: **Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister**

Proposed text:

Reasons:

The Representation of the Spanish Prime Minister accepts this article, but believes that the limitations on the rights recognised in the Treaty should also be included in the definition of those rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 52 (new).

Nothing in this Charter shall be interpreted as restricting or undermining the rights enshrined by the Treaty establishing the European Community.

Reasons:

This amendment is intended to turn the proposed article into a non-regression provision instead of a non-progression one.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48. Conditions and limits defined by the Treaty

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to read:

“The rights in the ‘Proclamation of Rights’ Section of articles 1 to [45] of this Charter are defined in the ‘Definition of Rights’ section in each of those articles, and are to be understood within the meaning and effect given to the corresponding rights under the ECHR by the European Court of Human Rights, and the TEU and the TEC by the European Court of Justice.”

Reasons:

I agree with the Praesidium’s proposal to tie those Charter rights which are based on the treaties to the treaty conditions and limits. However, I firmly believe, as I have consistently argued, that this policy should also extend to the ECHR. Divergence between the ECHR and the corresponding rights in the Charter would risk the creation of a two-tier system of rights protection in Europe. That would create legal and public confusion. It would not strengthen the protection of human rights but weaken it.

My version, therefore, which refers to the Part A/Part B approach (both proclaiming the rights and defining them), makes plain our intention that the rights in the Charter should be understood within the meaning of existing rights.

I believe it important that this article should be moved to the beginning of the Charter to set out its structure.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 48: Conditions and limits defined by the Treaty

Submitted by: Piero Melograni

Proposed text:

After the word 'enshrined', insert 'both by this Charter and'.

Reasons:

The proposed amendment specifies that the rights referred to in this article are those guaranteed both by the Charter and by the Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Pervenche BERÈS

Proposed text:

Article 48. Conditions and limits defined by the Treaty

The rights enshrined by the Treaty establishing the European *Union* shall be exercised under the conditions and within the limits laid down therein.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

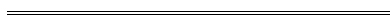
Proposed text:

Article 48. Conditions and limits defined by the Treaty

The rights and freedoms also enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Reasons:

The purpose of this article is to bring into line, in respect of scope and limitations, the fundamental rights already enshrined in the EC Treaty with the fundamental rights based on those rights contained in the Charter. The proposed wording seeks to achieve this.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Heinrich NEISSER

Proposed text:

Article 48. Conditions and limits defined by the Treaty

The rights enshrined by *Articles ... ~~the Treaty establishing the European Community~~* shall be exercised under the conditions and within the limits laid down *in the Treaty establishing the European Community ~~therein~~*.

Reasons:

It is suggested that the numbers of the specific articles be stated here (e.g. Articles 24, 25 et seq.).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I refer to my remarks under Article 47.

Finally, I believe that consideration should be given to drawing up separate articles on **equality between men and women** and **prohibiting racism**.

=====

Article 49

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

The purpose of this Article, namely that this Charter will not set a lower standard for fundamental human rights, is already met in Article 50.

The reference to the Member States' constitutions is here less appropriate, as they contradict each other. In a Charter of fundamental rights, there must not be any contradictions. We cannot create a "Europe à la carte" in constitutional matters, where individuals get the impression that it is possible to pick the constitutions he or she wishes to adhere to. Fundamental rights must be absolute, precise and unconditional. The scope of the Charter is to make fundamental and universal human rights visible, understandable - and thus not contradictory - to European citizens.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 49

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 49 to read:

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

Reasons:

- 1. The Charter obviously cannot allow the effect of the protective provisions deriving from the European Treaties or the substantive law of the Member States to be limited.*
- 2. To ignore the case-law of the two courts would be to undermine the protection currently provided by certain provisions, which is not, and cannot be, the aim of this Charter.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 49

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Delete the words 'the Union'

Reasons:

The European Union is not at present party to any international convention, as it does not have legal personality in its own right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. LEVEL OF PROTECTION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Delete the words ‘the Union’.

Reasons:

As things stand at present the Union has no legal personality and cannot therefore be party to an international convention.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. Level of Protection

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to read:

“Nothing in this Charter is intended to restrict any right guaranteed by the law of any Member State or under international agreements to which the Union, the Community or the Member States are party”

Reasons:

I agree with what I take to be the intention behind this proposed Article. It would be unfortunate if the Charter had the result of adversely affecting such higher levels of protection as may exist in individual Member States (whatever their source) or under agreements with third parties made by the EU or EC. My version seeks to overcome some drafting difficulties I find in the Praesidium version; e.g.:

- ◆ “constitutions” (too narrow – compare ECHR Article 53)
 - ◆ “international law” (too vague in this context)
 - ◆ “including the ECHR” (already covered; double inclusion may create legal confusion about our intentions)
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49: Level of protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

This Charter shall not affect the human rights and fundamental freedoms guaranteed by the constitutions of the Member States or by international law or international conventions the contracting parties to which include the Union, the Community or all Member States.

Reasons:

It is open to doubt whether the version of Article 49 which appears in CHARTE 4316/00, and which is based on the ECHR, is as clear as claimed in the statement of reasons. The interpretation which is evidently deemed desirable – that the Charter will institute a minimum level of protection – seems possible. However, it would surely be equally possible to interpret it as establishing a substantive rule for resolution of conflict of laws to the effect that the legal rights conferred by the Charter are deemed, from the outset, not to be capable of limiting aspirations to rights based on other sources of law. It is questionable whether this interpretation would result in a substantively acceptable definition of the rules. The legal fora ought, therefore, to be clearly separated, for example by means of the proposed formulation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 49. Level of protection

This Charter is without prejudice to the human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party.

Reasons:

Article 49 is intended to prevent a levelling down of human rights and fundamental freedoms guaranteed elsewhere and, in particular, a reduction in the level of protection. The wording 'This Charter is without prejudice to...' is intended to express this.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. Level of protection

Submitted by: Gabriel Cisneros Laborda

Proposed text:

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party.

Reasons:

It is proposed that the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms be deleted, in line with the second paragraph of the reasons for the amendment to Article 47.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. Level of protection

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Delete the word 'Union'.

Add, in fine: '*as interpreted by the European Court of Human Rights.*'

Reasons:

The European Union is not a legal person which can enter into international agreements or adhere to international organizations.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 53 (new).

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

Reasons:

See the statement of reasons for Article 49 in document CHARTE 4316/00 CONVENTION 34: 'The reference to the European Convention on Human Rights obviously means the Convention as interpreted by the European Court of Human Rights, whether now or in the future, by virtue of the principle that any interpretation is incorporated into the text interpreted.' This important principle ought to be stated in the text of Article 49 itself.

=====s

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 49****Submitted by: Ieke van den Burg****Proposed text:**

No provision of this Charter may be interpreted as a limitation of the protection of fundamental rights provided for by European and national law and international conventions and treaties, referred to in this Charter, including their jurisprudence.

Reasons:

This paragraph is meant to provide a non-regression clause to prevent that the Charter may be misused to weaken existing protection of fundamental rights, as provided for by the national and international standards, and the jurisprudence based on them, that inspired the drafting of the EU Charter. The formulation is similar to article 53 of the ECHR.

In case the Convention is attached to mentioning particularly the ECHR, I propose to also add the RESC!

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 49: Level of protection

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

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

Reasons:

The specific reference to the European Social Charter is justified by the fact that a number of the social rights set out in this draft Charter derive therefrom.

The reference to the constitutions of the Member States should be replaced by the words 'constitutional traditions common to the Member States', so as to bring the text into line with the wording of Article 6(2) of the Treaty on European Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised *in international law*, [] particularly any general convention for the protection of human rights and fundamental freedoms, and the Member States' constitutions [].

Reasons:

In its simplicity and clarity, this formulation corresponds to the statement of reasons in CONVENTION 34.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including *the Universal Declaration of Human Rights and the United Nations Pacts, the International Labour Organisation Conventions, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.*

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Pervenche BERÈS

Proposed text:

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. *This Charter shall supplement existing rights; it shall not prevent the maintenance or establishment of stronger protection measures by each Member State.*

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Einem/Holoubek

Proposed text:

1. Nothing in this Charter shall be interpreted as restricting (*two words deleted*) human rights and fundamental freedoms recognised (*6 words deleted*) by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party. *This applies in particular to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.*

2. *In interpreting the fundamental rights contained in this Charter, and particularly the economic and social rights, account shall be taken of international agreements and conventions concluded by the Member States of the European Union.*

Reasons:

The proposed wording endeavours to express the intention of Article 49 more clearly. It is based more closely on Article 53 ECHR than the Presidency's proposed text is.

In particular: no mention should be made of the idea that this Charter could be interpreted as 'undermining' human rights. Any reference to the 'fields of application' of international-law or Member State human rights provisions is confusing and unnecessary, because this is clear from the rights in any case. Because of its great importance the ECHR should be mentioned in a separate sentence, and it should also be stated that – as the Presidency's statement of reasons clearly says – the rights under the Convention are here to be understood as incorporating their interpretation by the European Court of Human Rights.

The proposed second paragraph – in accordance with a proposal by Mr Meyer (doc. 4271/00) – is intended to ensure the concordance of the Charter with other international human rights conventions binding on the Member States by stipulating that in interpreting the Charter these agreements and conventions are to be taken into account.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Article 49 (Level of protection) should be inserted after Article 47 (Limitation of guaranteed rights).

Reasons:

The aim is to make the Charter more coherent and intelligible to the layman.

Article 50

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed new Article 50

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Any person whose rights and freedoms are violated shall be entitled to a proper hearing conducted by a judge nominated on the basis of a law.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 50. Prohibition of abuse of rights****Submitted by: Lord Goldsmith QC****Proposed text:****Substitute ‘is to be’ for ‘may be’ in line one****Reasons:**

The linguistic change proposed aligns the drafting of the Article more closely with the indicative mode employed in the other horizontal articles (as amended). I am otherwise content with the Praesidium text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 50

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Correction of grammar.

Article 51

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed new Article 51

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. *Everyone shall be entitled to high-quality general services in all areas which are essential to the improvement of living conditions, sustainable development and, more generally, the protection of fundamental rights.*
2. *General services shall be governed by the principles of universality, equal access, continuity, transparency and democratic control.*

Reasons:

Article 51 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to the following Articles

Submitted by: Einem/Holoubek

Proposed text:

The Union and the bodies it comprises are based on the principles of freedom, democracy, solidarity, respect for human rights, and the rule of law; these principles are common to all the Member States.

Reasons:

At least with reference to the articles of the Charter that deal with fundamental social and economic rights, a formula should be incorporated in a general preamble, as proposed, for example, by MEYER (doc. 4271/00), which specifically introduces the principle of solidarity. The text suggested by Rodota, Manzella and Paciotti (doc. 4308/00) also adopts this approach.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Prof. Dr Jürgen Meyer

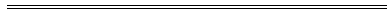
Proposed text:

Article. 42. Access to the courts

Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.

Reasons:

Article 42 contains the provision concerning access to the courts which I included in my original discussion draft (Contrib. 2).



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 23 June 2000 (28.06)
(OR. fr)****CHARTE 4373/00****CONVENT 40****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
– Compromise proposal submitted by the Praesidium for Articles 31 to 40
(social rights and horizontal clauses)
(reference doc: Charte 4316/00 CONVENT 34)

Article 31

Becomes second paragraph of the current Article 46.

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Duff, Leinen, Van den Burg, Tarschys, Rodotà – Paciotti – Manzella, Hirsch Ballin, Barros Moura – Azevedo, Goldsmith, Cederschiold.

Article 32

Becomes Article 31.

New title: Freedom to choose an occupation and right to work

New text:

- "1. Everyone has the right to work, to choose his or her work and to enjoy job protection
2. Everyone has in particular the right to engage in an occupation or commercial activity, and to have access to a free job placement service."

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, Van den Burg, Dieulengard, Meyer, Cederschiöld, Goldsmith, Rodotà – Paciotti – Manzella, Barros Moura – Azevedo, Braibant

Article 33

Becomes Article 32.

Text unchanged.

Article 34

Becomes Article 33.

Drafting amendments:

"Employers and workers have the right, at all levels, to negotiate and conclude collective agreements and to take collective action (...) in cases of conflicts of interest, to defend their economic and social interests under the conditions laid down by national and Community legislation and practice."

*Based on amendments submitted by the following members of the Convention:
Braibant, Olsen.*

Article 35 and Article 36

Merge to become Article 34.

New title: Fair and just working conditions

Drafting amendments:

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

Based on amendments submitted by the following members of the Convention:

Leinen, Van den Burg, Dieulangard, Fayot, Loncle, Goldsmith, Meyer, Dehousse.

Article 37

Becomes Article 35.

New title: Protection of young people at work

Drafting amendments: Read the second paragraph as follows:

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

Based on amendments submitted by the following members of the Convention:

Van den Burg, Dieulangard, Goldsmith, Fayot, Dehousse.

Article 38

Becomes Article 36.

New title: (..) Protection in the event of unfair dismissal

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, Van den Burg, Rodotà, Paciotti – Manzella, Dehaene, Cederschiöld, Dieulengard

Article 39

Becomes Article 37.

New title: (..) Combining family and professional life

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Van den Burg

Article 40

Becomes Article 38.

Drafting amendments: Read the paragraph as follows:

"Non-European Union nationals working lawfully in the territory of the Member States are entitled to benefit from working conditions which are no less favourable than those envisaged by European Union workers (...)."

Based on amendments submitted by the following members of the Convention:

Jansson, Brax, Nikula, Barros Moura – Azevedo, Dehaene, Dieulangard, Melograni, Einem, Houloubek, Voggenhuber, Fayot, Meyer.

Horizontal clauses

Article 46(current)

Drafting amendments: Read Article as follows:

- "1. The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions and bodies of the Union and to the Member States exclusively when they implement Union law.

2. The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers and in accordance with the principle of subsidiarity, shall observe the social rights and implement the social principles set out in this Charter.

3. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Neisser, Berès, Haenel, Melograni, Duff, Braibant, Leinen, Van den Burg, Tarschys, Rodotà – Paciotti – Manzella, Hirsch Ballin, Barros Moura – Azevedo, Goldsmith, Cederschiold.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 3 July 2000 (06.07)
(OR. fr)

CHARTE 4383/00

CONVENT 41

PRAESIDIUM NOTE

Subject: Draft Charter of Fundamental Rights of the European Union
– Summary of amendments received and of Praesidium compromise amendments on economic and social rights and on the horizontal clauses (Articles 31 to 50)
(reference documents: CHARTE 4316/00 (CONVENT 34), CHARTE 4372/00 (CONVENT 39))

This purpose of this document, drawn up by the Secretariat at the request of the Convention, is to group the amendments to Article 31 to 50 (CHARTE 4316/00) according to topic. This analysis does not cover drafting and linguistic amendments. These will be subject to separate examination.

Article 31. Social rights and principles

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter.

Proposed amendments

- (1) Delete the entire Article, to avoid any risk of inconsistency between Article 31 and Article 46: amendments 1 (Gnauck), 2 (Berès), 3 (Duff), 4 (Leinen), 5 (Goldsmith), 6 (van den Burg), 7 (Tarschys), 8 (Cederschiöld), 9 (Rodotà-Paciotti-Manzella), 10 (Hirsch Ballin). Amendments 11 (Barros Moura-Azevedo), 12 (Griffiths) and 14 (Olsen) also favour uniting these two Articles.
- (2) Begin the Article with a reference to subsidiarity: amendment 16 (Braibant)
- (3) Substitute "Union law" for "Community law": amendments 17 (Melograni), 21 (Korthals Altes) and 22 (Dehaene-De Gucht-Lallemand)
- (4) Delete the reference to "social partners": amendments 18 (Neisser) and 19 (Cisneros Laborda)
- (5) Amend the wording of the obligation, either to restrict its scope: amendments 19 (Cisneros Laborda), 20 (Friedrich- Mombaur), and 21 (Korthals Altes), or to reinforce it: 16 (Braibant), 22 (Dehaene, De Gucht, Lallemand), 23 (Loncle) and 24 (Solé Tura).
- (6) Add a reference to the principle of solidarity: amendment 388 (Rodotà-Paciotti-Manzella), [see also: amendment 446 (Einem-Holoubek)]
- (7) Add a new paragraph on invoking social rights on the basis of laws implementing them: amendment 26 (Rodriguez Bereijo)

- (8) Add a new paragraph explicitly referring to the Revised Social Charter: amendment 25 (Korthals Altes).

Praesidium proposal:

Becomes the second paragraph of the current Article 46

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Duff, Leinen, van den Burg, Tarschys, Rodotà-Paciotti-Manzella, Hirsch Ballin, Barros Moura-Azevedo, Goldsmith, Cederschiöld.

ARTICLE 31a (new)

- (1) **Equal treatment for men and women:** amendments 30 (Vitorino), 31 (Berès), 32 (Rodriguez Bereijo), 33 (Goldsmith) [see also amendments: 110 (Rodotà-Paciotti-Manzella) and 176 (van den Burg)]

Article 32. Freedom to choose an occupation

Everyone has the right to choose and to engage in an occupation.

Proposed amendments

- (1) Add the concept of the "right to work": amendments 38 (van den Burg), 39 (Dieulangard), 46 (Fayot), 51 (Rodotà-Paciotti-Manzella), or of "employment rights": 28 (Meyer) to the title.
- (2) Limit this right to citizens: amendments 40 (Gnauck), 41 (Friedrich-Mombaur)

- (3) Improve the wording of the right: amendments 28 (Meyer), 37 (Duff), 38 (van den Burg), 39 (Dieulangard), 40 (Gnauck), 42 (Goldsmith), 43 (Cederschiöld), 44 (Barros Moura-Azevedo), 45 (Cisneros Laborda), 51 (Rodotà-Paciotti-Manzella), 131 (Voggenhuber)
- (4) Develop the content of the right as a right to the protection of one's employment and of free access to measures promoting employment: amendment 28 (Meyer)
- (5) Refer to the legal framework setting the conditions for the exercise of this right: amendments 47 (Tarschys), 48 (Korthals Altes), 49 (Dehousse), 50 (Braibant), 53 (Rodriguez Bereijo)
- (6) Add a new paragraph on open access to free job placement services: amendment 47 (Braibant)
- (7) Include the right to protection against unfair redundancy (new paragraph): amendment 28 (Meyer); or a new paragraph referring to the market economy: amendment 53 (Rodriguez Bereijo);

Praesidium proposal:

Becomes Article 31

New title: Freedom to choose an occupation and the right to work

New text:

1. Everyone has the right to work, to choose his or her work and to enjoy job protection.
2. Everyone has in particular the right to engage in an occupation or commercial activity, and to have access to a free job placement service.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, Van den Burg, Dieulangard, Meyer, Cederschiöld, Goldsmith, Rodotà-Paciotti-Manzella, Barros Moura-Azevedo, Braibant.

ARTICLE 32a (new)

- (1) **The rights of workers who are EU citizens:** amendments 58 (Manzella) [see also amendment 53, para. 2 (Rodriguez Bereijo)]
- (2) **The right to life-long training:** amendment 59 (Fayot) [see also amendments 51 (Rodotà-Paciotti-Manzella), 154 (Loncle), 130 (Meyer)]
- (3) **The right to fair remuneration – the principle "equal work or work of equal value, equal pay":** 60 (Fayot), [see also 52 (Berès), 56 (Meyer), 89 (Loncle), 110 (Rodotà-Paciotti-Manzella), 196 (van den Burg) and 347 (Voggenhuber)]
- (4) **The right to a minimum wage:** amendment 61 (Dieulangard), [see also 111 (Berès)]
- (5) **The right to a minimum income:** amendment 62 (Dieulangard) [see also amendments: 29 (Voggenhuber), 251 (van den Burg) and 266 (Berès)]

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

Proposed amendments

- (1) Delete the entire Article: amendments 63 (Goldsmith), 64 (Griffiths) and 65 (Cisneros Laborda)
- (2) Reformulate the Article as a task for the Union, by deleting the words "the right to": amendments 67 and 69 (Korthals Altes)
- (3) Make the wording more precise, either as regards matters covered by the right to information and consultation: amendments 75 (van den Burg), 77 (Dehousse), 79 (Einem Holoubek), 80 (Friedrich-Mombaur), 81 (Gnauck), 82 (Berès), 83 (Rodotà-Paciotti-Manzella), or as regards the level where the right is to be exercised: amendments 75 (van den Burg), 76 (Fayot), 82 (Berès), 83 (Rodotà-Paciotti-Manzella)
- (4) Add a paragraph providing for a strengthened right to consultation in the case of restructuring: amendment 84 (Voggenhuber).

Praesidium proposal:

Becomes Article 32

Text unchanged.

ARTICLE 33a (new)

- (1) **Right to fair pay:** amendment 89 (Loncle) [see also amendments 52 (Berès), 56 (Meyer), 60 (Fayot), 110 (Rodotà-Paciotti-Manzella), 196 (van den Burg) and 347 (Voggenhuber)]

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, under the conditions laid down by national legislation and practice.

Proposed amendments

- (1) Delete the entire Article: amendments 90 (Cederschiöld), 91 (Friedrich) and 92 (Goldsmith)
- (2) Explicitly mention the right to strike: amendments 93 (Korthals Altes), 94 (Dehousse), 95 (Rodotà-Paciotti-Manzella), 96 (Voggenhuber), 97 (Braibant), 99 (Dieulangard), 102 (Fayot), 103 (Berès) and 104 (van den Burg)
- (3) Widen the legal reference framework: amendments 93 (Korthals Altes), 97 (Braibant) and 98 (Melograni)

Praesidium proposal:

Becomes Article 33

Drafting amendments:

Employers and workers have the right, at all levels, to negotiate and conclude collective agreements and to take collective action in cases of conflicts of interest, to defend their economic and social interests (...) under the conditions laid down by national and Community legislation and practice.

Based on amendments submitted by the following members of the Convention:

Braibant, Olsen.

ARTICLE 34a (new)

- (1) **The right to fair remuneration and to equality of treatment:** amendment 110 (Rodotà-Paciotti-Manzella) [see also, besides Article 40, amendments 30 (Vitorino), 31 (Berès), 32 (Rodriguez Bereijo), 33 (Goldsmith), 176 (van den Burg), and amendments 60 (Fayot), 52 (Berès), 89 (Loncle), 196 (van den Burg) and 347 (Voggenhuber)]
- (2) **The right to a minimum wage:** amendment 111 (Berès) [see also amendment 61 (Dieulangard)]

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Proposed amendments

- (1) Delete the entire Article: amendments 112 (Berthu) and 113 (Friedrich-Mombaur)
- (2) Reformulate the Article as a task for the Union, and delete the words "Right to" in the title: amendments 115 and 116 (Korthals Altes)
- (3) Define the concept of maximum working hours on a weekly basis: amendments 116 (Korthals Altes), 122 (Dieulangard) and 123 (Rodotà-Paciotti-Manzella)
- (4) Set a minimum period (4 weeks) for the annual period of paid leave: amendment 124 (Voggenhuber)
- (5) Add a paragraph on the right to increased pay for time worked beyond the maximum working hours: amendment 126 (Berès).

Praesidium proposal:

Merge Articles 35 and 36 to become Article 34

New title: Fair and just working conditions*Drafting amendments:*

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

Based on amendments submitted by the following members of the Convention:

Leinen, Van den Burg, Dieulangard, Fayot, Loncle, Goldsmith, Meyer, Dehousse.

Article 36. Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Proposed amendments

- (1) Delete the entire Article: amendments 133 (Cisneros Laborda), 134 (Berthu), 135 (Friedrich-Mombaur) and 136 (Cederschiöld)
- (2) Reformulate the Article as a task for the Union, and delete the words "the right to": amendments 137 and 138 (Korthals Altes)
- (3) Add the workers' right to the protection of his dignity: amendment 145 (van den Burg) or of his wellbeing and his private life: amendment 147 (Dieulangard)

- (4) Add a subparagraph or a paragraph on the right to compensation in the event of illness or accident at work: amendments 146 (Berès), 147 (Dieulangard) and 148 (Voggenhuber)
- (5) Add a paragraph on the right of workers to participate in improving their working conditions: amendment 148 (Voggenhuber)
- (6) Add a paragraph on the right of certain workers to special protection (inclusion in working conditions of the right to maternity and parental leave and the protection of young people): amendment 150 (Leinen).

Praesidium proposal:

See above (Praesidium proposal on Article 35)

ARTICLE 36a (new)

The right to professional training: amendment 154 (Loncle) [see also amendments 59 (Fayot), 151 (Rodotà-Paciotti-Manzella) and 130 (Meyer)]

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Proposed amendments

- (1) Delete the entire Article: amendments 155 (Cederschiöld), 156 (Friedrich-Mombaur) and 157 (Berthu)
- (2) Specify in the title that the Article refers to the protection of young people *at work*: amendments 158 (Korthals Altes) and 173 (Duff).
- (3) Amend the wording relating to the minimum working age, to strengthen it by setting a minimum: amendments 161 (Dehousse), 162 (Hirsch Ballin), 164 (Korthals Altes), or to attenuate it: amendments 160 (Gnauck), 167 (Goldsmith)
- (4) Delete [amendments 163 (Berès), 170 (Fayot)] or specify [amendments 162 (Hirsch Ballin), 164 (Korthals Altes)] possible derogations
- (5) Reformulate the second paragraph as a task for the Union: amendment 164 (Korthals Altes)
- (6) State the aims of adapting working conditions for young people: amendments 167 (Goldsmith), 169 (Dieulangard), 170 (Fayot) and 166 (van den Burg)

Praesidium proposal:

Becomes Article 35

New title: Protection of young people at work

Drafting amendments: Read the second paragraph as follows:

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

Based on amendments submitted by the following members of the Convention:

Van den Burg, Dieulangard, Goldsmith, Fayot, Dehousse.

ARTICLE 37a (new)

- (1) **Gender equality:** amendment 176 (van den Burg) [see also amendments 30 (Vitorino), 31 (Berès), 32 (Rodriguez Bereijo), 33 (Goldsmith) and 110 (Rodotà-Paciotti-Manzella)]
- 2) **Protection of the elderly:** amendment 177 (Berès) [see also amendments 271 (Einem-Holoubek), 314 (van den Burg), 315 (Rodotà-Paciotti-Manzella)]

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or unfair termination of employment.

Proposed amendments

- (1) Delete the entire Article: amendments 178 (Berthu), 179 (Friedrich-Mombaur), 180 (Goldsmith), 181 (Tarschys)
- (2) Reformulate the Article as a task for the Union and delete the words "Right to" in the title: amendments 182 and 183 (Korthals Altes)
- (3) Amend the description of the dismissal: amendments 184 (Duff), 185 (Dehaene-De Gucht-Lallemand), 186 (Rodotà-Paciotti-Manzella), 187 (Cederschiöld), 191 (van den Burg) and 192 (Dieulangard)
- (4) Add a specific provision for protection in the event of collective redundancies: amendments 188 (Fayot), 189 (Barros Moura-Azevedo) and 190 (Berès)

- (5) Add a right to compensation: amendments 189 (Barros Moura-Azevedo) and 190 (Berès)
- (6) Add a ban on dismissing pregnant women: amendments 191 (van den Burg) and 192 (Dieulangard)

Praesidium proposal:

Becomes Article 36

New title: (..) Protection in the event of unfair dismissal

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, van den Burg, Rodotà-Paciotti-Manzella, Dehaene, Cederschiöld, van den Burg, Dieulangard

ARTICLE 38a (new)

Right to fair remuneration: amendment 196 (van den Burg) [see also amendments 52 (Berès), 56 (Meyer), 60 (Fayot), 89 (Loncle), 110 (Rodotà-Paciotti-Manzella) and 347 (Voggenhuber)]

Article 39. Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Proposed amendments

- (1) Delete the entire Article: amendment 197 (Friedrich-Mombaur)
- (2) Reformulate the Article as a task for the Union and amend the title accordingly: amendments 199 and 200 (Korthals Altes)
- (3) Restrict the wording to stating the general principle: amendments 201 (Berthu) and 202 (Griffiths) or to the right to maternity/parental leave: amendments 204 (Goldsmith) and 203 (Duff)
- (4) Expand on the definition of the right to maternity/parental leave: amendments 205 (Melograni), 206 (Hirsch Ballin), 209 (Voggenhuber-Buitenweg), 210 (Berès), 211 (Solé Tura), 213 (van den Burg) and 208 (Dehousse)
- (5) Add a statement of the principle of non-discrimination against workers with family responsibilities: amendments 209 (Voggenhuber-Buitenweg), 210 (Berès) and 213 (van den Burg)

Praesidium proposal:

Becomes Article 37

New title: (..) Combining family and professional life

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, van den Burg.

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.

Proposed amendments

- (1) Delete the entire Article: amendments 215 (Goldsmith), 216 (Friedrich-Mombaur), 217 (Berthu) and 218 (Gnauck)
- (2) Reformulate the Article as a task for the Union: amendment 222 (Patijn)
- (3) Widen the scope to take in stateless persons: amendments 223 (Dehaene-De Gucht-Lallemand), 224 (Jansson-Brax-Nikula) and 225 (Melograni)
- (4) Extend the areas covered by the equality of treatment: amendments 195 (Meyer), 221 (van den Burg), 229 (Voggenhuber), 232 (Barros Moura-Azevedo), 230 (Fayot) and 231 (Einem-Holoubek)

Praesidium proposal:

Becomes Article 38

Drafting amendments: Read the paragraph as follows:

Non-European Union nationals working lawfully in the territory of the Member States are entitled to benefit from working conditions which are no less favourable than those of European Union workers (...).

Based on amendments submitted by the following members of the Convention:

Jansson, Brax, Nikula, Barros Moura – Azevedo, Dehaene, Dieulangard, Melograni, Einem, Holoubek, Voggenhuber, Fayot, Meyer.

Article 41. Social security and social assistance

1. **Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.**
2. **Provision shall be made for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.**

Proposed amendments

- (1) Delete the entire Article: amendments 236 (Cederschiöld) and 237 (Friedrich-Mombaur)
- (2) Reformulate the Article as a general principle: amendments 238 (Olsen), 239 (Rodriguez Bereijo), 240 (Goldsmith), 241 (Griffiths), 242 (Berthu) and 243 (Duff)
- (3) Reformulate as a task for the Union: amendment 245 (Korthals Altes)
- (4) Strengthen the wording of paragraph 1: amendments 175 (Meyer), 247 (Leinen), 248 (Dieulangard), 249 (Berès), 251 (Fayot), 246 (Hirsch Ballin) and 260 (Rodotà-Paciotti-Manzella)
- (5) Add to the list of situations covered: amendments 244 (Jansson-Brax-Nikula), 245 (Korthals Altes), 253 (Einem-Holoubek) and 254 (Cisneros Laborda)
- (6) Add a reference to national legislation to paragraph 2: amendments 255 (Tarschys) and 256 (Gnauck)

Praesidium proposal:

Becomes Article 39

1. Provision shall be made in accordance with conditions established by national legislation and practice for social security benefits providing adequate protection particularly in the event of illness, maternity, dependence or old age and in the event of unemployment.
2. Provision shall be made for social assistance and housing benefit in accordance with the conditions established by national legislation and practice in order to guarantee a decent existence to anyone lacking sufficient resources.

Based on the Korthals Altes, Jansson, Berthu, Einem-Holoubek, Cisneros Laborda, Braibant, Gnauck and Tarschys amendments.

ARTICLE 41a (new)

- (1) **The right to a minimum wage:** 266 (Berès) [see also amendments 29 (Voggenhuber), 62 (Dieulangard), 259 (van den Burg)]
- (2) **The right to housing:** amendments 267 (Leinen), 268 (Fayot), 269 (Berès) [see also amendments 109 (Voggenhuber), 152 (Meyer), 290 (van den Burg), 291 (Rodotà-Paciotti-Manzella) and 366 (Barros Moura-Azevedo)]
- (3) **The right to protection against exclusion and poverty:** amendment 270 (Fayot) [see also amendment 259 (van den Burg)]
- (4) **The rights of the elderly:** amendment 271 (Einem-Holoubek) [see also amendments 177 (Berès), 314 (van den Burg) and 315 (Rodotà-Paciotti-Manzella)]

Article 42. Health protection

Everyone shall have access to medical care and prophylactic measures in accordance with each Member State's rules.

Proposed amendments

- (1) Delete the entire Article: amendments 272 (Goldsmith), 273 (Friedrich-Mombaur) and 274 (Berthu)
- (2) Focus the Article on public health protection, by public authorities: amendment 275 (Rodriguez Bereijo), or through encouragement by the Union: amendments 276 (Korthals Altes), 277 (Patijn), 278 (Hirsch Ballin)
- (3) Reformulate to make access to health care a task for the Union: amendments 277 (Patijn), 278 (Hirsch Ballin)
- (4) Strengthen the wording of the Article to make this a subjective right: amendments 279 (Dehousse), 280 (Solé Tura), 281 (Berès), 283 (Rodotà-Paciotti-Manzella), 284 (Dieulangard) and 108 (Meyer)
- (5) Delete the reference to each Member State's rules: amendments 280 (Solé Tura), 281 (Berès), 282 (Duff), 283 (Rodotà-Paciotti-Manzella), 286 (Dehaene-De Gucht-Lallemand), 287 (van den Burg), 288 (Melograni) and 289 (Cederschiöld)

Praesidium proposal:

Becomes Article 40

English title: "Health care"; French unchanged.

Provision shall be made for access to medical care and prophylactic measures in accordance with the conditions established by national legislation and practice.

Based on the Duff amendment.

ARTICLE 42a (new)

The right to housing: amendments 290 (van den Burg) and 291 (Rodotà-Paciotti-Manzella) [see also amendments 109 (Voggenhuber), 152 (Meyer), 267 (Leinen), 268 (Fayot), 269 (Berès) and 366 (Barros Moura-Azevedo)]

Article 43. The disabled

Provision shall be made for social and vocational integration measures for the disabled.

Proposed amendments

- (1) Delete the entire Article: amendments 292 (Cederschiöld), 293 (Goldsmith), 294 (Friedrich-Mombaur) and 295 (Cisneros Laborda)
- (2) Reformulate the Article as a task for the Union: amendments 297 (Korthals Altes), 298 (Patijn) and 299 (Hirsch Ballin)

- (3) Strengthen the wording of the Article to make this a subjective right: amendments 301 (Fayot), 302 (Duff), 303 (Dieulangard), 304 (Voggenhuber-Buitenweg), 305 (Einem-Holoubek), 306 (Rodotà-Paciotti-Manzella), 307 (van den Burg), 308 (Berès) and 309 (Leinen)

Praesidium proposal:

Becomes Article 41

In English the title becomes "Integration of persons with disabilities", in French "Intégration des personnes handicapées".

Provision shall be made for the independence, social and vocational integration and participation in the life of the community of persons with disabilities.

Based on the Tarschys amendment.

ARTICLE 43a (new)

- (1) **The rights of elderly persons: amendments** 314 (van den Burg), 315 (Rodotà-Paciotti-Manzella) [see also amendments 177 (Berès) and 271 (Einem-Holoubek)]
- (2) **Access to services of general interest:** amendment 316 (Berès) [see also amendments 356 (Dehousse), 359 (Braibant), 360 (Fayot), 361 (Dieulangard), 362 (Dehaene-De Gucht-Lallemand), 363 (Rodotà-Paciotti-Manzella), 364 (van den Burg), 365 (Einem-Holoubek) and 445 (Barros Moura-Azevedo)]

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Proposed amendments

- (1) Delete the entire Article: amendments 317 (Cederschiöld) and 318 (Friedrich-Mombaur)
- (2) Align the wording with that of Article 174 of the TEC: amendments 320 (Tarschys), 321 (Rodriguez Bereijo)
- (3) Strengthen the wording to make this a right: 325 (Duff), 327 (Solé Tura), 326 (Fayot), 328 (van den Burg), 329 (Rodotà-Paciotti-Manzella), 330 (Voggenhuber-Buitenweg) and 331 (Dehaene-De Gucht-Lallemand)
- (4) Add the concept of every person's duty: amendments 326 (Fayot), 327 (Solé Tura), 329 (Rodotà-Paciotti-Manzella) and 335 (Jansson-Brax-Nikula)
- (5) Add a paragraph on participation in decision-making concerning the environment: amendments 335 (Jansson-Brax-Nikula), 336 (Olsen), 323 (Goldsmith, as the only content of the Article)

Praesidium proposal:

Becomes Article 42

Union policies shall ensure the protection and preservation of a clean and healthy environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Based on the Korthals Altes amendment

Article 45. Consumer protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Proposed amendments

- (1) Delete the entire Article: amendments 338 (Cederschiöld), 339 (Gnauck) 340 (Goldsmith) and 341 (Friedrich-Mombaur)
- (2) Align the wording of the Article with that of Article 153(1) of the TEC: amendment 343 (Korthals Altes)
- (3) Reformulate as a right for consumers or a guarantee: amendments 344 (Griffiths), 345 (Duff), 346 (Solé Tura), 347 (Voggenhuber-Buitenweg), 348 van den Burg)
- (4) Add a reference to the precautionary principle: amendments 350 (H. P. Martin), 351 (Dieulangard)
- (5) Add a paragraph on information for consumers: amendments 353 (Rodotà-Paciotti-Manzella), 354 (Barros Moura-Azevedo), 355 (Dehousse)

ARTICLE 45a (new)

- (1) **Right of access to services of general interest:** amendments 359 (Braibant), 360 (Fayot), 361 (Dieulangard), 362 (Dehaene-De Gucht-Lallemand), 363 (Rodotà-Paciotti-Manzella), 364 (van den Burg) and 365 (Einem-Holoubek) [see also amendments 316 (Berès), 356 (Dehousse) and 445 (Barros Moura-Azevedo)]
- (2) **Right to housing:** amendments 366 (Barros Moura-Azevedo) [see also amendments 109 (Voggenhuber), 152 (Meyer) 267 (Leinen), 268 (Fayot) 269 (Berès), 290 (van den Burg) and 291 (Rodotà-Paciotti-Manzella)]
- (3) **Right to self-determination:** amendment 367 (Rodotà-Paciotti-Manzella)
- (4) **Right to sexual freedom:** amendment 367 (Rodotà-Paciotti-Manzella)
- (5) **Fundamental duties :** amendment 369 (Haenel)

Article 46. Scope

1. **The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.**
2. **This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Proposed amendments

- (1) Member States should not be mentioned as addressees of the Charter: amendments 370 (Olsen), 371 (Bonde) or mentioned only to the extent that they are bound by the ECHR: amendment 372 (Goldsmith).
- (2) The list of addressees of the Charter should be supplemented by adding bodies "active in the sphere of the Union on the basis of an initiative by the Council": amendment 379 (Korthals Altes), the social partners: amendments 385 (van den Burg), 380 (Berès) or private persons: amendment 380 (Berès).
- (3) "Union law" should be replaced by "Community law": amendments 374 (Tarschys), 375 (Braibant), 376 (Rodriguez Bereijo) and 377 (Gnauck).
- (4) The 2nd paragraph should be deleted: amendments 381 (Voggenhuber) and 382 (Maij-Weggen)
- (5) A new paragraph on respect for the principle of subsidiarity should be added: amendments 386 (Haenel) and 387 (Melograni)

Praesidium proposal:

Drafting amendments: The Article should read as follows:

1. The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions and bodies of the Union and to the Member States exclusively when they implement Union law.
2. The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers and in accordance with the principle of subsidiarity, shall observe the rights and implement the social principles set out in this Charter.

3. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Neisser, Haenel, Melograni, Duff, Braibant, Leinen, Van den Burg, Tarschys, Rodotà-Paciotti-Manzella, Hirsch Ballin, Barros Moura-Azevedo, Goldsmith and Cederschiöld.

Article 47. Limitation of guaranteed rights

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Proposed amendments

- (1) Deletion of the entire Article: amendments 390 (Goldsmith), 391 (Cisneros Laborda) and 392 (Rodriguez Bereijo).
- (2) Beginning the Article with the principle of respect for the essential nature of these rights: amendment 398 (Gnauck) or by a general formula to the effect that these rights should not be considered as absolute privileges: amendment 392 (Rodriguez Bereijo)
- (3) Spelling out the objectives which might justify restrictions on the exercise of a right: by linking them with the objectives of the Community: amendment 392 (Rodriguez Bereijo) or by adding protection for rights and liberties: 402 (van den Burg)

- (4) Deletion of the reference to the ECHR: amendments 400 (Braibant), 401 (Korthals Altes) [see also 265 (Meyer)]
- (5) Addition of a reference to the revised European Social Charter: 402 (van den Burg)
- (6) Increasing the force of the reference to the ECHR system by making it more general: amendment 407 (Patijn) or mentioning the case law of the Court of Human Rights: amendments 403 (Voggenhuber-Buitenweg) and 404 (Tarschys)
- (7) Incorporation of Article 48 on the exercise of Treaty rights (Rodotà-Paciotti-Manzella)

Praesidium proposal

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may only be made if they are necessary and genuinely correspond to objectives of general interest being pursued by the Communities or other legitimate interests to be respected in a democratic society. The actual substance of those rights and freedoms must be respected.
2. Limitations on rights and liberties which are also recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms may not exceed those permitted by the latter.
3. The rights defined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits defined therein.

Based on amendments submitted by Rodriguez Bereijo and Van den Burg.

Article 48. Conditions and limits defined by the Treaty.

The rights enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Proposed amendments

- (1) Deletion of the entire Article: 411 (Leinen), 412 (Einem-Holoubek), 413 (Korthals Altes), 414 (Rodotà-Paciotti-Manzella), 415 (van den Burg), 416 (Hirsch Ballin) and 417 (Rodriguez Bereijo)
- (2) Redraft the Article to turn it into a non-regression provision: amendment 418 (Voggenhuber-Buitenweg)
- (3) Redraft the Article in order to break down Charter articles between the ECHR and the Treaties: amendment 419 (Goldsmith)
- (4) Replacement of "Treaty establishing the European Community" by "Treaty on European Union": amendment 421 (Berès)

Praesidium proposal:

Becomes Article 45(3)

Article 49. Level of protection

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

Proposed amendments

- (1) Deletion of the entire Article: amendment 425 (Cederschiöld)
- (2) Deletion of the reference to the possibility of international conventions to which the Union was party: amendments 427 (Rodriguez Bereijo) and 428 (Solé Tura)
- (3) Amendment of the list of references by substituting common constitutional traditions for Member States' constitutions: amendment 436 (Dehaene-De Gucht-Lallemand), adding the law of the Member States: amendment 429 (Goldsmith), adding the UN Pacts, ILO Conventions and the Social Charter: amendment 438 (Barros Moura-Azevedo)
- (4) Explicit reference to the case law of the Court of Human Rights: amendments 433 (Tarschys), 434 (Voggenhuber-Buitenweg), of the Court of Human Rights or the Court of Justice of the European Communities: amendment 426 (Dehousse), of national courts: amendment 358 (Bonde), and jurisprudence in general: amendment 435 (van den Burg)
- (5) Addition of a new subparagraph authorising the establishment or maintenance of stronger national protection measures: amendment 439 (Berès)
- (6) Addition of a paragraph on the interpretation of economic and social rights by reference to the Treaties and to international agreements :amendment 265 (Meyer) and 440 (Einem-Holoubek)

Praesidium proposal:

Becomes Article 46

Move "**by the Member States' constitutions**" to the end of the text: "**and by Member States' constitutions**".

Based on the Jansson amendment.

Article 50. Prohibition of abuse of rights

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

Praesidium proposal

Becomes Article 47

In the first line, replace "**may be**" with "**must be**".

Based on the Goldsmith amendment.

ARTICLE 50a (new)

- (1) **Right to effective appeal:** amendment 442 (Barros Moura-Azevedo)[see also amendment 447 (Meyer)]

- (2) **Services of general interest:** amendment 445 (Barros Moura-Azevedo) [see also amendments 316 (Berès), 356 (Dehousse), 360 (Fayot), 361 (Dieulangard), 362 (Dehaene-De Gucht-Lallemand), 363 (Rodotà-Paciotti-Manzella), 364 (van den Burg) and 365 (Einem-Holoubek)]

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 26 June 2000**CHARTE 4385/00****CONTRIB 244****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a complementary suggestion to article 34 of document CHARTE 4316/00 CONVENT 34, submitted by Mr. Daniel TARCHYS, personal representative of the Gouvernement of Sweden.

Article 34 Rights of collective bargaining and action

Proposal (bold):

Employers and workers **or their organisations** have the right to negotiate and conclude collective agreements and to take collective action , in conflicts of interest, to defend **or promote** their economic and social interests, /.../under the conditions laid down by national legislation, **collective agreements, custom** or practice.

Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

Reasons:

The proposed amendments aim to confirm rights already existing at national level as well as those enshrined in the European Social Charter and the Community Charter in a way which will respect the different national systems for these rights.

The reference to the European level is unclear in the current draft article. It seems preferable to mention the right to negotiate at Community level in a separate paragraph and with the same wording as in Article 139.1 TEC.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 27 juin 2000**CHARTE 4392/00****CONTRIB 251****NOTE DE TRANSMISSION**

Objet : **Projet de Charte des droits fondamentaux de l'Union européenne**
Contribution de Mme Anna Benaki-Psarouda, membre du Parlement grec

Veillez trouver ci-joint une contribution (propositions d'amendement) relative au document Charte 4284/00 CONVENT 28, soumise par Mme Anna BENAKI-PSAROUDA, membre du Parlement grec.¹

¹ Ce texte nous est parvenu en langues française et grecque.

ANNA BENAKI-PSAROUDA, Représentante du Parlement Hellénique
AMENDEMENTS AU PROJET DE CHARTE DES DROITS FONDAMENTAUX

ARTICLE 1a ou ARTICLE 22§3 (CONVENT 28 en combinaison avec CONVENT 36 et 37):

Il est proposé d'ajouter un 2ème paragraphe à l'article 1a ou de remplacer le paragraphe 3 de l'article 22 par le texte suivant :

“L'égalité substantielle entre femmes et hommes doit être garantie et appliquée dans tous les domaines. Toute discrimination directe ou indirecte en raison du sexe est interdite en tout domaine. Des mesures positives temporaires sont indiquées, avant tout pour améliorer la situation des femmes, jusqu'à ce que l'égalité substantielle entre femmes et hommes soit atteinte”.

Exposé des motifs

1. - L'égalité entre femmes et hommes est un “*principe fondamental*” du droit communautaire et un “*droit fondamental de la personne humaine*”, selon une jurisprudence constante de la CJCE (v. p. ex. arrêts du 15.6.1978, *Defrenne III*, 149/77, Rec 1509; du 10.2.2000, *Sievers*, C-270/97). Le Traité la proclame en tant que “*mission*” et objectif de la CE et impose à celle-ci l'obligation positive de la “*promouvoir*”, c'est à dire, de ne pas se contenter de l'égalité formelle, mais d'oeuvrer pour atteindre l'égalité substantielle entre femmes et hommes dans tous les domaines de son activité (articles 2, 3§2 traité CE).

Le respect de l'acquis communautaire et des impératifs du Traité exige que l'application d'un principe si fondamental de l'Union, comme l'est le principe de l'égalité substantielle entre femmes et hommes, soit garantie par un des premiers articles de la Charte, dans tous les domaines de compétence de l'Union, par un libellé exprès, clair et spécifique, qui ne soit susceptible d'aucun doute ou fausse interprétation. C'est ainsi seulement que sera obtenue la sécurité juridique qu'exige le mandat du Conseil de Cologne.

Le 1er alinéa du 3ème paragraphe de l'article 22 du Projet ne contient pas une norme générale satisfaisante. Par ailleurs, la mention indicative des rémunérations et autres conditions de travail, que contient le 2ème alinéa du même paragraphe, est tout à fait inadéquate, puisque le droit communautaire en vigueur contient des normes qui imposent l'égalité entre femmes et hommes dans bien d'autres domaines.

2. - Par ailleurs, l'égalité substantielle entre femmes et hommes constitue un principe universel, garanti aussi par des traités ratifiés par tous les États membres, tels les Pactes de l'ONU (article 3 du Pacte des droits civils et politiques, article 3 du Pacte des droits économiques, sociaux et culturels) et la Convention sur l'élimination des discriminations contre les femmes.

Comme il est constaté par les institutions communautaires et internationales compétentes, les clauses générales de non discrimination ne suffisent pas pour atteindre l'égalité substantielle entre femmes et hommes. Cela est dû au caractère particulier des discriminations en raison du sexe, qui continuent dans plusieurs domaines et dont souffrent surtout les femmes. Les discriminations à l'encontre de celles-ci sont, d'ailleurs, souvent multiples (en raison du sexe et d'autres motifs).

Cette situation a rendu nécessaires, en plus des clauses générales de non discrimination, des dispositions communautaires et internationales qui exigent l'égalité substantielle entre femmes et hommes, et même des traités spécifiques, telle la Convention pour l'élimination des discriminations contre les femmes dans tous les domaines. Cette Convention a été récemment enrichie d'un Protocole qui permet les recours individuels et que l'Union s'enorgueillit d'avoir soutenu et de promouvoir.

3. – Pour combattre effectivement les discriminations en raison du sexe, des mesures positives temporaires sont requises. Celles-ci ne constituent pas des discriminations, mais des moyens pour atteindre l'égalité substantielle entre femmes et hommes, selon la Convention sur l'élimination des discriminations contre les femmes (Art. 4§1) et le Traité CE (Art. 141). La Déclaration No 28 annexée au Traité d'Amsterdam précise qu'elles doivent viser “*avant tout à améliorer la situation des femmes*”.

Les mesures ou actions positives sont aussi prévues par un nombre croissant de Constitutions nationales (v. Constitutions allemande, article 3§2; autrichienne, article 7§2; portugaise, article 9(h); finlandaise, article 6§4; suédoise, chapitre 2§16; française, articles 3 et 4; hellénique-projet). Une “*tradition constitutionnelle commune*”, au sens de l'article 6§2 Traité UE, est ainsi formée. De telles mesures sont, d'ailleurs, recommandées et requises par les institutions communautaires et internationales compétentes.

La nature particulière des discriminations contre les femmes, ainsi que la nécessité des actions positives sont confirmées par la CJCE (arrêt *Badeck*, C-158/97, 26.3.2000).

ARTICLE 16 § 3 (CONVENT 28 en combinaison avec CONVENT 36 et 37).

Les ajouts suivants, qui sont soulignés, sont proposés :

«Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses et philosophiques, doit être respecté dans la mesure où celles-ci ne contreviennent pas aux principes démocratiques et aux droits reconnus par la Charte. Dans l'exercice de ce droit les parents doivent agir dans l'intérêt de l'enfant.»

Exposé des motifs

La nécessité du respect des principes démocratiques ainsi que des droits fondamentaux et des libertés fondamentales par les parents, dans le cadre de l'éducation et de l'enseignement de leurs enfants, ainsi que la nécessité d'enseigner aux enfants et aux jeunes ces principes, droits et libertés est évidente. Par ailleurs, la garantie de l'intérêt de l'enfant est requise aussi par la Convention sur les droits de l'enfant, ratifiée par tous les États membres.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int****Brussels, 29 June 2000
(OR. fr)****SN 3340/00****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposals for horizontal Articles presented by the Praesidium

Article 46

Becomes Article 44, with the wording found in CHARTE 4373/00 CONVENT 40.

Read Article as follows:

- "1. The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions and bodies of the Union and to the Member States exclusively when they implement Union law.**

- 2. The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers and in accordance with the principle of subsidiarity, shall observe the social rights and implement the social principles set out in this Charter.**

- 3. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties."**

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Neisser, Haenel, Melograni, Duff, Braibant, Leinen, Van den Burg, Tarschys, Rodotà – Paciotti – Manzella, Hirsch Ballin, Barros Moura – Azevedo, Goldsmith, Cederschiold.

Article 47

Becomes Article 45

Scope of guaranteed rights

- 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may only be made if they are necessary and genuinely correspond to objectives of general interest being pursued by the Communities or other legitimate interests to be respected in a democratic society. The actual substance of those rights and freedoms must be respected.**
- 2. Limitations to rights and liberties which are also recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms may not exceed those permitted by the latter.**
- 3. The rights defined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits defined therein.**

Based on amendments submitted by Rodriguez Bereijo, Van den Burg.

Article 48

Becomes Article 45(3).

Article 49

Becomes Article 46

Move "**by the Member States' constitutions**" to the end of the text "**and by Member States' constitutions**".

Based on an amendment by Jansson.

Article 50

Becomes Article 47.

In the first line, replace "**may be**" with "**must be**".

Based on an amendment by Goldsmith.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 30 June 2000 (05.07)
(OR. de)****CHARTE 4393/00****CONTRIB 252****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached an addition to the proposed amendment to Article 47 submitted by Mr Jürgen GNAUCK, Member of the German Bundestag.

Draft Charter of Fundamental Rights of the European Union Convent 34

Proposed amendment to Article 47: Limitation of guaranteed rights

Submitted by: Jürgen Gnauck, Thuringian Minister for Federal and European Affairs

Proposed text:

"Article 47. Limitation of guaranteed rights.

The actual substance of the rights and freedoms recognised by this Charter must be respected. These rights and freedoms may be limited only by the competent legislative authority. **A limitation is permissible only for the purpose of protecting the fundamental rights of third parties or other essential common goods.** Limitations may not exceed the degree that is absolutely necessary and must observe the principle of proportionality. These limitations must respect the level of protection afforded by the European Convention for the Protection of Human Rights and Fundamental Freedoms."

Reasons:

I think it important to add to my original proposed amendment to Article 47 by clarifying what kind of limits may be set. A limitation must not have the effect of nullifying a fundamental right. The previous wording – "Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society" – would be unlikely to fulfil this intention as on this basis violations of a fundamental right could (too) frequently be seen as justified. A more restrictive interpretation of the general determination of limits would therefore seem indispensable in the interests of the citizen.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 3 July 2000 (05.07)
(OR. en,nl)****CHARTE 4397/00****CONTRIB 256****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution relating to the horizontal clauses by Mr Hirsch BALLIN,
representative of the Parliament of the Netherlands.

E.M.H. Hirsch Ballin

Comments on the relationship between the Charter and the ECHR in connection with the "horizontal provision" in Article 47 (= Article 45 new), according to CHARTE SN 3340/00 of 29 June 2000.

1. Where reference is made to the ECHR, the "accompanying Protocols" must always be mentioned too. (Alternative: express this in a defining provision). Obviously the effect is limited, as in the case of the ECHR itself, to those Protocols of which provisions are incorporated in the Charter.
2. There are two aspects to clauses limiting fundamental rights: on the one hand they are enabling provisions, without which limitation of the fundamental right is not permitted; on the other hand they make limitation subject to conditions. (The conditions may be of different types: they may, for example, relate to the purpose for which or the interests in which limitations may be imposed, the authority which is entitled to impose them or the procedure which must be followed). There are also two aspects to any vagueness in a limitation clause: it can lead to authorities considering themselves justified in breaching a fundamental right, but can also be invoked to contest what may be a legitimate limitation in lengthy legal proceedings. For that reason vagueness in limitation clauses must be avoided as far as possible and no uncertainty must be generated regarding the relationship to (legal decisions on) the ECHR and Protocols.
3. I therefore support the proposal by various members that it be clearly and explicitly stated that the limitation clauses in the ECHR are applicable. Various ways of doing this could be envisaged (taking over the whole text, adopting a "Parts A and B" system, Korthals Altes proposal with references by Article). Ingo Friedrich's suggestion of listing the relevant provisions corresponding to the ECHR and Protocols in a single Article (which could be Article 47 = 45 new) seems to me a feasible one.
4. There are a few draft provisions in the Charter, e.g. Article 19 (personal data), which do not correspond, or correspond only to a small degree to provisions in the ECHR and Protocols. In these cases, which are fortunately rare, it will be necessary to formulate an independent limitation clause in the Charter. Otherwise, precisely in those places where we want the Charter to have added value, we would have to fall back on a vague, general limitation clause with all its accompanying dangers (see paragraph 2).
5. The revised text of Article 47 (= 45) retains a general condition for limitations of fundamental rights which was also found in previous drafts, namely that they must not affect "the actual substance" of the rights. The "actual substance guarantee" plays an important role in German constitutional law but the significance of incorporating this into the Charter is questionable. The ECHR follows a different line. It may be argued that the "actual substance guarantee" is in essence also to be found in the ECHR's limitation clauses, but then the addition is superfluous. If, on the other hand, we wish to add an extra condition to those in the ECHR – and the wording of the Article seems to imply that – then we are opening up a Pandora's box full of points of contention. I therefore also doubt if it is wise to incorporate the "actual substance guarantee" in our Charter; a reference to it in the notes with an explanation seems preferable to me.

6. I support the proposal by Mr Korthals Altes in amendment 582 (wrongly headed) relating to the interpretation of the Charter in relation to the ECHR (and Protocols – see paragraph 1).

E.M.H. Hirsch Ballin

29 June 2000

Note

Article 46(2) now limits itself to "Community law". That should be extended again to include the law of the Union as a whole.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 July 2000 (05.07)
(OR. fr)**CHARTE 4399/00****CONVENT 42****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Compromise proposal submitted by the Praesidium for Articles 41 to 44
(social rights and horizontal clauses)
(reference document: Charte 4316/00 CONVENT 34)

Article 41. Social security and social assistance

Becomes Article 39

1. Provision shall be made in accordance with conditions established by national legislation and practice for social security benefits providing adequate protection particularly in the event of illness, maternity, dependence or old age and in the event of unemployment.
2. Provision shall be made for social assistance and housing benefit in accordance with the conditions established by national legislation and practice in order to guarantee a decent existence to anyone lacking sufficient resources.

Based on the Korthals Altes, Jansson, Berthu, Einem/Holoubek, Cisneros Laborda, Braibant, Gnauck and Tarschys amendments.

Article 42. Health protection

Becomes Article 40

English title: "Health care"; French unchanged.

Provision shall be made for access to medical care and prophylactic measures in accordance with the conditions established by national legislation and practice.

Based on the Duff amendment.

Article 43. The disabled

Becomes Article 41

In English the title becomes "Integration of persons with disabilities", in French "Intégration des personnes handicapées".

Provision shall be made for the independence, social and vocational integration and participation in the life of the community of persons with disabilities.

Based on the Tarschys amendment.

Article 44. Protection of the environment

Becomes Article 42

Union policies shall ensure the protection and preservation of a clean and healthy environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Based on the Korthals Altes amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

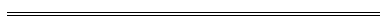
**Brussels, 14 July 2000
(OR. fr)****CHARTE 4400/00****CONVENT 43****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
 – Draft preamble

PREAMBLE

1. The peoples of Europe have established an ever closer union between them and henceforth share the same destiny;
2. This Union is founded on the indivisible, universal principles of the dignity of the human being, of freedom, of the equality of all persons, both men and women, and of solidarity; it is based on the principles of democracy and the rule of law;
3. The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and their constitutional organisation at the national, regional and local levels;
4. The protection of fundamental rights in the Union and their visibility to all require that they be anchored in a charter of fundamental rights of the European Union;

5. This charter confirms the rights that arise out of, *inter alia*, the constitutional principles common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention on Human Rights, the social charters adopted by the Community and by the Council of Europe and the jurisprudence of the Court of Justice of the European Communities and of the European Court of Human Rights;
6. It adapts the content and the scope of these rights to the development of society, to social progress and to scientific and technological developments;
7. Enjoyment of these rights entails responsibilities and duties with regard both to other persons and to the human community;
8. The Charter neither increases nor amends the powers and tasks of the Community and of the European Union as laid down in the Treaties. When they implement Union law the institutions and bodies of the Union and the Member States will guarantee, with regard to every person, the following rights and freedoms, in accordance with the principle of subsidiarity.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 July 2000**CHARTE 4401/00****CONTRIB 258****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a compromise proposal on economic and social rights, submitted by Mr. Guy BRAIBANT, Representative of the Government of France and Mr. Jürgen MEYER, Representative of the German Parliament.¹

¹ This text has been submitted in English, French and German languages.

Berlin/Paris, 13.6.2000

Compromise on fundamental economic and social rights

proposed by Braibant/Meyer

The articles have been consolidated and renumbered as follows:

Convent 34	Braibant-Meyer Proposed compromise
Article 31	Omitted Based on amendments made by Gnauck, Meyer, Goldsmith, Leinen, van den Burg, Duff, Beres, Rodota/Pacioti/Manzella, Tarschys
Article 32	Article 31(1)
Article 33	Article 33(3)
Article 34	Article 33(1) and (2)
Article 35	Article 32(1)
new (replaces Article 16 Convent 28)	Article 35
Article 36	Article 32(1)
Article 37	Article 32(2)
Article 38	Article 31(2)
Article 39	Article 32(2)
New	Article 39
Article 40	Omitted Based on amendments made by Goldsmith, Gnauck, Friedrich/Mombaur, Berthu
Article 41	Articles 36/37
Article 42	Article 34
Article 43	Article 31(4)
Article 44	Article 38
Article 45	Article 38

Chapter: Solidarity**Article 31 Labour rights**

- (1) Everyone has the right to work¹ and the right to job protection. In particular, everyone has the right to choose and to engage in an occupation and the right of free access to job-placement services free of charge.**

¹ In German the term “Recht zu arbeiten” (right to work) has been deliberately chosen (instead of “Recht auf Arbeit” (≈ right to employment)) to indicate that it is not the right to pursue any particular occupation that is meant.

Based on amendments made by Braibant, Meyer, Dehousse, Beres, Fayot, Dieulangard, van den Burg, Rodota/Pacioti/Manzella

- (2) Everyone has a right to protection against unjustified or abusive termination of employment.**

Based on amendments made by Braibant, Meyer, Gnauck, Dehaene/Gucht, Dieulangard, van den Burg, Rodota/Pacioti/Manzella, Beres

- (3) Notwithstanding Article 22 (CONVENT 28) the social and occupational integration of particularly disadvantaged groups shall be promoted.**

- (4) Paragraph 3 shall apply in particular for the disabled.**

Based on amendments made by Braibant, Meyer, Taschys

Article 32 Right to just and favourable conditions of work

- (1) Everyone has the right to safe and healthy working conditions. For the protection of this right everyone is entitled in particular to have limits imposed on daily and weekly working hours, to have an annual period of paid leave and to have fair and equal remuneration for work of equal value.**

Sentence 1: Based on amendments made by Braibant, Meyer, Gnauck, Leinen, van den Burg, Loncle, Beres, Fayot, Dieulangard, Dehousse

Sentence 2 part 1: Based on amendments made by Braibant, Meyer, van den Burg, Dieulangard, Einem/Holoubek, Gnauck, Dehousse, Beres, Rodota/Pacioti/Manzella, Korthals Altes, Goldsmith

Sentence 2 part 2: Based on amendments made by Braibant, Meyer, van den Burg, Beres, Loncle, Fayot, Rodota/Pacioti/Manzella, Dieulangard

- (2) Young people, pregnant women and those bringing up children have the right to special protection. This right includes in particular the granting of maternity leave and parental leave following the birth or adoption of a child, with the aim of reconciling family and professional life.**

Based on amendments made by Braibant, Meyer, Beres, Dehousse, Leinen, Einem/Holoubek, van den Burg, Duff

Article 33 Rights of collective bargaining and action

- (1) Everyone has the right to form trade unions and to take collective action, including strike action, to protect their economic and social interests.**

Based on amendments made by Braibant, Meyer, van den Burg, Fayot, Dieulangard, Beres, Dehousse, Rodota/Paciotti/Manzella, Korthals Altes

- (2) The autonomy of the trade unions and the employers' organisations in negotiating wage rates shall be respected.**

Based on amendments made by Braibant, Meyer, Leinen

- (3) The rights of workers to be involved in measures affecting them within the undertaking shall be protected.**

Article 34 Right to health

Everyone has the right to health protection. For the implementation of this right the Union shall above all respect universal access to medical care.

Based on amendments made by Braibant, Meyer, Duff, Beres, Dehousse, Rodota/Paciotti/Manzella, Dieulangard

Article 35 Right to education and continuing training

- (1) Everyone has the right to education, the right of access to vocational and continuing training and the right to lifelong learning. These rights include the right to receive free compulsory education.**

Based on amendments made by Braibant, Meyer, Fayot, Loncle, Rodota/Paciotti/Manzella

- (2) The freedom to found educational establishments shall be guaranteed subject to democratic principles.**
- (3) The right of parents to have their children educated and taught in accordance with their religious, philosophical and pedagogical convictions shall be respected.**

Article 36 Right to housing

The universal right to adequate housing shall be respected.

Based on amendments made by Braibant, Meyer, Beres, Fayot, van den Burg

Article 37 Right to social security

- (1) The universal right to social security and the right of access to social services shall be protected, in order to enable everyone to lead a decent life especially in the event of unemployment, industrial accident, invalidity, maternity, illness or old age.**

Based on amendments made by Braibant, Meyer, Rodota/Pacioti/Manzella, Beres, Dieulangard, Dehousse

- (2) The Union shall protect the right of anyone lacking sufficient resources to be guaranteed a decent existence through social assistance.**

Based on amendments made by Braibant, Meyer, Dehaene/Gucht/Lallemande, Beres, Dieulangard, Rodota/Pacioti/Manzella, Duff, van den Burg, Leinen

Article 38 Right to a healthy environment and to consumer protection

- (1) The Union shall respect the universal right to a healthy environment and shall take steps to protect natural resources.**

Based on amendments made by Braibant, Meyer, Einem/Holoubek, Neisser, Dieulangard, Tarschys, van den Burg, Dehaene/Gucht/Lallemande, Rodota/Pacioti/Manzella, Bereijo, Duff

- (2) The Union shall ensure a high level of protection as regards the health, safety and interests of consumers.**

Article 39 Services of general interest

The Union shall respect the universal right of free and equal access to services of general interest.

Based on amendments made by Braibant, Meyer, van den Burg, Dehaene/Gucht/ Lallemande, Beres, Fayot, Einem/Holoubek, Dehousse, Dieulangard, Rodota/Pacioti/ Manzella

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 4 July 2000 (06.07)
(OR. de)****CHARTE 4402/00****CONTRIB 259****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a contribution on Articles 20-30, submitted by Mr Caspar EINEM,
Representative of the Austrian Parliament.

Dr CASPAR EINEM
Member of the Austrian National Council

Wasagasse 11/15
A 1090 Wien
Tel/Fax:
0043-01-317 28 05
Email:
caspar.einem@aon.at

Vienna, 2 July 2000

Sir,

As I was unable to attend the meeting of the Convention on the afternoon of Friday 30 July, I would like to take this opportunity to forward you my comments on the Articles which were (presumably) discussed in the afternoon.

Article 20.

In Articles 1 to 30 the Praesidium has correctly attempted to formulate the fundamental right concerned very concisely, and to not include its limitations at the same time. In Article 20 the second sentence does not in my view state more than the general horizontal clause of Article 45 (new).

Therefore, my suggestion is: **delete the second sentence of Article 20.**

Article 21.

I fully agree with the Praesidium's compromise proposal on Article 21. It is the minimum which is to be achieved. Any limitation of the Geneva Convention in the Charter could not, however, be considered.

Article 21a.

I expressly agree with the Praesidium's proposal.

Article 22.

In the Convention's proceedings, the importance of the Charter's readability for citizens has been frequently discussed, as has the importance of its intelligibility. Article 22 provides in legally compressed form the basis of a prohibition of all forms of discrimination. However, in many cases a mere prohibition of discrimination is not enough. In these instances, there is a need for explicit compensation measures (positive discrimination).

For political reasons – i.e., in order to fulfil the hopes and meet the expectations of many people and many groups of people, and in order to make it clearer what is involved and who is to be favoured – as well as for reasons relating to the content, as an explicit provision on positive discrimination in the case of minorities is required, I would like to once again propose splitting Article 22 into three separate Articles:

1. **Delete the third paragraph of Article 22**
2. **A new Article 22a Equal status of women and men**
3. **A new Article 22b Equal status of minorities**

In this connection, I refer to the texts proposed by Einem/Holoubek (proposals for amendment 467 and 470).

Article 23.

The previous version of Article 23 formulated clear rights, one could say personal rights, for children. The Praesidium's compromise proposal now formulates a right to care but at the same time it deprives children of the right to manage their affairs – at least in comparison with the previous version of the text. I therefore propose leaving the previous text as paragraph 1 and adding paragraph 2, consisting of the first sentence of paragraph 1 and of paragraph 2 of the Praesidium compromise, as I also consider the principles of this text to be important.

Therefore, my proposed text is:

Article 23: Children's rights

- (1) **Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.**
- (2) **Children shall have the right to protection and to the care necessary for their well-being. In all decisions relating to children, whether taken by public or private welfare bodies, the first concern shall be the child's best interests.**

Article 30.

In line with my proposal for amendment 592, I would once again like to argue in favour of including a paragraph 2 which would also grant freedom of movement to third country nationals after a certain minimum period of legal residence. However, above all, in view of the expected effect on third parties, I believe it is important to include a paragraph 3 which – while not absolutely essential in legal terms, as it is covered by paragraph 1 – clearly formulates a right of return. Experience with expulsions of members of ethnic groups in the Balkans conflict – in countries, of which at least some are working towards membership of an enlarged Union – has highlighted the political importance of sending out a clear message!

Therefore, my proposed text is:

Article 30. Freedom of movement

- (1) Every citizen of the Union has the right to move and reside freely within the territory of the Member States.**
- (2) Every citizen of a third State shall enjoy this right to the same degree, if he or she has resided legally within the territory of the Member States for five years.**
- (3) Every citizen of the Union is entitled to leave the territory of the Member States and to return there.**

I hope that with these proposals I have put forward a number of arguments which you will find convincing and remain,

Yours faithfully,

Caspar Einem

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 6 July 2000 (13.07)
(OR. de)****CHARTE 4405/00****CONTRIB 262****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached proposals for amendments to Articles 31 and 33-46 submitted by
Dr Sylvia-Yvonne KAUFMANN, Member of the European Parliament.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Delete the Article.

Reasons

A separate horizontal Article for fundamental economic and social rights runs counter to the obligation to treat all rights equally.

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Proposed amendment to Article 33

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 33. *Right to information, (one word deleted) consultation and co-determination (three words deleted)*

1. Workers have the right to **full** information and consultation in good time.
2. *Workers and their representatives have the right to co-determination in industrial decision-making processes at national, transnational and Union level within the undertaking which employs them.*

Reasons

- I. Does not concern the English text.
- II. The German text should refer not to "Pflicht" ("duty") but to the individual right of workers to be informed and consulted within the undertaking. Moreover, the emphasis should be on information being given not only in good time but also in full.
- III. Workers' right to co-determination is referred to in Article 137(3) TEC as part of representation and collective defence of the interests of workers and employers. In the course of establishing European works councils, it is indispensable to secure workers' rights to representation of their interests by means of an individual right to co-determination in industrial decision-making processes. The ECSC Treaty, moreover, lays down specific

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co-determination provisions. These provisions should not be undermined by the absence of an individual right of workers to co-determination in a firm's internal procedures. In addition, the Charter of Fundamental Rights must be open to future provisions on co-determination, as is clear from Article 137(3) TEC. As a general rule, the Charter should also be open to democratisation of industrial relations, which is playing an ever greater role internationally in discussions about fundamental social rights. From that point of view also, it would be a mistake not to establish workers' right to co-determination as part of fundamental social rights in the EU.

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Proposed amendment to Article 34

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 34. Rights of collective bargaining and action

1. Employers and workers have the right to negotiate and conclude collective agreements *(23 words deleted)* under the conditions laid down by national legislation and practice.
2. *Workers and their trade unions have at national, transnational and Union level, an unlimited right of association, a right to engage in collective bargaining and solidarity action, to strike and to take other collective action.*
3. *Agreements to restrict or impede workers' right to freedom of assembly and association are invalid. Lock-outs are prohibited.*

Reasons:

- I. Does not concern the English text.
- II. The right of collective bargaining and action as contained in the Charter should not fall behind that in the ILO Conventions. In particular, the ILO Conventions stipulate that all attempts to undermine this right and by various acts prevent workers from enjoying it are invalid (ILO Convention No 98, Articles 1 and 2). Furthermore, the means by which

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workers can enforce their economic and social interests, such as solidarity action, strikes and other collective action, should be mentioned. The International Covenant on Economic, Social and Cultural Rights explicitly lays down the right to strike in Article 8(1)(d).

- III. Lock-out is an illegitimate weapon which does not achieve "equality of arms". It is an inadmissible restriction of the right to strike as laid down in Article 8(1)(d) referred to above.

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Proposed amendment to Article 35

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. *Sundays and national holidays continue to be legally protected as days of rest and leisure.*

Reasons:

- I. Does not concern the English text.
- II. In many Member States Sunday is legally protected as a day of rest (cf. inter alia German Basic Law, Article 140). This secures the external conditions enabling workers not only to recover physically but also to rest and find time for social contacts.

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Proposed amendment to Article 37

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 36. Safe and healthy working conditions

1. Every worker has the right to safe and healthy working conditions.
2. *Every worker has the right to refuse to work for a certain period if statutory labour, health and environmental provisions are being grossly violated at the workplace.*

Reasons:

- I. Does not concern the English text.
- II. In order fully to guarantee the rights of workers at work, it is absolutely essential to have an individual right to a direct remedy, i.e. the right to leave the workplace without endangering one's job. It further develops workers' rights to co-determination in a firm's internal affairs and protects them from damage to health at work and the loss of human dignity in the working environment.

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Proposed amendment to Article: 37

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 37. Protection of *children and* young people

The minimum age of admission *of young people* to employment **may** not be lower than the minimum school-leaving age. (33 words deleted)

Young people admitted to work must have working conditions which suit their age.

Child labour is prohibited.

Reasons:

Union Member States prohibit any form of child labour and guarantee compliance on their territory with both ILO Conventions on child labour (C 138 and C 182).

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Proposed amendment to Article: 38

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 38. *Right to work*

1. *Everyone has the right to decent work which guarantees an income.*
2. *Everyone has the right to equal pay for work of equal value.*
3. All workers have a right to protection against unjustified or abusive termination of employment.
4. *Everyone has a right to adequate benefits guaranteeing subsistence in the event of unemployment*

Reasons:

- I. Does not concern the English text.
- II. view of the ILO Conventions on employment rights which have been signed by Union Member States, limitation of this provision to the right to protection against unjustified or abusive termination of employment, as provided for in the Praesidium's draft, is incomprehensible.

I propose that the right **to** work be put before employment rights. The right to work is contained in the Universal Declaration of Human Rights adopted by the UN on

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10 December 1948. Article 23(1) reads: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

In the International Covenant on Economic, Social and Cultural Rights, the right to work is guaranteed by the Contracting States. Article 6(1) reads: "The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. "

The European Social Charter contains provisions on the right to work and employment rights. For example, Part I, 1 reads: "Everyone shall have the opportunity to earn his living in an occupation freely entered upon." Part I, 4 reads: " All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families." and Part II, Article 1, "The right to work," reads "With a view to ensuring the effective exercise of the right to work, the Contracting States undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment."

The "right to work" and extensive "employment rights" are also laid down in many of the constitutions of Union Member States. For example, Article 4 of the Italian Constitution reads: " The Republic recognises the right of all citizens to work and promotes such conditions as will make this right effective", while Article 35 reads: "The Republic safeguards labour in all its forms and methods of execution. (...) It promotes and encourages international agreements, and organisations calculated to confirm and regulate the rights of labour (...) and (...) the protection of Italian labour abroad."

The French Constitution of 1958 includes references to employment rights which must be guaranteed. Thus, Article 34 stipulates that legislation to be enacted by Parliament must govern, inter alia, "employment, trade union and social security law."

In the constitutions of countries which will accede in the next few years as part of the EU enlargement process the "right to work" and "employment rights" are mentioned. For example, Article 24 of the Constitution of the Polish Republic reads: "Work shall be

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protected by the Republic of Poland. The State shall exercise supervision over the conditions of work." Article 65(1) reads: "Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work" and Article 66 (1) "Everyone shall have the right to safe and hygienic conditions of work. The methods of implementing this right and the obligations of employers shall be specified by statute." The Hungarian Constitution includes the following Section 70/B: 1. In the Republic of Hungary everyone shall have the right to work and the freedom to choose his work and profession. 2. Everyone shall have the right to the same pay for the same work without any form of discrimination. 3. Every employed person shall have the right to an income corresponding to the quantity and quality of his work. 4. Everyone shall have the right to rest, leisure and regular paid leave."

EEA countries also, such as the Kingdom of Norway, recognise obligations regarding the right to work. Article 110 of the Norwegian Constitution reads: "It is the responsibility of the authorities of the State to create conditions enabling every person capable of work to earn a living by his work. Specific provisions concerning the right of employees to co-determination at their place of work shall be laid down by law."

The constitutions of German Länder also include provisions on the right to work. For example, Article 39 of the Constitution of Saxony-Anhalt states that the Land and the local authorities have a constant obligation to give everyone the opportunity to earn his living through work which has been freely chosen. The corresponding provision of the Brandenburg Constitution, Article 48 I states that the Land has an obligation, within the limits of its powers, to ensure that the right to work, which encompasses the right of every individual to earn his living by work he has freely chosen, is put into effect by means of a policy of full employment and work promotion. There are similar provisions in the constitutions of Mecklenburg-Western Pomerania and Saxony. Article 18 of the Constitution of Berlin states that everyone has the right to work. It is the duty of the Land to protect and promote that right. The Land is to help to create and keep jobs and to guarantee a high level of employment in keeping with the overall balance of the economy. Where a person cannot be found work, he has a claim to maintenance payments from public funds.

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Last but not least, Article 127 TEC reads: "The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities."

At the EU Special Summit in Lisbon the Heads of State and Government adopted the achievement of full employment in the Union as one of the objectives of Union policies.

- III. Equal pay, protection from dismissal and benefits in the event of unemployment are essential employment rights which protect human dignity in the working environment, and references to them can be found in many constitutions of Union Member States. Employment rights are also explicitly guaranteed in Article 7 of the International Covenant on Economic, Social and Cultural Rights.

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Proposed amendment to Article: 39

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 39: Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Reasons:

Does not concern the English text.

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Proposed amendment to Article: 40

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 40: Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States *and their families* are entitled to treatment not less favourable than that of European Union workers in respect of working conditions *and other social benefits*.

Reasons:

- I. Does not concern the English text.
- II. This right should also be extended to the principle of equal treatment regarding social benefits as already laid down in Article 7(2) of Regulation (EEC) No 1612/68.

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Proposed amendment to Article: 41

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 41: Social Security

- (1) *Every person has the right to social security*
- (2) *Every person has the right to protection from poverty and social exclusion.*
- (2) Provision shall be made in accordance with each Member State's rules for social benefits providing protection in the event of maternity, illness, dependence, *incapacity for work and invalidity*, old age, the need to care for survivors and in the event of unemployment.
- (3) *(phrase deleted)* Every person lacking sufficient resources *has the right to basic social security to guarantee a decent existence.*
- (4) *Every person has the right to adequate and decent housing.*

Reasons:

- I. The basic right to social security should be formulated as an individual right. In the "General Declaration of Human Rights" adopted by the UNO on 10 December 1948, the "Right to Social Security" is specifically laid down. Article 25(1) states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,

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including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." In the European Social Charter, the references to a right to social security are clear. The right to social security and rights further articulating that right are incorporated in great detail, viz. Article 12, "The right to social security", Article 13, "The right to social and medical assistance", Article 14, "The right to benefit from social welfare services", Article 15, "The right of persons with disabilities to independence, social integration and participation in the life of the community", Article 16, "The right of the family to social, legal and economic protection", Article 17, "The right of children and young persons to social, legal and economic protection", and Article 4 of the Additional Protocol to the European Social Charter sets out the right of elderly persons to social protection. The right to social security is also stated directly or by implication in the constitutional traditions of individual Member States of the Union, for example in Article 38 of the Italian constitution, which states *inter alia* that "Every citizen incapacitated for work who lacks the necessary resources for life is entitled to support and social care".

Also in the constitutional traditions of the countries which are candidates for accession within the framework of EU enlargement reference is made to a fundamental right to social security. Thus Article 67 of the Polish constitution states that "1. Citizens have the right to social security in the event of incapacity for work following illness or invalidity and after reaching retirement age. The extent and form of social security is regulated by the law. 2. A citizen who through no fault of his own cannot obtain work and has no other means of maintaining himself has a right to social security". Furthermore, social rights are contained in Articles 68 to 71 and Article 75. The Hungarian constitution also recognises the following obligations: "Section 70/E 1. Citizens of the Hungarian Republic are entitled to social security; in old age, in the event of illness, if widowed, orphaned or unemployed through no fault of their own they are entitled to the care necessary for their continued existence". 2. In the Hungarian Republic the right to assistance through social insurance and the system of the social institutions is guaranteed".

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- II. To guarantee a decent existence, in order to articulate the obligation to safeguard human dignity adopted in Article 1 of the Charter, the "right to social security" must provide social assistance for every person lacking sufficient resources, sickness insurance and medical assistance, housing support and/or publicly financed housing. The "right to social security" must cover at least the minimum of socio-cultural existence and allow the person concerned to have an equal share in social life and to take responsibility for running his own life. It may not be linked to any form of condition, such as forced labour in the low pay sector.
- III. It is indispensable for any society which guarantees and protects the right of every person to dignity, and thus also to a decent existence, to keep in view the goal of offering guarantees of basic social rights; having emerged as premises in social movements since the French Revolution, they must not call into question the guaranteed freedoms of the rule of law but must actually bring about freedom for a majority of citizens and provide the opportunities for taking advantage of it. An idealistic approach to the degree of protection provided by defensive rights is one of the reasons for criticism of the non-specific nature of fundamental social rights; the social conditions for exercising fundamental rights go largely unconsidered. Not to develop to the fullest a clearly delineated fundamental right to social security would mean denying many citizens the material bases for assuming their fundamental rights and freedoms. In the preamble to the "International Covenant on Economic, Social and Cultural Rights", the States parties to the Covenant committed themselves to implementation of social rights, "...recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights".

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IV. The "right to adequate and decent housing" is an indispensable element of the "right to social security". It is a necessary articulation of the material conditions through which alone the assumption of fundamental rights and freedoms for all people is possible. Here too, the Charter must not fall short of the "Universal Declaration of Human Rights" adopted by the UNO on 10 December 1948; this applies in particular to Article 25(1). Nor must the Charter fall short with regard to the right to adequate and decent housing accorded to every person in Article 11 of the "International Covenant on Economic, Social and Cultural Rights".

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Proposed amendment to Article: 42

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 42. *Health*

Everyone shall have the right to health, medical attention and health care.

Reasons:

Article 42 should be worded as an individual right to health and on no account should it fall short of the rights confirmed in Article 12(1) and (2) of the International Covenant on Economic, Social and Cultural Rights. Article 12 reads: 1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. "

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Proposed amendment to Article: 43

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 43. *People with disabilities.*

People with disabilities shall have the right to social and vocational integration measures.

Reasons:

The concept "the disabled" in Article 43 should be replaced by "people with disabilities" to prevent misunderstandings and discrimination caused by the verbal attribution of an essential characteristic.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 44. Environmental protection

Everyone shall have the right to live in a healthy environment.

Reasons

The right to protection of the environment should, as for all Articles of the Charter, be formulated as an individual right.

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Proposed amendment to Article: 45

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 45. Consumer protection

Everyone shall have the right to a high level of protection as far as health, safety and consumer interests are concerned.

Reasons:

- I. Does not concern the English text.
- II. This provision should, as in the case of the other Articles, be formulated as an individual right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 46. Scope

1. The provisions of this Charter are addressed to the institutions and bodies *of the Community* and the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of *Community and* Union law.
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Reasons:

It is clear from the wording used in Article 46(2) and Article 49 of the draft that a distinction is being made between the Community and the Union. Since the relationship between them is in fact very much debated, they should always be mentioned together so as to establish the scope of fundamental rights clearly.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 6 July 2000
(bilingual version)****CHARTE 4406/00****CONTRIB 262****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter to the Convention by Mr. Frits KORTHALS ALTES, Representative of the Government of the Netherlands, relating to horizontal articles.¹

¹ This text has been submitted in a bilingual French/English version.

Letter of Frits KORTHALS ALTES, representative of the government of the Netherlands,
to the Convention

Re: EU Charter / relation to ECHR / my proposal for a horizontal article

I refer to my proposal for a new horizontal article on the relation between the EU Charter and the ECHR. The proposal was erroneously published in Charta 4332/00, as a second amendment to article 29 (number 582 on page 710). The proposal should, however, be taken into consideration within the context of the horizontal clauses that the Convention will deal with today.

I draw your attention to this proposal.

For your reference I repeat the contents of my proposal. It reads as follows:

'Insofar as this Charter contains rights corresponding to rights laid down in the European Convention on Human Rights, their meaning and scope are the same as the meaning and scope of the rights under the ECHR, unless this Charter provides greater protection.

Reasons

This clause makes it clear that the rights in the Charter have the same meaning and scope as the provisions of the ECHR, as interpreted by the CDH, even if the formulation differs. In Article 5 of the ECHR, security is linked to the individual person. The Charter does not therefore explicitly cover a right to security in the general sense, as is expressed for example in Article 2 of the Treaty on European Union which states that one of the objectives of the Union is "to maintain and develop the Union as an area of freedom, security and justice...". Clearly that Article leaves open the possibility of further protection under the Charter.

En français:

'Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l'homme, leur signification et leur portée sont similaires à la signification et à la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue.

Justificatif:

Cette disposition fait clairement apparaître que les droits énoncés par la Charte ont la même signification et la même portée que les dispositions de la CEDH, telles qu'interprétées par la Cour européenne des droits de l'homme, même si la formulation diffère. Ainsi, la sûreté énoncée à l'article 5 de la CEDH est liée à la personne. Par conséquent, il ne s'agit nullement dans la Charte d'un droit à la sûreté au sens large, comme celui que est énoncé par exemple à l'article 2 du traité sur l'union européenne, aux termes duquel l'Union se donne notamment pour objectif 'de maintenir et de développer l'Union en tant qu'espace de liberté, de sécurité et de justice ...". Bien entendu, cet article n'empêche pas d'offrir avec la Charte une protection plus étendue.

For the Secretariat: I kindly request you to arrange that copies of this letter be distributed during today's meeting of the Convention in Brussels, and be send around by e-mail.

+++ The Hague, 28 June, 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 July 2000**CHARTE 4408/00****CONTRIB 265****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Daniel TARSchYS, representative of the Swedish government.¹

¹ This text has been submitted in English language only.

7 July 2000

TOWARDS CONSENSUS

A Contribution by Daniel Tarschys

Time is short, and the Convention is still divided on a number of fundamental issues pertaining to the very architecture of the Charter. To move forwards and reach agreement on a forceful text, we must now urgently find a way of satisfying several seemingly contradictory demands on the Charter. In this paper, I seek to define some key tensions that must be resolved and outline the basis for a possible consensus.

1. Five Tensions in the Convention

There are above all five areas where we need to reconcile divergent positions:

- (i) First of all, we need to find a common ground between those who insist on the exclusively political character of the Charter and those who have their eyes set mainly on a further stage at which the text might be integrated into the Treaties.
- (ii) Secondly, we must agree on whether to draft a single text or to divide the substance into a part A and a part B, the former short and forceful and the latter specifying the conditions for exceptions and the links to the Treaties, the ECHR and eventually other legal instruments.
- (iii) Linked to this issue is a third problem of reconciling the different requirements of the two audiences to which the Charter is addressed. To grasp the interest of the general public, the text should be crisp and concise. But to prevent confusion and satisfy the legal experts, it must also be comprehensive and conform with the various legal instruments in force.
- (iv) We must also bridge the gap between the demand for an autonomous and innovative text and the plea for continuity and consistency with other instruments, particularly the ECHR.
- (v) A final tension persists between, on the one hand, the ambition to draft an inclusive catalogue where no important rights are left out and, on the other, the apprehension that a text offering ample promises in its first 43 articles and then taking large chunks of them back at the end (where it is explained that the rights just proclaimed are valid only within the limits of Community competence, which is in no way extended through the Charter) might fuel cynicism and Euro-scepticism.

For some advice on how to resolve such conflicts, I propose first to consult the house philosopher of the Convention.

2. Kant revisited

The task of the Convention as defined by the Cologne Council is to draft a Charter that could be solemnly proclaimed by the European Council together with the European Parliament and the European Commission. Whether and, if so, how the Charter should be integrated into the treaties is as we know a matter for later consideration.

In recognition of this uncertainty about the ultimate status of the Charter, the Convention has adopted a "Kantian approach". In drafting the political declaration requested by the Cologne Council, it follows the "as if" principle, considering the eventuality that this text might later be translated into law.

The "as if" principle has been invoked in our discussions more frequently than faithfully. What Kant actually wrote in his *Critique of Practical Reason* was the following:

Handle so, dass die Maxime deines Willens jederzeit zugleich als Prinzip einer allgemeinen Gesetzgebung gelten könne.

What occupied Kant in this context was not so much the individual rules or laws but the *principle(s)* underlying general legislation. In our own discussions we have moved more and more towards recognising the importance of such principles as a source of inspiration for political action (first in the old draft article 31, now in the new draft article 44:2). I believe that we could proceed even further in this direction and base the Charter on the conviction that the acceptance of common European principles is a powerful stimulus to the successive extension of common rights and standards.

We must also recognise that this is a gradual, laborious and demanding process. A "Europe of Fundamental Rights" does not come about through Summit proclamations; it can only be built through a long chain of sustained efforts. It evolves step by step through institution-building, legislation and jurisprudence. While we have already come a long way in developing fundamental rights in Europe and have a great many *acquis* to be proud of, there also challenges in front of us, areas in which common principles have not yet been translated into homogeneous rights or efficient political action. These challenges will certainly take years and decades to meet rather than months and weeks.

"*Statt Revolution Evolution*" -- those were Kant's words in *Streit der Fakultäten* (1798) where he pleaded for reformism and the patient but determined *Fortschritt zum Besseren*. Following this idea we should recognise that the strengthening of fundamental rights in Europe is an on-going process and define the role of the Charter accordingly as (1) a concise guide for our citizens and as (2) an expression of firm commitment to a Europe of common values and an impetus to further action on the basis of shared principles.

One purpose of the Charter should thus be to *provide a succinct summary* of the fundamental rights that have been recognised by the Union and its Member States and to *lay down* principles for action, particularly in the social field. But the Convention should not compete with or seek to replace the constitutionally regulated and treaty-bound legislative processes. As members of the Convention, we have been appointed by Governments, National Parliaments, the European Parliament and the European Commission -- but we have not been asked to take over the functions of these august bodies. Respecting the established democratic procedures and division of competence, we should therefore regard ourselves not as a legislature but as an eminently political body tasked with the important mission of promoting fundamental rights through a clear, concise and forceful presentation of the rules scattered in different and not so easily accessible legal instruments.

A second function of the Charter should be to give a powerful impetus to further measures purporting to enhance the respect for fundamental rights and principles, through the solemn commitment of the Member States and through the support for the Charter that can be mobilised

among European citizens. The keen interest in our work demonstrated by many non-governmental organisations should give added impact to the effort. The Charter will serve to remind the European institutions and the Member States of important obligations that they will have to honour in their political practice.

3. A Forceful and Dynamic Charter

My proposal to reconcile the divergent positions outlined above goes as follows:

(i) In its form, the Charter is clearly a political declaration. In its substance, however, it is both an extensive index of legally binding rights and a resumé of common principles. Most of the articles cover rights that have already been given legal force. The dynamic character resides in the fact that in the future, the number of such articles may gradually grow through the normal legislative process in the EU. Other articles cover political principles on which the Union and its Member States are agreed.

(ii) The Charter can be a single and concise text, accompanied by a commentary or a “user’s manual” which gives references to the legal instruments in which the specific rights and the conditions for exceptions to them are enshrined. While the division into a part A and a part B with equal status is an elegant solution if the Charter is construed as a *source of law*, this structure is not necessary if the text is clearly recognised to be a *guide to law*.

(iii) The text should be aimed at the general public. The legal experts will have to continue to consult the Treaties, and ECHR and other instruments where the details of the particular rights are specified. The Charter itself is not intended to compete with these instruments as a source of law. It is an overview, a guide and an index.

(iv) The Charter is a fully autonomous document, and it may very well refer to principles and rights not included in the Treaties and the ECHR if these are acceptable to the Member States.

(v) The Charter will be forceful only if it is truthful. It should therefore recognise that the strengthening of fundamental rights is a lengthy and unfinished process. It should not pretend that guarantees exist where they do not. In such cases, it is better to lay down principles or objectives. In view of the dualism introduced through draft article 44:2, it might be considered to call the final document of the Convention “The European Charter of Fundamental Rights and Principles”.

To give leverage to the Charter, it is important to emphasise its dynamic and evolutionary dimension. We must not allow it to be dismissed as a one-shot event, a document required only in a particular political conjuncture and then forgotten as quickly as it was drafted. It should be presented to the Council explicitly as an agenda for action, “*la Charte comme chantier*”.

The Charter should serve as a new departure and an important impulse to the process of making the European Union an area of common values. But it should not be seen as an attempt to replace the normal, treaty-bound legislative process by hasty improvisation and by attempts to settle thorny normative questions by shots from the hip. Not only would that compromise the whole enterprise we have embarked upon but it might also run counter to the very ends that we are seeking to pursue.

4. Implications for the Horizontal Articles

To express clearly that the Charter is a **forceful summary and presentation** of existing, legally binding rights and of important principles pursued by the European Union and its Member States, **not** an effort to reformulate these rights, we must redraft the horizontal articles. The Charter should not be addressed to the European institutions but to the European citizens. The relationship between the Charter and the ECHR would be less dramatic if it were obvious that each of these texts has its own specific purpose. Giving a succinct overview of fundamental rights recognised in Europe, the Charter would provide valuable guidance to the public, but to ascertain the precise substance of the many different rights covered in it the readers would have to consult the various legal texts (such as the Treaties, the secondary legislation, the ECHR) as well as the jurisprudence of the two Courts. In other words, the Charter should not duplicate or derogate existing legal instruments but provide a clear picture of the fundamental rights recognised in such texts.

A Testament from the Convention to Biarritz and Nice.

Words, words, words. Europeans are rightly suspicious of declarations not followed by action. A Charter adopted in Biarritz or Nice and then just shelved is worse than no Charter at all. The real measure of the our institutions' commitment to fundamental rights is not what they say but what they do -- and are prepared to pay for.

Many suggestions have been put forward to make additional rights justiciable. Before such ideas are considered it would seem imperative to assess how our European Courts are coping with the workload they already have. Waiting-times are growing unacceptably long both in Luxembourg and Strasbourg. The Strasbourg Court in particular is likely to face a dramatically mounting caseload as applications start coming in from the new member states in Central and Eastern Europe. Unless the resource needs of the two Courts are given adequate attention, there are reasons to expect a *sharp deterioration* of the system for fundamental rights protection in Europe, and even a collapse of the Strasbourg mechanism.

The Convention should alert the European Council of this threatening situation and recommend remedial action. It should also suggest further examination of the quarter-century old proposal to proceed to the ratification by the Community of the ECHR. Though the resistance to this idea is manifestly shrinking, the apprehensions expressed deserve serious analysis and the modalities of a ratification need to be clarified. A study of this issue could perhaps usefully be broadened to consider the non-hierarchical co-operation between the two Courts in the protection of European fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 July 2000**CHARTE 4411/00****CONTRIB 268****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the text of the intervention made by M. Marc FISCHBACH, observer of the Council of Europe, in the debate on the horizontal provisions.¹

¹ This text has been submitted in French and English languages.



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

30 June 2000

**Address by Mr Marc FISCHBACH,
on behalf of the Council of Europe observers,
in the debate on the horizontal provisions**

As you know, Mr President, we attach particular importance to the horizontal provisions, since they are calculated to dispel a large number of ambiguities and uncertainties which application of the Articles of the Charter as proposed at present would not fail to give rise to without them.

As I have already said on a number of occasions, the first concern of the Council of Europe observers is to ensure that the same rights are not interpreted in divergent or even contradictory ways by the Court of Justice on the one hand and the Strasbourg Court on the other. What we want is to ensure respect for the principle of the universality of human rights, which is nothing other than the European conception of human rights which we defend unceasingly on the international stage, particularly at the UN, in the face of States which have a very different idea of human rights.

After those observations, I would say at the outset that the text of the horizontal Articles, as now proposed, seems to me to satisfy adequately the requirement of ensuring consistency and legal certainty, which are, as you know, decisive factors for the success of the Charter. I therefore express my satisfaction about the wording of the new Articles 47 and 49, which I find sufficiently clear and precise to exclude all wider restrictions than those permitted by the ECHR, or a level of protection lower than that afforded by the ECHR.

However, I would add two provisos to the above assessment. The first concerns the fact that the references to the ECHR in Articles 47 and 49 do not mention the Protocols to the Convention. Yet in so far as the Charter includes certain rights taken from the First, Fourth and Seventh Protocols to the ECHR, it is necessary, in my opinion, to add to the references to the Convention a specific reference to those Protocols. We must not allow it to be thought that the rights in question – such as the right of property, the right to education, the prohibition of collective expulsions or the *ne bis in idem* principle – are not covered by the safeguards set forth in Articles 47 and 49.

Secondly, I must insist once more on the need to add to the reference to the ECHR a reference to the case-law of the European Court of Human Rights. Here I would refer to the arguments we put forward in our contribution of 5 June (Contrib 196), which have, moreover, been repeated today by a number of speakers. Without returning to those arguments in detail, I consider that it is necessary to include this reference to the case-law mainly in the interests of legal certainty. It will not be at all obvious – unless an express provision to that effect is included – that the minimum level of protection to be respected under Articles 47 and 49 of the Charter will also be applicable to those rights contained in the Charter whose equivalents are to be found not in the ECHR but in the case-law of the European Court of Human Rights.

That applies, for example, to the right to data protection, set forth in Article 19 of the Charter (Convent 37), a provision which, as such, has no equivalent in the text of the ECHR. However, the European Court of Human Rights has developed an important body of case-law on the question, but on the basis of the right to respect for private life (Article 8 of the ECHR). So when Article 47 of the Charter (Charter SN/3340/00) speaks of “rights and liberties *which are also recognised by the [ECHR]*” does that include the right to data protection as enshrined in the case-law of the Strasbourg Court? Should the rights and restrictions laid down in that case-law be taken into consideration for application of Article 19 of the Charter? It is immediately apparent that a simple reference to the case-law would dispel all doubts on this point, in the interests not only of legal certainty but also of enhanced protection of the rights concerned.

Moreover, I cannot understand the arguments of those who see in a mere reference to the case-law of the Strasbourg Court a threat to the autonomy of the Charter or of Community law. In any event, and this can not be repeated too often, such a reference would not fix interpretation of the Charter at the level of the ECHR, as nothing would prevent interpretation of the Charter going beyond that level, as Article 53 of the ECHR expressly provides. In that sense, such a reference would not represent any threat to the Charter, since if by some extraordinary chance the level of protection afforded by the ECHR were to fall as a result of developments in the case-law – though the first important judgments of the new Court prove that the opposite is true – this would not affect the Charter in any way, the level of the ECHR being a *minimum* level not a *compulsory* level.

Would a clear, easily comprehensible wording of the horizontal provisions, coupled with a reference to the case-law of the European Court of Human Rights guaranteeing the advances made under the Convention system, be sufficient to ensure consistency and legal certainty in the future? Here I must say that I do not share the optimism of those who consider that with the horizontal provisions there is no more reason to fear for the harmonious coexistence of the Charter and the ECHR, and who put their trust moreover in the good understanding between the Court of Justice in Luxembourg and the Strasbourg Court. Why?

Because the Charter, when applied and interpreted within the context of the European Union, that is in the framework of a Treaty with its own objectives, which include, moreover, new powers in the fields of immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references to the Court of Justice for preliminary rulings than it receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will clash with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very difficult position.

That shows to what extent the Charter, designed to become a legally binding instrument, replaces on the agenda the question of accession by the European Communities to the ECHR, or at least the idea of a preliminary consultation mechanism, recognised by the member States, between the two Courts. As long as these questions remain unanswered the European Council, if it wishes to avoid the risk of creating legal uncertainty, will scarcely be in a position to reach a final decision on the nature of the Charter. Admittedly, it is not part of our terms of reference to state our views on that question. However, that should not dispense us from identifying and pointing out problems and above all it should warn us not to indulge the illusion that it will suffice to take the Charter and turn it into a legally binding instrument.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 13 July 2000 (14.07)
(OR. fr)****CHARTE 4412/00****CONVENT 44****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
 – Structure of the Charter

The Praesidium proposes to the Convention that the Articles in the Charter should be divided into the following 7 chapters:

- Chapter 1: Rights of the human person**
- Chapter 2: Freedoms**
- Chapter 3: Equality**
- Chapter 4: Citizenship**
- Chapter 5: Solidarity**
- Chapter 6: Justice**
- Chapter 7: General provisions.**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 11 July 2000 (13.07)
(OR. fr)****CHARTE 4413/00****CONTRIB 269****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a contribution with a Charter plan from Mr Guy BRAIBANT, representative of the French Government.

GUY BRAIBANT

Paris, 7 July 2000

**CONTRIBUTION
CHARTER PLAN**

On 17 April President Herzog sent us a proposal for the layout of the Charter that comprised seven chapters. On receiving it, I agreed with the idea behind the plan, which to my mind has several advantages. It gets away from the artificial distinctions which emerged at the end of the Second World War and which separate "civil and political rights" from "economic and social rights", distinctions that are still found in the Cologne mandate. Moreover, it makes it possible to avoid the existence of a "basket" devoted to rights reserved for citizens of the European Union, which in any case are very few in number. The formula devised by President Herzog allows the articles to be rearranged in a way that is both more original and more legible. It was elaborated in a recent document.

While I agree with the principle behind the plan, I have some reservations regarding its application.

1. I propose to shorten the titles by using symbolic keywords that express the concepts of the Charter:

Chapter 1: the proposed title could be simplified by replacing it with the wording "Right of the human person".

Chapter 2: the word "freedoms" alone should be sufficient, without characterising them as "fundamental", since in any case we are dealing solely with fundamental rights.

Chapter 3: retain the word "equality" as the expression "equality and non-discrimination" is used for both the title of a chapter and the title of an article.

In this case Article 1a could be entitled "general principle of equality" and Article 22 "non-discrimination".

Chapter 4: the expression "political rights" could be replaced by the more modern term "citizenship".

Chapter 5: what is now Chapter 6 could be inserted here, with the title "Solidarity".

Lastly, the current Chapter 5 would become Chapter 6 with the title "Justice".

The general layout of the Charter would therefore be:

1. Right of the human person
2. Freedoms
3. Equality
4. Citizenship
5. Solidarity
6. Justice
7. General provisions.

Guy BRAIBANT
Representative of the President of the Republic and of the Prime Minister
to the Convention responsible for drawing up the Charter of Fundamental Rights
of the European Union

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 12 juillet 2000
(OR. Fr/Es)****CHARTE 4414/00****CONTRIB 270****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de M. Rodriguez BEREIJO, Représentant du gouvernement d'Espagne. ¹

¹ Ce texte a été soumis en langues française et espagnole.



Representación Permanente de España
ante la
Unión Europea

**CONTRIBUTION DE M. ALVARO RODRIGUEZ BEREIJO, REPRESENTANT DU
PRESIDENT DU GOUVERNEMENT ESPAGNOL, AU SEIN DE LA CONVENTION
POUR L'ELABORATION DE LA CHARTE DES DROITS FONDAMENTAUX DE
L'UNION EUROPEENNE, RELATIVE AU CHAPITRE DES DROITS ECONOMIQUES
ET SOCIAUX.**

L'élaboration du chapitre des droits économiques et sociaux est cruciale pour la réussite de l'entreprise confiée à la Convention. Le Gouvernement espagnol accorde une grande importance à ce chapitre en tant que valeur ajoutée de la Charte au Droit communautaire, ce qui exige une combinaison adéquate de détermination et de rigueur, en accord avec le mandat du Conseil Européen de Cologne et avec les critères qui doivent guider les travaux de la Convention: ne pas attribuer de nouvelles compétences à l'Union Européenne ni étendre celles déjà existantes; ne pas modifier les Constitutions nationales des Etats Membres ; et ne pas créer de nouvelles charges ni obligations financières pour l'Union ou les Etats Membres.

A partir de ces prémisses, une affirmation adéquate des droits économiques et sociaux est une exigence impérative ayant pour conséquence directe l'évolution juridico-politique européenne. La Convention doit être à la hauteur du mandat reçu et éviter, d'une part, des formulations génériques, étendues ou insubstantielles –qui équivaldraient à un accomplissement défectueux du mandat et frustreraient les attentes que la Charte suscite- et, d'autre part, tomber dans l'excès d'un catalogue de droits juridiquement inapplicable et ne pouvant être assumé politiquement. Cet exercice d'équilibre et de pondération, dans le but de la recherche d'un consensus, se révèle tout particulièrement nécessaire dans le chapitre économique et social, dont la rédaction devrait prendre en spéciale considération les critères suivants :

- a) Ne pas altérer ce qui est prévu dans le Traité CE, ni vider de leur contenu les procédures que celui-ci établit en vue de l'adoption de la législation communautaire ;
- b) Ne pas imposer de charges financières additionnelles à l'Union ou à ses Etats Membres ;
- c) configurer des préceptes suffisamment « ouverts » tels qu'ils puissent contenir les différentes options de la politique économique de l'Union ou des Etats Membres, pour ce faire, la formule « en accord avec la législation et les pratiques nationales des Etats Membres » pourrait être

très utile, en accord avec la Charte Sociale Européenne et avec la Charte Communautaire des Droits Sociaux Fondamentaux des travailleurs; et,

- d) ne pas énoncer d'objectifs de la politique économique, conformément au mandat de Cologne.

Ainsi dessiné le périmètre spécifique du chapitre économique et social, et une fois admise la nécessité de l'alimenter aussi bien de droits subjectifs que de principes recteurs –comme il en découle de la clause horizontale 44.2-, nous devons identifier quels préceptes appartiennent à l'une ou l'autre catégorie et les formuler en accord avec leur caractère spécifique.

D'un point de vue juridique, sont considérées « droits » les facultés qui peuvent s'exercer directement d'elles mêmes dans le respect d'autres droits, de biens protégés et de valeurs reconnues. De ce fait, elles ont un caractère subjectif qui dérive de la sphère d'action de l'individu et font partie, en tant que droits de liberté et d'égalité, de la dignité de la personne dans une société démocratique.

De leur côté, les “principes” informent la législation et la pratique judiciaire et lient dans leurs agissements les pouvoirs publics. Il ont une force juridique négative, étant donné qu'ils limitent la disponibilité du législateur, qui dans l'exercice de son pouvoir ne peut les contredire ou les méconnaître. En fin, les “principes recteurs” pourront seulement être invoqués devant l'autorité judiciaire en accord avec ce qui est prévu dans les lois qui effectivement les développent.

Cette distinction a nécessairement des conséquences pratiques dans la formulation des préceptes correspondants: les “droits” proprement dits seront rédigés de la même manière que les droits classiques de liberté et d'égalité.

Au contraire, les “principes” doivent refléter leur caractère inspirateur de la politique sociale et économique, tout en évitant dans leur rédaction l'utilisation du terme « droit » pour des raisons de clarté et afin de ne pas induire en erreur. La décision relative à l'opportunité de leur développement, par lequel ils deviennent des droits de prestations concrètes, appartient à la volonté du législateur ou de l'autorité compétente, communautaire ou nationale, à qui l'on ne peut contraindre dans sa liberté d'agir moyennant l'imposition d'une obligation de faire dérivée d'un principe recteur. Cependant, si le législateur, dans l'exercice de son pouvoir, décidait de les développer, il devra en tous cas, respecter le contenu essentiel de ceux-ci.

La rédaction des « principes » exige, en définitive, un langage qui n'impose pas son développement législatif, ainsi que l'introduction d'une référence expresse au principe de subsidiarité en tant que critère de base pour un éventuel développement. (De même, certains droits subjectifs peuvent nécessiter un renvoi à la législation nationale, conséquence, en tous cas, du partage des compétences entre la Communauté et les Etats Membres).

En tant qu'illustration, on pourrait qualifier de droits sociaux subjectifs, entre autres, le droit au travail et au libre choix d'une profession ou d'un métier ; à la santé et à la sécurité au travail ; au repos ; à la liberté syndicale ; à la négociation et action collective ; et à la non discrimination du travail pour raison de sexe. De leur côté, seraient considérés « principes recteurs » le droit à la sécurité sociale ; à l'assistance sanitaire ; à un logement digne ; à la protection des consommateurs ; et à la protection de l'environnement.

En conclusion, l'élaboration du chapitre économique et social demande un soin tout particulier. Si, en matière de droits fondamentaux de liberté et d'égalité, le défi fondamental consiste à trouver le juste équilibre entre l'autonomie de la Charte et la sécurité juridique, dans le chapitre économique et social on doit tenir particulièrement présents ces critères: la non imposition de nouvelles obligations financières à l'Union ou aux Etats Membres, la non altération des compétences de l'Union ou des Etats Membres et la non imposition aux gouvernements des obligations d'agir de caractère programmatique qui entravent leur liberté d'action en vue d'orienter leurs politiques économiques.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 13 July 2000 (17.07)
(OR. de)****CHARTE 4417/00****CONTRIB 273****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a letter from Mr Roman HERZOG, President of the Convention, forwarded by Mr Caspar EINEM, member of the Austrian National Council.

Dr CASPAR EINEM
Member of the National Council

Wasagasse 11/55
A 1090 Vienna
Tel/Fax:
0043-01-317 28 05
Email:
caspar.einem@aon.at

Vienna, 13 July 2000

Dear Sir,

Please allow me to take this opportunity to make a number of comments and suggestions with regard to the discussions of the Convention.

1. Re Article 31a.

The title should read "**Equal treatment of women and men**" to make it clear that it concerns active measures to compensate for disadvantage.

The text should read:

"(1) The Union shall promote the equal treatment of women and men and thereby equality of opportunity, in particular in the areas of work and employment, including equal pay for equal work or work of equal value.

(2) Measures may be taken to promote genuine equality of treatment and/or to ensure that preference is given to the disadvantaged gender when individuals are equally qualified."

Reasons:

The wording "Equal treatment of men and women", as proposed by the Praesidium following Vitorino, is permissible where there are disadvantages that cannot be remedied because it disposes that inequality be treated equally.

This should also expressly remove the concern expressed in discussions in the Convention about preference being given to less qualified women over better qualified men. Preference given to the disadvantaged gender when individuals are equally qualified is what is involved.

2. Re Article 37

The text of this Article should read as follows:

(1) The minimum age of admission to employment must not be lower than the minimum school leaving age.

(2) Young people must have conditions of work and work protection appropriate to their age.

(3) **Child labour is prohibited.**

Reasons:

The reference to any more favourable arrangements that may exist in Member States may be deleted here and should be expressed in a horizontal Article.

The second paragraph may be worded more concisely without any loss of substance.

In order to make the message clear to the citizens concerned, the third paragraph should be expressly included even if its substance is already contained in paragraph 1.

3. **Re Article 46a.**

I would propose that an additional horizontal Article be included after "Article 46. Scope", to read as follows:

"Article 46a. Comparison of advantageousness

Any more favourable arrangements existing in the Member States, shall remain unaffected."

Reasons:

The discussions in the Convention have shown that, in particular in the area of economic and social fundamental rights, some Member States are seriously concerned that their often more extensive rights of the beneficiaries could be prejudiced by less extensive rights in the Charter. The new Article should take account of this understandable concern.

I should be obliged if you would pass on these suggestions to the other members of the Convention.

Yours faithfully,

Caspar Einem

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ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 17. Juli 2000**CHARTE 4421/00****CONTRIB 277****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme von Herrn Jo LEINEN, Mitglied des Europäischen Parlaments, zum Artikel 24 (Politische Parteien). ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Beitrag zum Chartakonvent zum Artikel 24 – Politische Parteien

Eingereicht von **Jo Leinen MdEP**

Den Artikel 24 wie folgt **beibehalten**:

Artikel 24:

Jeder Bürger der Union hat das Recht, mit anderen eine politische Partei auf der Ebene der Europäischen Union zu gründen.

Begründung

Nach der Debatte zu den Artikeln 1-30 am 10.7.00, insbesondere zum Artikel 24 möchte ich noch einmal darauf hinweisen, dass bei einer Streichung des Artikel 24 eine große Lücke im politischen Gefüge der Europäischen Union bestehen bleiben würde. Nach der in Convent 36 vorgeschlagenen Neuformulierung für Artikel 17 (der jetzt nur noch die "...politische... Versammlung" erwähnt, nicht aber politische Parteien), erscheint es umso wichtiger, den Artikel 24 mit einer expliziten Erwähnung der "*politischen Parteien auf europäischer Ebene*" **zu erhalten**. Artikel 17 deckt zwar unzweideutig das Recht ab, politischen Parteien beizutreten, aber es ist nicht klar, ob er auch die Gründung von Parteien auf transnationaler- europäischer Ebene garantiert. Durch Art 191 des EG Vertrages wird den Parteien auf europäischer Ebene eine klare Rolle zugeschrieben. Sie sind unentbehrlich für die Meinungsbildung und die Gestaltung des politischen Prozesses in Europa.

Die Charta der Grundrechte richtet sich an die Organe der Union, gleichzeitig muß sie die grundrechtlichen Rahmenbedingungen für den politischen Prozess in Europa festlegen – wie dies auch durch das Wahlrecht zum Europaparlament in Artikel 25 geschieht. Dabei handelt es sich, im Gegensatz zu Artikel 17, der sich an "jede Person" richtet, um ein **Europäisches Bürgerrecht**. Ich plädiere daher für die Beibehaltung von Art 24 in der revidierten Fassung (Konvent 36, mein Vorschlag siehe oben) als Recht jedes Unionsbürgers, auf europäischer Ebene eine politische Partei zu gründen.

Der Satzteil nach dem Komma ("...und jede Person hat das Recht, dieser beizutreten") ist durch Artikel 17 gedeckt und kann entfallen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 July 2000
(OR. fr)****CHARTE 4422/00****CONVENT 45****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium

The Members of the Convention will find below the complete text of the Charter proposed by the Praesidium in the light of discussions in the Convention. Members may forward their general comments on this draft, by 1 September 2000, to the following address:

Jean-Paul.Jacque@consilium.eu.int,

indicating:

- "for the attention of Mr Jansson" (for the representatives of the national Parliaments)
- "for the attention of Mr Mendez de Vigo" (for the members of the European Parliament delegation)
- "for the attention of Mr Braibant" (for the personal representatives).

The Secretariat will forward these comments to the relevant addressee.

PREAMBLE

1. The peoples of Europe have established an ever closer union between them and are resolved to share a peaceful future based on common values.
2. The Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law.
3. The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it ensures balanced and sustainable development through the free movement of persons, goods, capital and services.
4. In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.
5. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.
6. Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.
7. Each person is therefore guaranteed the rights and freedoms set out hereafter.

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person must be respected and protected.

Article 2. Right to life

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

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition on making the human body and its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

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

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

Article 5. Prohibition of slavery and forced labour

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

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

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

Article 8. Protection of personal data

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

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

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

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

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

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.

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

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

Article 13. **Freedom of research**

Scientific research shall be free of constraint.

Article 14. **Right to education**

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

Article 15. **Freedom to choose an occupation**

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

Article 16. **Freedom to conduct a business**

The freedom to conduct a business is recognised.

Article 17. **Right to property**

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

Article 18. **Right to asylum**

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

Article 19. **Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman or degrading treatment.

CHAPTER III. EQUALITY**Article 20.** **Equality before the law**

Everyone, man or woman, is equal before the law.

Article 21. **Equality and non-discrimination**

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

Article 22. **Equality between men and women**

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 23. **Protection of children**

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

Article 24. **Integration of persons with disabilities**

Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV. SOLIDARITY

Article 25. **Workers' right to information and consultation within the undertaking**

Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.

Article 26. **Right of collective bargaining and action**

Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, in accordance with Community law and national laws and practices.

Article 27. **Right of access to placement services**

Everyone has the right of access to a placement service.

Article 28. **Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal.

Article 29. **Fair and just working conditions**

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

Article 30. **Protection of young people at work**

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

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

Article 31. **Reconciling family and professional life**

The family shall enjoy legal, economic and social protection.

Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 32. **Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social assistance and housing benefit in order to ensure a decent existence for persons lacking sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 33. **Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

Article 34. **Access to services of general economic interest**

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

Article 35. **Environmental protection**

All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Article 36. **Consumer Protection**

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

CHAPTER V. CITIZENSHIP**Article 37.** **Right to vote and to stand as a candidate in elections to the European Parliament**

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

Article 38. **Right to vote and to stand as a candidate at municipal elections**

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

Article 39. **Right to good administration**

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

Article 40. **Right of access to documents**

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

Article 41. **Ombudsman**

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

Article 42. **Right to petition**

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

Article 43. **Freedom of movement and of residence**

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

Article 44: **Diplomatic and consular protection**

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

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 46. Presumption of innocence and right of defence

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

Article 47. Principles of legality and proportionality of criminal offences and penalties

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

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Article 48. **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

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

CHAPTER VII. GENERAL PROVISIONS

Article 49. **Scope**

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

Article 50. **Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Article 51. **Level of protection**

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

Article 52. **Prohibition of abuse of rights**

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

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 31 July 2000 (17.08)
(OR. fr)****CHARTE 4423/00****CONVENT 46****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4422/00 CONVENT 45

EXPLANATIONS RELATING TO THE PROVISIONS OF THE DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The Members of the Convention will find attached an explanatory report on the provisions of the Charter. This report was drawn up by the Secretariat on the basis of instructions from the Praesidium, which requested that it be as factual as possible, setting out the texts or case law used as sources for the wording of each article and refraining from any attempt to interpret the Charter. This report reflects the text in its current state and will be amended as changes are made to the text of the Charter.

Any comments should be sent to the Secretariat either to the following e-mail address:

jean-paul.jacque@consilium.eu.int

or in writing to Jean-Paul Jacqué, Director in the Council Legal Service, Council of the European Union, 175 rue de la Loi, B-1048 Brussels.

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person must be respected and protected.

Explanation

The dignity of the human person is the real basis of fundamental rights. For that reason the 1948 Universal Declaration of Human Rights enshrined this principle in its preamble as follows: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Consequently, Article 1 produces the following effects, inter alia:

- 1. None of the rights laid down in this Charter may be used to harm the dignity of another person.*
- 2. The dignity of the human person is part of the actual substance of the rights laid down in this Charter and must therefore be respected, even where a right is restricted.*

Article 2. Right to life

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

Explanation

1. *The content of paragraph 1 corresponds to the first sentence of Article 2(1) of the European Convention on Human Rights, which reads as follows:*

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

The second sentence of the provision, which referred to the death penalty, was superseded by Article 1 of Protocol No 6 to the European Convention on Human Rights, which reads as follows:

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

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

2. *The right to life may, pursuant to Article 50 thereof, be subject to limitations within certain limits. However, these limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms." Limitations are therefore only permissible in the context of the following provisions:*
 - (a) *Article 2(2) of the European Convention on Human Rights:*

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

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

 - (b) *Article 2 of Protocol No 6 to the European Convention on Human Rights:*

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

The provisions of this Article correspond to those of the Articles of the European Convention on Human Rights quoted above. In accordance with Article 50(3), their meaning and scope are therefore similar to those of the Convention articles.

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition on making the human body and its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Explanation

The principles of this Article are already included in the Convention on Human Rights and Biomedicine. The Charter does not set out to depart from those principles.

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

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

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the European Convention on Human Rights, which has the same wording. In accordance with Article 50(3), its meaning and scope are therefore similar to those of that Article. The result is that limitations may not exceed those guaranteed by the Convention.

Article 5. Prohibition of slavery and forced labour

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

Explanation

The right in Article 5(1) and (2) is the right guaranteed by Article 4(1) and (2) of the European Convention on Human Rights, which has the same wording.

Pursuant to Article 50(3) of the Charter, its meaning and scope are therefore similar to those of Article 4 of the Convention. Consequently:

4. *paragraph 1 may not be limited at all;*
5. *in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the European Convention on Human Rights. That provision reads as follows:*
"For the purpose of this article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - (d) any work or service which forms part of normal civic obligations."*

Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in crime. It is also based on the 1926 Slavery Convention, the 1953 Protocol to it and the 1957 Additional Convention.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the European Convention on Human Rights.

Pursuant to Article 50(3) of the Charter, the meaning and scope of this right are similar to those of Article 5. Consequently, limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms." Therefore, the only limitations which are permissible are those in the context of Article 5 of the European Convention on Human Rights, which reads:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions for harmonisation in criminal matters.

Article 7. Respect for private and family life

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

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the European Convention on Human Rights. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 50(3), the meaning and scope of this right are similar to those of the corresponding article of the Convention. Consequently, the limitations to this right which are

permissible are those which result from the Convention. Article 8 of the Convention reads as follows:

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

Article 8. Protection of personal data

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

Explanation

This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data which has been ratified by all the Member States. [The latter Convention is currently being amended to enable the European Communities to accede.] The right to protection of personal data may be limited under the conditions set out in Article 50.

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

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

Explanation

This Article is based on Article 12 of the European Convention on Human Rights, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." To take account of changes in society, the wording has been altered to cover cases in which national legislation recognises arrangements other than marriage for founding a family.

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Explanation

This right corresponds to the right guaranteed in Article 9 of the European Convention on Human Rights and, in accordance with Article 50(3) of the Charter, has similar meaning and scope. Limitations must therefore respect Article 9(2) of the Convention which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.

Explanation

Paragraph 1 of this Article corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 50(3) of the Charter, the meaning and scope of this right are similar to those guaranteed by the Convention and limitations may not exceed those provided for in Article 10(2) of the Convention.

Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the press and freedom of information. They are based on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007) and the provisions of the Treaty establishing the European Community regarding rules of competition.

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the European Convention on Human Rights which reads as follows:

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

The meaning and scope of the provisions of paragraph 1 are similar to those of the Convention, pursuant to Article 50(3) of the Charter. Limitations on that right may not exceed those provided for in Article 11(2) of the ECHR.

Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.

Article 13. Freedom of research

Scientific research shall be free of constraint.

Explanation

This right is deduced from the right to freedom of thought and expression. It is to be exercised within the framework of Article 1 and subject to the limitation clause in Article 50. It is subject to respect for the dignity of the person.

Article 14. Right to education

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

Explanation

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

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

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide

education, in particular private ones, to be free of charge. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers.

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

Article 15. Freedom to choose an occupation

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

Explanation

Freedom to choose an occupation, as enshrined in paragraph 1, is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds). This paragraph also draws upon Article 1(2) of the European Social Charter which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989.

The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph is based on TEC Article 137(3), fourth indent, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States.

Article 16. Freedom to conduct a business

The freedom to conduct a business is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission (not yet published), paragraph 99 of the grounds) and TEC Article 4(1) and (2) which recognises free competition.

Article 17. Right to property

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

Explanation

This Article is based on Article 1 of the Additional Protocol to the European Convention on Human Rights:

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

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

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, pursuant to Article 50(3), the meaning and scope of the right are similar to those of the right guaranteed by the Convention and the limitations may not exceed those provided for in the Convention.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned because of its growing importance.

Article 18. Right to asylum

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

Explanation

The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. The provisions of Article 1 of Protocol No 7 to the European Convention on Human Rights concerning procedural safeguards in the event of expulsion have not been incorporated, as most Member States have not signed or ratified that Protocol.

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman or degrading treatment.

Explanation

Paragraph 1 of this Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons who are nationals of a particular State.

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

CHAPTER III. EQUALITY**Article 20. Equality before the law**

Everyone, man or woman, is equal before the law.

Explanation

*Article 2 corresponds to a principle which has been included in all European constitutions since the 1789 Declaration of Human and Civil Rights and has also been recognised by the Court of Justice in a judgment as a basic principle of Community law (judgment of 13 November 1984, *Racke*, Case 283/83 [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson*, not yet published).*

Article 21. Equality and non-discrimination

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

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the European Convention on Human Rights and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage.

Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Explanation

The first paragraph is based on Article 141 of the EC Treaty and draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter.

The second paragraph is based on Article 141(4) of the EC Treaty and Article 2(4) of Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 23. Protection of children

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

Explanation

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

Article 24. Integration of persons with disabilities

Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on the revised Social Charter and point 24 of the Community Charter.

CHAPTER IV. SOLIDARITY**Article 25. Workers' right to information and consultation within the undertaking**

Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.

Explanation

This Article is based on the revised European Social Charter (Article 21) and the Community Charter (Article 17). There is a considerable Community acquis in this field: Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 26. Right of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, in accordance with Community law and national laws and practices.

Explanation

This Article is based on Article 1 of the European Social Charter and on point 6 of the Community Charter. The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the European Convention on Human Rights.

Article 27. Right of access to placement services

Everyone has the right of access to a placement service.

Explanation

This Article is based on Article 2 of the European Social Charter and point 6 of the Community Charter.

Article 28. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Explanation

This Article draws on Article 24 of the revised Social Charter.

Article 29. Fair and just working conditions

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

Explanation

This Article is based on Directive 89/391/EC on the introduction of measures to encourage improvements in the safety and health of workers at work, Article 3 of the Social Charter and point 19 of the Community Charter. The right to dignity at work in particular is proclaimed in Article 26 of the revised Social Charter.

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

Article 30. Protection of young people at work

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

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

Explanation

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

Article 31. Reconciling family and professional life

The family shall enjoy legal, economic and social protection.

Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

The first paragraph is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter.

Article 32. Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social assistance and housing benefit in order to ensure a decent existence for persons lacking sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Explanation

The principle set out in paragraph 1 is based on Article 12 of the European Social Charter and point 10 of the Community Charter. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community.

The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter and sets out the rules arising from Regulation No 1408/71 which implements Article 42 of the Treaty establishing the European Community.

The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137 of the Treaty establishing the European Community, particularly the last paragraph.

Article 33. Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter.

Article 34. Access to services of general economic interest

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

Explanation

This Article is based on Article 16 of the Treaty establishing the European Community and does not of itself create any right but sets out the principle of respect by the Union for the access to services of general economic interest provided for by national provisions when it is compatible with Community legislation.

Article 35. Environmental protection

All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Explanation

The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty.

Article 36. Consumer Protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Explanation

The principles set out in this Article are based on Article 153 of the EC Treaty.

CHAPTER V. CITIZENSHIP**Article 37. Right to vote and to stand as a candidate in elections to the European Parliament**

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

Explanation

Paragraph 1 of this Article corresponds to the right guaranteed by Article 19(2) of the EC Treaty. Paragraph 2 corresponds to Article 190(1) of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 38. Right to vote and to stand as a candidate at municipal elections

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

Explanation

This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 39. Right to good administration

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

Explanation

This right is based on the existence of a Community based on the rule of law and was developed in the case law which enshrined the principle of good administration (see inter alia Court of Justice judgment of 31 March 1992, Case C-255/90 P, Burbán, [1992] ECR 2253, and Court of First Instance judgments of 18 September 1995, Case T-167/94 Nölle [1995] ECR II 2589, and 9 July 1999, Case T-231/97 New Europe Consulting and others (not yet published)). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1984 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty.

Paragraph 3 reproduces the right guaranteed by Article 288 of the EC Treaty.

Paragraph 4 reproduces the right guaranteed by the third paragraph of Article 21 of the EC Treaty.

In accordance with Article 50(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Article 40. Right of access to documents

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

Explanation

The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 50(2), it applies under the conditions defined by the Treaty.

Article 41. Ombudsman

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

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 42. Right to petition

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

Explanation

The right guaranteed in this Article is the right guaranteed by Article 21 and 194 of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 43. Freedom of movement and of residence

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

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty.

Paragraph 2 refers to the power granted to the Community by Article 62(3) and Article 63(4) of the EC Treaty.

Article 44. Diplomatic and consular protection

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

Explanation

The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 50(2), it applies under the conditions defined by the Treaty.

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

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

Explanation

Paragraph 1 is based on Article 13 of the European Convention on Human Rights:

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

However, in Community law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined the principle in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties.

Paragraph 2 corresponds to Article 6(1) of the European Convention on Human Rights which reads as follows:

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

In Community law, the right to a fair hearing is not confined to disputes relating to civil law rights

and obligations. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339); that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, [1986] ECR 1682, and the other cases cited above). Nevertheless, in all respects other than their scope, the guarantees afforded by the Convention apply in a similar way to the Union.

With regard to paragraph 3, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 46. Presumption of innocence and right of defence

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

Explanation

This Article is based on Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

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

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

In accordance with Article 50(3), the meaning and scope of this right are similar to those of the right guaranteed by the European Convention on Human Rights.

Article 47. Principles of legality and proportionality of criminal offences and penalties

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

Explanation

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

Article 7 of the European Convention on Human Rights is worded as follows:

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

In paragraph 2, the reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 48. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

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

Explanation

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*

2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
3. *No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission, not yet published). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 48, the "non bis in idem" principle applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" principle are covered by the horizontal clause in Article 50(1) of the Charter regarding limitations.*

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Explanation

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, within the framework of the Union's powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union, in compliance with the principle of subsidiarity. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the EC Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) of the Treaty establishing the European Community).

It follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). The second paragraph confirms that the Charter does not affect the competences and tasks which the Treaties confer on the Community and the Union

Article 50. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a

democratic society or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Explanation

The purpose of this provision is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds).

Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties. Paragraph 3 lays down the arrangements for rights which are also guaranteed by the European Convention on Human Rights. Where the Charter does not afford greater or more extensive protection, the meaning and scope of those rights are similar to those conferred on them by the European Convention on Human Rights. It goes without saying that the term "convention" covers both the Convention and its Protocols and that the meaning and scope of the rights are determined not only by the text of the Convention but also by the case law of the European Court of Human Rights. "Scope" means not only the extent of the rights as they result from the Convention but also the arrangements for limitations.

Article 51. Level of protection

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

Explanation

The aim of the provision is clear - to maintain the level of protection currently afforded by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes a minimum standard in all cases. The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the Convention, with the result that the arrangements for limitations may not fall below the level provided for in the Convention.

Article 52. Prohibition of abuse of rights

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

Explanation

*This Article corresponds to Article 17 of the European Convention on Human Rights:
"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 14 July 2000 (14.7)
(multilingual version: En/Fr/Dk)**CHARTE 4427/00****CONTRIB 281****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from Dr. Erling OLSEN, representative of the Danish government, relating to a horizontal article concerning the relation between the Charter and the ECHR.

”Les droits dans les articles.....ont la même signification que les droits correspondants garantis par la Conventions Européenne des Droits de l’Homme et interprétés par la Cour Européenne des Droits de l’Homme.

Ces droits seront uniquement appliqués á un Etat Membre dans la mesure où il a adhéré á la Convention et ses protocoles tout en prenant en considération les réserves ou dérogations formulées par ledit Etat Membre”.

”The rights in Articles..... have the same meaning as the corresponding rights guaranteed under the ECHR as interpreted by the European Court of Human Rights.

These rights apply to a Member State only to the extent to which it has consented to be bound in relation to that Convention and its protocols and subject to any reservations or derogations in force for that Member State”.

”Rettighederne i artiklerne..... skal forstås i overensstemmelse med de tilsvarende rettigheder garanteret af Den Europæiske Menneskerettighedskonvention som fortolket af Den Europæiske Menneskerettighedsdomstol.

Disse rettigheder finder udelukkende anvendelse over for en medlemsstat i det omfang den har tilsluttet sig Den Europæiske Menneskerettighedskonvention og dens tillægsprotokoller og under hensyn til de forbehold, som den pågældende medlemsstats har taget”.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 July 2000**CHARTE 4428/00****CONTRIB 282****COVER NOTE**

Subject : Draft Charter of Fundamental rights of the European Union

Please find hereafter a contribution submitted by Lord Goldsmith QC, personal representative of the Government of the United Kingdom, on the structure of the draft Charter.

The European Union's Charter of Fundamental Rights and Freedoms and Common Principles

(Structure)

Chapter 1: Fundamental Rights

Rights of Individual Persons

Right to life (2)

Right to respect for the integrity of the human person (3)

Prohibition of torture and inhuman treatment (4)

Prohibition of slavery and forced labour (5)

Right to liberty and security (6)

Right to a fair trial (8/9)

Justice

No punishment without law (10)

Right not to be tried or punished twice [in criminal proceedings for the same offence] (11)

Respect for private [and family] life (12)

Right to marry and found a family (13)

Right to education (16)

[Equality and] Non-discrimination (22)

Right to property (20)

Equality between men and women

Right to effective remedy (7)

Chapter 2: Fundamental Freedoms

Freedom of thought, conscience and religion (14)

Freedom of expression (15)

Freedom of assembly and association (17)

Chapter 3: Foundations of the EU/EC

Freedom of movement of workers (30)

Freedom of establishment

Freedom of provision of services

Freedom of movement of goods

Freedom of capital

Chapter 4: Rights of Citizenship

Right to vote and to stand as a candidate for European Parliament (25)

Right to vote and to stand as a candidate in municipal elections (26)

Relations with the administration (27) including Ombudsman (28) & Right to petition (29)

Diplomatic and consular protection (29a)

Right of access to documents (18)

Chapter 5: Principles of Social Protection

Introduction to principles of Social Protection (18a)

Data Protection (19)

[Children's rights (23)]

Freedom of work (31)

[Workers' right to information and consultation within the undertaking (32)]

[Rights of collective bargaining and action (33)]

Fair and just working conditions (34)

Protection of young people at work (35)

Combining family and professional life (maternity/paternal leave) (37)

[Right of migrant workers to equal treatment (38)]

Social security and social [assistance] advantages (39)

Health Care (40)

Integration of persons with disabilities (41)

[Environmental protection (42)]

[Consumer Protection (43)]

Chapter 6: General Articles

Scope and definition of rights, freedoms and principles (44)

Conditions and limits obliged by the treaty [Scope of Guaranteed Rights] (45)

Level of Protection (46)

Prohibition of abuse of rights (47)

Lord Goldsmith, QC

18 July 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 July 2000**CHARTE 4429/00****CONTRIB 283****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution submitted by Lord Goldsmith QC, personal representative of the government of the United Kingdom, on the Preamble.¹

¹ This text has been submitted in English language only.

The European Union's Charter of Fundamental Rights and Freedoms and Common Principles

Preamble

Whereas:

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law - principles which are common to the Member States;
2. The four freedoms enshrined in the Treaties establishing the European Communities namely, freedom of movement of goods, persons, services and capital continue to be enjoyed by citizens and implemented by the institutions and Member States as fundamental rights in the Union;
3. The Union is also obliged to respect fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law;
4. The Union respects the Member States' national identities and the principle of subsidiarity;
5. All fundamental rights of the individual flow from the dignity of the person and the equality of each and every person before the law;
6. Enjoyment of these fundamental rights and freedoms entails responsibilities and duties, both towards other individuals and to society as a whole;
7. The Union recognises that, in addition to fundamental rights and freedoms, there are certain principles, especially in the field of social protection, which are common to all Member States. These are recognised in each Member State to the extent and in accordance with limitations appropriate in each Member State; its own national, regional and local identity; and the principle of subsidiarity;
8. At this stage in the Union's development there is a need to consolidate in a Charter the fundamental rights and freedoms applicable at Union level and the principles common to Member States to make them more visible to the union's citizens;

9. The Union's institutions and bodies [and the Member States when implementing community law] should respect these fundamental rights and freedoms and have due regard to those principles whilst respecting the principle of subsidiarity and the need, in accordance with the Community's overriding task in article 2 of the Treaty establishing the European Community. This task is to promote a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable development and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of environment, the raising of the standard of living and quality of life, economic and social cohesion and solidarity among Member States;

10. Having regard to the constitutional traditions common to the Member States, the Community Treaties and the European Convention of Human Rights and drawing upon the Social Charters adopted by the Community and by the Council of Europe, as well as the jurisprudence of the Court of Justice of the European Communities and the European Court of Human Rights;

The Council, European Commission and European parliament proclaim in this Charter the following fundamental rights and freedoms and principles of social protection:

Lord Goldsmith, QC

18 July 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 20. Juli 2000**CHARTE 4430/00****CONTRIB 284****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme von Herrn Jürgen Gnauck, Vertreter des Deutschen Bundestages, zu den sozialen Rechten (Bezugsdokumente: Charte 4383/00 CONVENT 41 und CHARTE 4399/00 CONVENT 42).¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An das
Sekretariat des Konvents
Rue de la Loi/Wetstraat 175

B-1048 Brüssel

Per Fax (0032-2-285 78 37)!

Per E-mail (Margit.Huy@consilium.eu.int)!

Geschäftszeichen:

Ihr Zeichen, Ihre Nachricht vom

Telefon

Datum

33/KI-03145

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Stellungnahme des Vertreters des Bundesrates im Konvent zu den Kompromissvorschlägen des Präsidiums zu den sozialen Rechten in den Dokumenten CHARTE 4383/00 CONVENT 41 und CHARTE 4399/00 CONVENT 42

Sehr geehrte Damen und Herren,

in der Sitzung des Konvents am 10./11. Juli 2000 wurde mit der Prüfung der Artikel 31 bis 50 begonnen. Die Prüfung soll in der nächsten Sitzung des Konvents am 17./18./19. Juli 2000 abgeschlossen werden. Mit Schreiben vom 31. Mai 2000 habe ich Ihnen bereits meine Änderungsvorschläge zu den Vorschlägen des Präsidiums zu den sozialen Rechten übermittelt. Nunmehr hat das Präsidium Anfang Juli seine Kompromissvorschläge zu den sozialen Rechten in den Dokumenten CHARTE 4383/00 CONVENT 41 und CHARTE 4399/00 CONVENT 42 veröffentlicht. Aus diesem Grund sehe ich mich veranlasst, nochmals auf grundsätzliche Positionen der deutschen Länder zu den sozialen Grundrechten einzugehen. Eine ausführliche Stellungnahme liegt meinem Schreiben bei. Ich möchte Sie bitten, diese den Mitgliedern des Konvents in der kommenden Sitzung am 17./18./19. Juli 2000 bekanntzugeben.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Entwurf einer Charta der Grundrechte der Europäischen Union**Stellungnahme des Vertreters des Bundesrates im Konvent, Herrn Minister Jürgen Gnauck, zu den sozialen Rechten**

Angesichts der derzeitigen Beratungen im Konvent zu den sozialen Rechten sehe ich mich veranlasst, nochmals die grundsätzliche Position der deutschen Länder zu diesen Rechten darzulegen:

Die deutschen Länder bekennen sich zum Sozialstaatsprinzip. Auf dieser Grundlage sind sie in Deutschland Garanten eines hohen sozialen Schutzniveaus. Die Länder halten zugleich die soziale Dimension der Europäischen Union für wichtig und treten für eine Europäische Sozialordnung ein.

Hiervon zu unterscheiden ist jedoch die Frage, ob die vorgeschlagenen sozialen Gewährleistungen in eine Grundrechtecharta der Europäischen Union aufgenommen werden sollten. Die deutschen Länder orientieren sich hierbei an folgenden Kriterien:

Der Entwurf einer Grundrechtecharta hat sich streng an das Mandat des Europäischen Rates von Köln zu halten. Danach sind wirtschaftliche und soziale Rechte lediglich zu „berücksichtigen“, und zwar allein dann, wenn sie nicht nur Ziele für das Handeln der Union begründen. Es soll ein Katalog von Rechten erstellt werden, der die Bindung der Europäischen Union an die fundamentalen Rechtsüberzeugungen der Mitgliedstaaten für die Unionsbürger deutlich sichtbar macht. Nicht geht es um ein politisches Grundsatzprogramm der Union. Politische Zielbestimmungen scheiden mithin aus.

Des Weiteren darf es mit der Charta zu keinerlei Kompetenzerweiterung auf der Ebene der Europäischen Union kommen. Eine detaillierte Befassung mit Sachverhalten, für deren Regelung die Union nicht zuständig ist, mindert die angestrebte Wirkung der Charta, da die Union in diesen Bereich Rechte nicht selbst gewähren kann.

Es ist darüber hinaus stets darauf zu achten, dass die sozialen Rechte justizierbar, d. h. von den Gerichten anwendbar sind.

Ungeachtet all dessen wird die Charta entwertet, wenn sie mit Details überfrachtet wird. Nicht jede soziale Errungenschaft, die die europäischen Staaten auszeichnet, hat die Qualität eines unveräußerlichen Rechts, das auch und gerade unabhängig von der wirtschaftlichen Leistungsfähigkeit eines Gemeinwesens bestehen muss.

Schließlich soll die Charta knapp, lesbar und bürgerfreundlich formuliert sein, so dass sie sich auf allgemeinere, weniger detaillierte Regelungen beschränken muss. Diesen Ansatz hat sich der Konvent gerade auch bei den elementaren Rechten zu Eigen gemacht. Er sollte bei den sozialen Rechten von diesem sachgerechten Bestreben nicht abgehen. Es ist daher zu prüfen, ob nicht Regelungen auf der „einfachgesetzlichen“ Ebene ausreichen.

Da die Charta nach dem Mandat des Europäischen Rates die Rechtsbindung des Handelns der Organe der Union zum Ausdruck bringen soll und es damit um Verpflichtungen der hoheitlichen Gewalt geht, besteht schließlich kein Raum, eine unmittelbare Drittwirkung der Grundrechte, d. h. eine Verpflichtung auch von Bürgerinnen und Bürger oder Unternehmen, zu regeln. Die Länder lehnen eine solche Ausweitung grundsätzlich ab. Auch unter diesem Gesichtspunkt wäre bei einigen Regelungen eine weit größere Zurückhaltung angebracht, um durch einen Rechtstext nicht unerfüllbare Erwartungen bei den Unionsbürgern zu wecken.

An dieser von Beginn an vertretenen Auffassung halten die deutschen Länder unverändert fest. Sie betonen, dass es sich bei den sozialen Rechten in erster Linie nur um Abwehrrechte gegenüber der europäischen Hoheitsgewalt handeln darf, keinesfalls aber um Ansprüche des Einzelnen auf konkrete soziale Leistungen. Darüber hinaus bestehen keine Bedenken dagegen, Respektierungs- und Förderungspflichten in die Charta aufzunehmen, soweit sie nicht nur Ziele für das Handeln der Union begründen oder zu einer Kompetenzausweitung führen. Schließlich haben sich die Länder bereits dafür ausgesprochen, den Grundsatz der Solidarität in der zukünftigen Präambel zu verankern. Damit würde eine zusätzliche Werteentscheidung getroffen, die allen Mitgliedstaaten und den deutschen Ländern gemein ist.

Diesen Vorstellungen kommt der von Prof. Braibant und Prof. Meyer unter dem 13.06.2000 ausgehändigte Kompromissvorschlag nahe, dessen Konzeption (Respektierung/Schutz/Förderung) ebenfalls auf der Vorstellung beruht, soziale Rechte nur als Abwehrrechte in der Charta zu verankern. Prof. Meyer hat diesen Aspekt während der Konferenzberatungen mehrfach betont. Allerdings ist es aus der Sicht der Länder unabdingbar, dass der Charakter der sozialen Grundrechte als reiner Abwehrrechte stärker hervorgehoben wird, als das in dem angesprochenen Kompromisspapier der Fall ist. Für eine solche Klarstellung bieten sich die sogenannten horizontalen Regelungen (derzeit Art. 46 Abs. 2) an.

Soweit es um die Ausgestaltung der einzelnen sozialen Rechte geht, erscheint es für deren Beurteilung sinnvoll, den für Ende Juli angekündigten neuen Präsidiumsvorschlag abzuwarten.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int****Bruxelles, le 7 septembre 2000
Document multilingue****A L'ATTENTION DES MEMBRES DE LA CONVENTION****OBSERVATIONS RECUES RELATIVES AU
DOCUMENT CHARTE 4422/00 CONVENT 45**

Veillez trouver, pour information, un recueil des observations reçues, classées par ordre alphabétique:

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M. Barros Moura

Observations générales sur le projet de la Charte des Droits Fondamentaux (Charte 4422)

Je souscris les observations faites par Mr. Jürgen Meyer et autres (lettre du 30 août), à l'exception de la sous-alinéa ii. de l'alinéa b) du point II (Questions particulières) concernant la transparence des médias (article 11, 2, liberté d'expression), en ajoutant les observations suivantes:

1. Le numéro 3. du préambule devrait mentionner expressément la diversité linguistique.
2. Au texte du numéro 5 du préambule il faut ajouter la référence au droit international en général, en parallèle avec l'article 51° du projet, pour garantir la cohérence interne de la Charte.
3. A propos du numéro 3. de l'article 15° j'insiste, encore une fois, sur le fait que le principe de non discrimination des conditions de travail s'impose même si le travailleur reside illégalement dans le pays membre. En plus, il faut décourager l'utilisation par les employeurs de cette possibilité de *dumping* social...
4. La garantie de l'article 22° ne devrait pas se limiter à l'emploi et au travail. D'autres aspects, tels que la sécurité sociale, devraient aussi être compris. Pour cela suffit l'utilisation d'une formule exemplificative comme, par exemple, nottament.
5. A l'article 26° il faudrait expliciter que les droits respectifs peuvent être exercés à tous les niveaux, y compris le niveau européen. C'est la précisément la valeur ajoutée d'une Charte Européenne, tenant compte des dispositions du Traité.
6. A l'article 28° il convient d'ajouter le droit à une compensation dans les cas de licenciement par cause économique (tenant compte des directives européennes sur les licenciements collectifs).
7. La référence, dans l'article 30° à la possibilité de "derogations bien delimitées" au principe sur l'age minimale ne devrait pas figurer dans un texte fondamentale comme la Charte doit être. En plus, l'article 50°, tenant compte de l'article 51°, permet résoudre le problème de la permission du travail d'enfants à caractère formatif et sans préjudice de la personnalité physique et morale de l'enfant. La dérogation doit donc disparaître.
8. L'article 34° devrait reprendre de la Déclaration n° 13 annexe au Traité d'Amsterdam, sur l'interprétation de l'article 16° (ex-article 7°-D) du Traité CE, la référence aux principes de l'égalité de traitement, de qualité et de continuité des services d'intérêt général.

9. L'article 43° semble être la place idéale pour garantir, en tant que noyau dur de la libre circulation européenne, l'exercice des droits prévus dans la Charte dans le pays de l'Union de résidence de la personne. Par exemple, les droits prévus à l'article 12° doivent être expressément garantis dans le pays de résidence.
10. Peut-être un article horizontal pourrait expliciter que les droits prévus par la Charte sont applicables aux personnes morales ou collectives dans toute la mesure compatible avec sa nature non humaine. Par exemple, il faut garantir la protection des données concernant les entreprises et c'est vrai que ces données-là ne revêtent pas un caractère personnel tel qu'il est prévu par l'article 8° du projet. Un article horizontal est une solution.

Les soussignés, **José Barros Moura** et **Maria Eduarda Azevedo**, représentants de Assembleia da República, Portugal, adoptent la position commune ci devant sur l'avant-projet de Charte proposé par le Praesidium (Charte 4422/00). Sur les questions de non-accord, chacun des représentants du Parlement portugais présente ou souscrit des positions différenciées.

Observations générales

En général, le texte préparé par le Praesidium a pris en compte les contributions orales et écrites des membres de la Convention et mérite une appréciation favorable. Mais il faut continuer le débat pour améliorer le texte, combler ses lacunes, corriger les imperfections qui subsistent. Nous avons le temps en conformité avec le mandat de Tampere, et serait une grave erreur limiter le débat seulement à cause des convenances d'un calendrier de la Présidence française. En tout cas, nous avons le temps jusqu'au 25 septembre pour faire le débat en profondeur qui est encore indispensable. Pas question, donc, de précipiter les choses dans la réunion du 11 et 12 septembre.

En ce qui concerne la systématique, il conviendrait de ne pas se référer, comme il est fait dans divers articles, aux "législations nationales" et "au droit communautaire". Nous demandons, en conséquence, la suppression de cette référence aux articles 9, 18, 25, 26, 32, 33 et 34.

Compte tenu de la disposition horizontale de l'article 49, al. 1 et 2, cette référence est superflue. Pour des considérations liées à la systématique, la Convention a convenu de formuler les questions horizontales séparément dans le but notamment de faciliter la lisibilité de la Charte et l'identification du citoyen avec l'UE.

La systématique du projet fait croire au citoyen que l'on tend à diluer des articles spécifiques par rapport à d'autres, ce qui n'est pas l'intention de la Convention et ne correspond pas au mandat de Cologne. Par ailleurs, elle peut faire croire que des droits fondamentaux relevant, dans leur acception générale, du droit premier sont valables sous réserve de réglementations nationales ou de

futures révisions du traité. Cette impression serait regrettable et contraire à l'esprit de l'article 6, al. 1 du traité de l'UE dans lequel il est dit expressément que l'Union accorde une priorité absolue au respect des droits de l'Homme et des libertés fondamentales. C'est pourquoi nous proposons la suppression pure et simple de l'article 50, al. 2.

Nous approuvons l'énumération au point 5 du préambule des principales sources dont s'inspire la Charte qui est, conformément au mandat de Cologne, la Convention européenne des droits de l'Homme, les traditions constitutionnelles communes des Etats membres, la Charte sociale européenne et la Charte communautaire des droits sociaux fondamentaux des travailleurs. Cependant, la cohérence du projet risque d'être compromise si l'on omet de mentionner ces sources également à l'article 51. Le préambule et l'article 51 relient entre eux les diverses parties du projet. C'est pourquoi nous plaidons en faveur de l'insertion également à l'article 51, en tant que niveau de protection minimal, les Chartes sociales adoptées par la Communauté et le Conseil de l'Europe. Et, *vice versa*, la mention au préambule du droit international en général en parallèle avec l'article 51 du projet pour assurer la cohérence interne de la Charte.

Peut-être un article horizontal pourrait expliciter que les droits prévus par la Charte sont applicables aux personnes morales ou collectives dans toute la mesure compatible avec sa nature non humaine. Par exemple, il faut garantir la protection des données concernant les entreprises et c'est vrai que ces données-là ne revêtent pas un caractère personnel tel qu'il est prévu par l'article 8 du projet.

D'une manière générale, il conviendrait de vérifier une nouvelle fois très attentivement l'équivalence des notions employées dans les différentes langues du texte de la Charte.

Nous espérons que la Convention disposera du texte de la Charte dans toutes les langues de l'UE avant sa transmission aux chefs d'état et de gouvernement.

Observations particulières

Le **numéro 3 du préambule** devrait mentionner expressément la diversité linguistique.

Article 10. Liberté de pensée, de conscience et de religion

Il convient d'ajouter à cet article un deuxième alinéa dans lequel sera inscrit le *droit à l'objection de conscience*. L'insertion donne suite à toute une série d'amendements et aux points de vue exprimés par une majorité au cours de la discussion à la Convention.

Article 13. Liberté de la recherche

Il convient d'ajouter à cet article la *liberté des sciences, de l'enseignement et des arts*. Cet ajout correspond à une proposition précédente du Présidium (Convent 13, art.15 al. 2, à l'exception de "l'enseignement") que la Convention n'avait pas critiquée à cet égard. Bien au contraire, plusieurs délégués avaient souligné, au cours du débat, l'importance de cet alinéa, le justifiant dans un grand nombre d'amendements. Par ailleurs, ces libertés correspondent aussi bien aux traditions constitutionnelles communes des Etats membres qu'aux conventions internationales.

Article 15. Liberté d'exercice d'une profession

Nous insistons, encore une fois, sur le fait que le principe de non-discrimination des conditions de travail s'impose même si le travailleur réside illégalement dans le pays membre. En plus, il faut décourager l'utilisation par les employeurs de cette possibilité de *dumping social*...

Article 22. Egalité entre hommes et femmes

La garantie ne devrait pas se limiter à l'emploi et au travail. D'autres aspects, tels que la formation professionnelle, la sécurité sociale, etc., devraient aussi

être compris. Pour cela suffit l'utilisation d'une formule exemplificative comme, par exemple, notamment.

Article 26. Droit de négociation et action collective

Il faudrait expliciter que les droits respectifs peuvent être exercés a tous les niveaux, y compris le niveau européen. C'est la précisément la valeur ajoutée d'une Charte Européenne, tenant compte des dispositions du Traité.

Article 30. Protection des jeunes au travail

La possibilité de "dérogations bien délimitées" au principe sur l'âge minimal" ne devrait pas figurer dans un texte fondamental comme la Charte doit être. En plus, l'article 50°, tenant compte de l'article 51°, permet résoudre le problème de la permission du travail d'enfants a caractère formatif et sans préjudice de la personnalité physique et morale de l'enfant. La dérogation doit donc disparaître.

Article 32. Sécurité sociale et aide sociale

Tout en approuvant l'article tel que formulé à l'alinéa 1 nous proposons de placer en tête de l'énumération de l'assurance sociale et des services sociaux les termes "*plus particulièrement*" afin de souligner que cette énumération n'est pas limitative. Les droits fondamentaux devant, par définition, avoir un caractère aussi durable que possible, il convient d'éviter toute liste limitative d'exemples, car les développements futurs dans ce domaine ne sont pas prévisibles.

Par ailleurs, le Présidium n'a retenu à l'alinéa 3, ce que nous déplorons, qu'un seul aspect du "droit au logement", à savoir l'aide au logement. Rappelons encore dans ce contexte que le "*droit au logement*" est reconnu en droit international par tous les Etats membres (cf. notamment art. 25, al. 1 de la Déclaration universelle des droits de l'Homme, art. 11 du Pacte international des Nations Unies relatif aux droits économiques, sociaux et culturels, art. 27, al. 3 de la Convention des Nations Unies relative aux droits de l'enfant, art. 31 de la Charte sociale européenne révisée) et ancré dans nombre de constitutions des

Etats membres (art. 23 Belgique, par. 15 a Finlande, art. 21, al. 4 Grèce, art. 22, al. 2, art. 65 Portugal, chapitre 1, par. 2 Suède, art. 47 Espagne; implicitement art. 1, 13, 14 et 20 Allemagne).

Article 34. Accès aux services d'intérêt général

Le texte devrait reprendre de la Déclaration n° 13 annexe au Traité d'Amsterdam, sur l'interprétation de l'article 16° (ex-article 7°-D) du Traité CE, la référence aux principes de l'égalité de traitement, de qualité et de continuité des services d'intérêt général.

Article 43. Liberté de circulation et de séjour

Voilà la place idéale pour garantir, en tant que noyau dur de la libre circulation européenne, l'exercice des droits prévus dans la Charte dans le pays de l'Union de résidence de la personne. Par exemple, les droits prévus à l'article 12° doivent être expressément garantis dans le pays de résidence

L'alinéa 2 de cet article ne définit pas de droit fondamental et annonce seulement une future révision éventuelle du traité susceptible de créer un droit à la libre circulation en faveur des ressortissants de pays tiers. L'article 63 n° 4 du traité de la CEE autorise l'égalité de traitement des ressortissants de pays tiers concernant la liberté de circulation. La liberté de circulation constitue, selon l'article 13 de la Déclaration universelle des droits de l'Homme, l'article 12 du Pacte international relatif aux droits civils et politiques et l'article 2 du protocole n°4 de la Convention européenne des droits de l'Homme, un droit de l'Homme et non pas un droit civil.

Il conviendrait d'étendre, dans la Charte des droits fondamentaux, la liberté de circulation aux ressortissants d'Etats tiers en substituant à l'alinéa 1 les termes "toute personne" au terme "citoyen", ou encore de supprimer l'alinéa 2.

Lisbonne 30 août, 2000

José Barros Moura

Maria Eduarda de Azevedo

PROF. ANNA BENAKIS M.P.
VICE PRESIDENT
OF THE HELLENIC PARLIAMENT

ATHENS, 30.8.2000

To the attention of **mr. Jansson**

PROF. ANNA BENAKIS M.P.
VICE PRESIDENT
OF THE HELLENIC PARLIAMENT

Παρατηρήσεις ANNAS ΜΠΕΝΑΚΗ-ΨΑΡΟΥΔΑ

(ΕΛΛΑΣ) επί του Σχεδίου Convent 45:

Αρθρ. 3 : Θα πρέπει να προστεθεί ένας επί πλέον όρος ότι: <<όλες οι ιατρικές πράξεις πρέπει να λαμβάνουν χώρα προς το συμφέρον του ατόμου>>.

Αρθρ. 8 : Επειδή σε περιπτώσεις δίωξης εγκληματικών πράξεων δέν πρέπει να επιτρέπεται η πρόσβαση στα αρχεία διωκτικών αρχών, πρέπει στο τρίτο εδάφιο και μετά τη φράση <<να έχει πρόσβαση στα συλλεγμένα δεδομένα που το αφορούν>> να προστεθεί η φράση <<σύμφωνα με τους περιορισμούς που ορίζει ο νόμος>>. Αυτό είναι σύμφωνο και με τη σχετική Κοινοτική Οδηγία.

Αρθρ. 10 : Οι θρησκευτικές πεποιθήσεις πρέπει να μπορούν να εκφράζονται καθ' οιονδήποτε τρόπο και όχι μόνο με τη λατρεία, την παιδεία κ.λπ. Γι' αυτό πρέπει το δεύτερο εδάφιο να διαμορφωθεί: <<Το δικαίωμα αυτό συνεπάγεται....., καθώς και το δικαίωμα της καθ' οιονδήποτε τρόπο εκδήλωσης του θρησκευματοςδημοσία ή κατ' ιδίαν, ιδίως με τη λατρεία..... και τις τελετουργίες>>.

Αρθρ. 11 : Στην παράγρ. 2 πρέπει να κατοχυρωθεί ο πάσης φύσεως έλεγχος του ΜΜΕ μέσω ανεξάρτητης διοικητικής αρχής. Γι' αυτό προτείνεται να προστεθεί το εξής εδάφιο: <<Ο σεβασμός των κανόνων αυτών υπόκειται στον έλεγχο ανεξάρτητης διοικητικής αρχής>>.

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Αρθρ. 14 : Στο τέλος της παρ. 2 πρέπει να τεθεί η φράση: <<Κατά την άσκηση των δικαιωμάτων τους οι γονείς πρέπει πάντα να ενεργούν προς το συμφέρον του παιδιού>>.

Αρθρ. 15 : Σε σχέση με την παράγραφο αυτή πρέπει να διευκρινισθεί, εάν η προστασία περιλαμβάνει και τα πληρώματα υπηκόων τρίτων χωρών επί εμπορικών πλοίων χωρών της Ευρωπαϊκής Ένωσης. Αν ναι, η εξομοίωση πρέπει να περιορισθεί και να μην ισχύει ως προς τις αμοιβές και την κοινωνική ασφάλιση, αλλά να ακολουθούνται οι όροι των χωρών της υπηκοότητας των πληρωμάτων.

Αρθρ. 22 : Το άρθρο αυτό περιορίζει το πεδίο εφαρμογής της ισότητας μόνο στον τομέα της απασχόλησης και της εργασίας και γι' αυτό βρίσκεται πολύ πιο πίσω από το κοινοτικό κεκτημένο των άρθρ. 2 και 3 παρ.2 της Συνθήκης της Ε.Κ. Γι' αυτό και στην παράγρ.1 πρέπει να τεθεί μετά την φράση <<ίση μεταχείριση ανδρών και γυναικών>> η φράση <<σε όλους τους τομείς και ιδίως στον τομέα της απασχόλησης>>.

Η παράγρ.2 του άρθρου βρίσκεται ομοίως πολύ πιο πίσω από τα άρθρα 2 και 3 παρ. 2 της Συνθήκης που υποχρεώνουν την Ένωση να <<προωθεί>> την ισότητα <<σε όλους τους τομείς>> καθώς και με το άρθρο 141 παρ.4 της Συνθήκης και με τη Διακήρυξη Νο28 που προσαρτάται στη Συνθήκη του Αμστερνταμ. Για το λόγο αυτό ή πρέπει να αντικατασταθεί η παράγρ. 2 σύμφωνα με την πρότασή μου Contrib. 251 ή πρέπει να συμπληρωθεί με την εξής φράση: <<Μέχρις ότου εξασφαλισθεί η πλήρης ισότητα ανδρών και γυναικών η αρχή της ισότητας δεν εμποδίζει την διατήρηση ή υιοθέτηση μέτρων που προβλέπουν ειδικά

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πλεονεκτήματα υπέρ του λιγότερο εκπροσωπούμενου φύλου. Τα μέτρα αυτά πρέπει κυρίως να αποβλέπουν στην βελτίωση της θέσης των γυναικών>>.

Αρθρ. 31: Το άρθρο αυτό παρέχει πολύ περιορισμένη προστασία της μητρότητας και μόνο σε σχέση με την επαγγελματική ζωή.

Οφείλουμε να περιλάβουμε ξεχωριστό άρθρο για την προστασία της μητρότητας σύμφωνα με το κοινοτικό κεκτημένο, που θεωρεί το δικαίωμα αυτό αυτόνομο, ώστε πέραν των άλλων να απαγορεύεται και κάθε δυσμενής μεταχείριση της εγκύου κατά την πρόσβαση στην εργασία ή κατά τη διάρκεια αυτής ή της άδειας μητρότητας, να παρέχονται διευκολύνσεις κατ' αυτήν ή όταν επιστρέφει στην εργασία και να προστατεύεται από συνθήκες εργασίας που βλάπτουν αυτήν και το παιδί.

ΕΠΙΣΗΜΗ ΜΕΤΑΦΡΑΣΗ TRADUCTION OFFICIELLE OFFICIAL TRANSLATION

No. 409218/3390

Observations of Mrs. ANNA BENAKI-PSAROUDA
(GREECE) on the Draft of Convent 45:

- Article 3:** An additional term should be added, that: "all medical acts should be made to the benefit of the person"
- Article 8:** Because, in cases of prosecution of criminal acts the persecuted person should not be given access to the files, at the third item and after the phrase "to have access to the collected data that concern him", the phrase "in accordance with the limitations of law" should be added. This is consistent with the relevant Community Directive.
- Article 10:** Religious convictions should be able to be expressed in any way, and not just by worship, education etc. This is why the second item should be formulated as follows: "This right implies ... as well as the right of manifestation of the religion in any way .. in public or in private, namely by worship .. and rituals".
- Article 11:** In paragraph 2, all forms of control of the Mass Media should be secured through an independent administrative authority. This is why we recommend the addition of the following item: "The respect of these rules is subject to the control of an independent administrative authority".
- Article 14:** The following phrase should be put at the end of paragraph 2: "In the exercise of their rights, the parents should always act to the benefit of the child".
- Article 15:** Concerning this paragraph, it should be clarified whether the protection also includes the crews of third country citizens on commercial ships of European Union countries. If so, the equal ranking should be limited and should not be applicable concerning salaries and social

ΕΠΙΣΗΜΗ ΜΕΤΑΦΡΑΣΗ TRADUCTION OFFICIELLE OFFICIAL TRANSLATION

security, for which the terms of the countries of crew citizenship should be followed.

Article 22: This article limits the scope of equality only in the field of employment and work and, for this reason, it is way behind the community acquis of articles 2 and 3 para.2 of the EU Treaty. This is why in paragraph 1, after the phrase "equal treatment of men and women", the following phrase should be added "in all fields, notably in the field of employment ...".

Paragraph 2 of the article is similarly way behind articles 2 and 3 para.2 of the Treaty that oblige the Union to "promote" equality "in all fields" as well as article 141 para.4 of the Treaty and Resolution No.28 attached to the Amsterdam Convention. For this reason, paragraph 2 should either be replaced in accordance with my recommendation Contrib.251 or supplemented with the following phrase: "Until full equality of men and women is secured, the principle of equality does not obstruct the maintenance or adoption of measures that provide for special advantages in favour of the less represented sex. These measures should mainly aim at improving the position of women".

Article 31: This article grants very limited protection of maternity and only in relation to professional life.

We ought to include a separate article on the protection of maternity in accordance with the community acquis which considers this right as autonomous so that, apart all other things, any unfavourable treatment of the pregnant woman is prohibited in her access to work or during pregnancy or during the maternity leave, so that facilities are granted during maternity leave or on return to work and so that she is protected from work conditions that may do harm to her and the child.

Γραφείο Μεταφράσεων Υπουργείου Εξωτερικών, Αθήνα Athens 31 AUG 2008
 Service des Traductions du Ministère des Affaires Étrangères de la République Hellenique, Athenes Accurate translation into Greek
 Hellenic Republic, Ministry of Foreign Affairs, Translation Service, Athens The translator: Eleni Zorimou

BERES

Bruxelles, le 30 août 2000

au Président de la Convention

chargée de l'élaboration de la Charte des Droits fondamentaux de l'Union européenne
M. Roman Herzog

aux Vice-présidents

M. Guy Braibant, pour les représentants personnels des Gouvernements

M. Gunnar Jansson, pour les représentants des Parlements nationaux

M. Mendez de Vigo, pour les représentants du Parlement européen

Monsieur le Président,
Messieurs les vice-présidents,

Je souhaite vous faire part de ma surprise s'agissant de l'actuelle rédaction de l'article 23 concernant la protection des enfants.

En effet celle-ci ne retient pas le droit de chaque l'enfant d'entretenir des relations et contacts directs et réguliers avec ses deux parents.

L'enfant n'est jamais plus en situation de détresse que lorsqu'il se retrouve privé de sa famille, de ses parents ou de l'un d'entre eux, or ce cas de figure se manifeste de plus en plus souvent à l'heure où l'Union favorise la libre-circulation, les mariages mixtes et la mobilité des personnes.

Cette situation est contraire à la Convention de New-York sur le droit des enfants (1989), qui dans son article 19 dispose :

Les Etats parties respectent le droit de l'enfant séparé de ses deux parents ou de l'un d'eux d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à l'intérêt supérieur de l'enfant.

La jurisprudence de la Cour européenne des droits de l'homme reconnaît régulièrement qu'une telle situation est contraire à l'article 8 de la Convention européenne des droits de l'homme.

La présidence portugaise et aujourd'hui la présidence française ont l'une et l'autre reconnu que dans le domaine civil l'harmonisation du droit de la famille est la priorité, afin de régler les conflits qui impliquent des enfants issus de couples binationaux de l'UE. Moi-même, en tant que membre de la Commission parlementaire franco-allemande de médiation, je peux témoigner des nombreux drames

frappant les couples binationaux du fait de la coexistence de systèmes judiciaires différents, et du

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désarroi dans lequel se trouvent leurs enfants subitement privés de tout contact avec l'un de leurs parents.

Comment la Charte peut-elle dès lors prétendre consacrer "l'intérêt supérieur de l'enfant", trop souvent interprété par certains tribunaux comme étant un intérêt à ne pas changer de pays, et ignorer que chacun d'entre eux a un droit et un besoin fondamental de connaître et de bénéficier d'une présence significative de ses deux parents ?

Je serais heureuse que nous puissions encore améliorer le texte du projet de charte sur ce point.

En vous remerciant par avance de l'intérêt que vous porterez à ma requête, je vous prie de croire, Monsieur le Président, Messieurs les Vice-Présidents, à l'assurance de ma haute considération.

Pervenche Berès

BERES ET GROUPE SOCIALISTE

Bruxelles, le 31 août 2000
amend-CV45.doc

M. Iñigo Méndez de Vigo
Président de la Délégation du Parlement européen
auprès de la Convention chargée de l'élaboration
de la Charte des droits fondamentaux de l'Union Européenne

Bruxelles

*Objet : Observations générales au projet de la Charte des droits fondamentaux
(CONVENT 45)*

Les députés socialistes soussignés, membres de la délégation du Parlement européen à la Convention de la Charte, remercient le Présidium pour le travail qui a abouti à l'élaboration de ce projet de Charte dans lequel nous pouvons retrouver beaucoup de nos contributions. Néanmoins, nous souhaitons faire part des remarques suivantes :

Sur la structure :

La subdivision en 7 chapitres à chaque fois avec un titre comporte une nouveauté et contribue à une plus grande lisibilité du texte, néanmoins il serait souhaitable de revoir la distribution des articles de la Charte dans ces différents titres car dans certains cas cette répartition paraît un peu forcée et artificielle.

Sur le contenu général :

La référence faite dans certains articles de la Charte, et notamment dans le chapitre SOLIDARITÉ, aux législations nationales et au droit communautaire nous semblent tout à fait superflue compte tenu des dispositions énoncées dans l'article 49 relatif au champ d'application de la Charte. Aux yeux des citoyens, cette référence constante aux législations nationales utilisée uniquement dans certaines dispositions de façon arbitraire, surtout en matière relative aux droits sociaux, peut diminuer l'importance et l'impact de ces articles vis-à-vis des autres. Or la Charte, dans son ensemble, doit mettre en évidence l'indivisibilité des droits.

C'est pourquoi nous proposons de **supprimer** cette référence faite aux articles 9, 14, 18, 25, 26, 32, 33 et 34.

Nous soutenons l'énumération faite au paragraphe 5 du préambule des principales sources qui ont inspiré la rédaction de cette Charte qui d'ailleurs correspondent au mandat de Cologne, c'est-à-dire la Convention européenne des droits de l'Homme, les traditions constitutionnelles communes des Etats membres, la Charte sociale

européenne et la Charte communautaire des droits fondamentaux sociaux des travailleurs.

Cependant, la cohérence du projet risque d'être compromise si l'on omet de mentionner ces sources également à l'article 51. Le préambule et l'article 51 relient entre eux les diverses parties du projet. C'est pourquoi nous plaidons en faveur de l'insertion également à l'article 51, en tant que niveau de protection minimal, les Chartes sociales adoptées par la Communauté et le Conseil de l'Europe.

Dans le chapitre SOLIDARITÉ, nous avons remarqué que beaucoup des articles sont rédigés d'une façon vague ou ambiguë, par exemple, nous proposons de remplacer l'expression « l'Union reconnaît et respecte », par « **Toute personne a droit** ». Ceci permet une harmonisation de la terminologie valable pour tous les articles.

Sur quelques articles en particulier :

Article 11 – Liberté d'expression et d'information

Nous souhaitons qu'au paragraphe 1 soit mentionné expressément la liberté de "**chercher**" des informations, et non pas seulement de les recevoir. Ce droit, déjà existant dans l'article 19 de la Déclaration de l'ONU de 1948, est aujourd'hui essentiel étant donné la nouvelle dimension de l'Internet.

Quant au paragraphe 2, nous proposons l'ajout suivant : "**Elle peut nécessiter des limitations aux grandes concentrations des moyens de communication**".

Article 12 – Liberté de réunion et d'association

Paragraphe 1 : Nous proposons d'ajouter « **Toute personne a le droit de fonder et d'adhérer à ces associations au niveau européen.** »

Paragraphe 2 : Nous proposons d'ajouter : « les partis politiques au niveau européen contribuent, **par voie démocratique**, à l'expression (reste inchangé) ».

Article 13 – Liberté de la recherche

Nous proposons d'ajouter à cet article « **la liberté des sciences, de l'enseignement et des arts** » ainsi qu'un nouveau paragraphe : « **Toute personne a le droit de bénéficier, dans des conditions équitables, des résultats des recherches scientifiques, notamment dans le secteur bio-médical** ».

Article 15 – Liberté professionnelle et droit de travailler

Paragraphe 1 : Nouvelle rédaction : « **Toute personne a le droit de travailler, d'exercer une profession librement choisie ou acceptée et de créer une entreprise, dans le respect du principe du développement économique et social équilibré et durable** ».

Article 16 – Liberté d'entreprise

Nous proposons l'**inclusion** de cet article, comme rédigé, dans le premier paragraphe de l'article 15.

Article 23 bis (nouveau) – Personnes âgées

« **Toute personne âgée a le droit de mener une vie indépendante et décente et de jouer un rôle actif dans la vie politique, sociale et culturelle.** »

Article 26 – Droit de négociation et d'actions collectives

Nous proposons la rédaction suivante :

« **Les organisations des travailleurs ont le droit de négocier et de conclure des conventions collectives avec des employeurs ou leurs organisations, également au niveau de l'Union, et de recourir, en cas de conflits d'intérêts, à des actions collectives, y compris le droit de grève, pour la défense de leurs intérêts.**

Les pratiques et traditions des législations nationales sont respectées au niveau européen et l'effet transnational des droits est reconnu. »

Article 29 – Conditions de travail justes et équitables

Paragraphe 1 : A ce paragraphe doit être ajouté « **tout travailleur a droit à des conditions de travail saines, sûres, dignes et à une rémunération équitable** ».

Article 32 – Sécurité sociale et aide sociale

Paragraphe 1 : « **Toute personne a droit à l'accès aux prestations de la sécurité sociale et aux services sociaux (reste inchangé)** »

Paragraphe 3 : « **Toute personne a droit à une aide sociale et le droit au logement (reste inchangé)** »

Article 34 – Accès aux services d'intérêt économique général

Nous proposons de commencer l'article par: « **Toute personne a le droit d'accès (reste inchangé)** »

Article 36 – Protection des consommateurs

Nouvelle rédaction : « **Les consommateurs ont droit à une information complète sur la qualité des biens et des services ainsi qu'à une publicité non mensongère qui répond aux critères de transparence et de vérité** ».

Article 43 – Liberté de circulation et de séjour

Nous proposons que ce droit soit étendu aux ressortissants des pays tiers ainsi le paragraphe 1 doit commencer par « **Toute personne (reste inchangé)** ».

Le **paragraphe 2** de cet article doit en conséquence être **supprimé**.

Article 50 – Portée des droits garantis

Nous proposons la suppression du paragraphe 2 actuel pour le remplacer par le texte suivant : « **les droits reconnus par la présente Charte doivent s'exercer selon les**

pratiques et législations européennes et nationales existantes et sont valables au-delà des frontières dans toute l'Union européenne. »

Paragraphe 3 : Nous proposons l'ajout suivant : « Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, **et des Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe**, leur sens et leur portée sont **les mêmes** que leur confère **lesdites conventions** (reste inchangé) ».

Article 51 – Niveau de protection

Nous proposons la **suppression du mot « tous »**, avant Etat membres dans la quatrième ligne ainsi que l'insertion après « Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, **les Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe** (reste inchangé) ».

Pervenche BERÈS

Elena PACIOTTI

Ieke van den BURG

Jo LEINEN

Hans-Peter MARTIN

Jean-Maurice DEHOUSSE

Ulpu IIVARI

Catherine LALUMIÈRE

BEREIJIO

OBSERVACIONES DE ALVARO RODRIGUEZ BEREIJO. REPRESENTANTE PERSONAL DEL PRESIDENTE DEL GOBIERNO ESPAÑOL AL TEXTO CONSOLIDADO DEL PROYECTO DE CARTA DE DERECHOS FUNDAMENTALES DE LA UNION EUROPEA (Documento del Presidium CONVENT 45 DE 28 DE JULIO DE 2000)

1. A la Estructura.

Se propone cambiar la denominación del capítulo IV "Solidaridad" por "**Derechos económicos y sociales**".

Justificación: La denominación es equívoca. Cada cabeza de capítulo debe guardar una coherencia estricta con su contenido. La solidaridad es un concepto mucho más amplio que el contenido que se enuncia en este Capítulo, especialmente en el ámbito de la Unión Europea.

2. Al Preámbulo.

- punto 1 . Modificar la frase introductoria: "Les peuples européens"....por la siguiente: "**Los ciudadanos de Europa han establecido entre ellos...**".

Justificación: Precisar que los sujetos autores de la Unión son los ciudadanos europeos, más que los pueblos.

- punto 7. Se propone su modificación en la siguiente forma: "**En los términos previstos en esta Carta, se garantizan los derechos y libertades que se enumeran...**"

Justificación:

coherencia con la estructura y contenido de la Carta: la titularidad de los derechos varía en función de su contenido (por ejemplo, algunos derechos corresponden sólo a los ciudadanos de la Unión); por otra parte, la Carta no sólo enuncia derechos sino principios no directamente invocables ante los Tribunales de Justicia.

3. Al Articulado.

En reiteradas ocasiones la representación española ha insistido en la necesidad de fijar en el propio articulado la definición de cada derecho con **los límites a su ejercicio**, en aquellos casos en que, por su naturaleza, así lo requiera una definición acabada del mismo. La determinación de las limitaciones al ejercicio de un derecho son un elemento esencial de su configuración que debe figurar en la definición del propio derecho. Ello no alargaría necesariamente, el texto del artículo correspondiente, como ya se pudo comprobar en algunos borradores propuestos por el propio Presidium a la Convención.

Esta definición, positiva y negativa a la vez, del derecho no es redundante ni incompatible con la existencia de los artículos "horizontales" relativos a los límites y condiciones bajo las cuales han de ejercitarse los derechos reconocidos en la Carta.

Por otra parte, los artículos horizontales no siempre resuelven el problema de los límites específicos que definen el contenido de un derecho,

Debería, al menos, redactarse una cláusula horizontal satisfactoria (en los términos que se expresarán más adelante) para que la representación española pueda desistir de esta petición que considera imprescindible. No puede, por ejemplo, mantenerse el derecho de asociación y sindicación en los términos que recoge el artículo 12.1, que, permitiría la libre sindicación de los militares o de los jueces, sin una cláusula que habilitara a los Estados a introducir límites al ejercicio de este derecho, como de hecho sucede en el Convenio Europeo de Derechos Humanos.

Por otra parte, y respecto al Capítulo IV. "Solidaridad", donde se contienen los derechos sociales y económicos, es preciso resolver de modo satisfactorio el distinto alcance y efectos, según se trate de "derechos" (subjetivos y justiciables) o de "principios" (que rigen la activación de los poderes públicos en su política social y económica, informan la legislación positiva y la práctica judicial. Son también "derechos", desde luego, pero requieren de la mediación del legislador para ser ejercidos como derechos subjetivos, en tanto **sólo podrán ser alegados ante la autoridad judicial de acuerdo con lo que dispongan las leyes que los desarrollen.**

Esta distinción ha de traducirse, necesariamente, en el lenguaje empleado en la formulación de los artículos correspondientes. Los "derechos subjetivos" se redactarán al modo de los derechos clásicos de libertad e igualdad. Por el contrario, aquellos derechos sociales y económicos que tengan el **carácter principal** deben reflejar en su formulación, su carácter

inspirador de la política social y económica, **evitando en ellos, en aras de la claridad y para no inducir a equívocos, la utilización del término "derecho"**.

4. Al Artículo 19.2.

Se propone modificar su redacción por el siguiente texto: **"se prohíben las expulsiones masivas" o "de colectivos regularmente instalados"**.

Justificación:

Este precepto procede de un protocolo al Convenio Europeo de Derechos Humanos no ratificado por España, debido a los múltiples problemas que plantea la configuración de sus fronteras en relación con la inmigración ilegal. Se propone esta redacción puesto que de otra manera, cabría interpretar que la redacción propuesta impide la expulsión de grupos de personas que atravesasen ilegalmente la frontera.

5. Al Artículo 24.

A fin de evitar la creación de un **"derecho prestacional"** nacido directamente de la Carta y exigible a los Estados miembros, convendría formularlo de otro modo. Se propone redactar la integración de los minusválidos como un principio que vincula a los Estados miembros más que un derecho directamente exigible.

"La Unión (o los poderes públicos) garantizarán a las personas discapacitadas el acceso y las medidas ..."

6. Al Artículo 27.

Se pide su supresión.

Justificación:

No es un derecho fundamental y no debe figurar como tal en la Carta. Es más propio de la legislación laboral ordinaria.

Además, en la formulación que se propone, es un derecho vacío de contenido que carece de sentido.

7. Al artículo 32.3

Se propone la supresión (o su reformulación con una redacción diferente) del apartado 3), especialmente en lo relativo al **derecho a una ayuda a la vivienda a toda persona**.

Justificación:

Lo que se reconoce aquí es un derecho de carácter prestacional y extendido a todas las personas (es decir, universalizado), en un ámbito que es más propio de la categoría de los principios rectores. No parece procedente, pues, dotarlo de carácter de derecho subjetivo como se hace en el texto propuesto. La remisión al derecho nacional aunque salva la cuestión competencial (subsidiariedad) no hace lo mismo con su carácter no directamente vinculante o al menos justiciable como derecho subjetivo.

8. Al artículo 33

Modificación: La Unión reconoce y respeta el derecho a beneficiarse de la prevención sanitaria y de acceder a los cuidados médicos en las condiciones establecidas por las legislaciones y prácticas nacionales.

Justificación:

De acuerdo con lo que se acaba de expresar, estas prestaciones a cargo del Estado deben configurarse más como un principio rector que un derecho. Esta propuesta de formulación es por lo demás coherente con la redacción del anterior artículo 32.1 de contenido muy similar de la que sin embargo se separa el texto del Presidium sin motivo aparente.

9. Al artículo 34.

Se pide su supresión

Justificación

Recrea libremente un derecho a partir del art. 16 del Tratado de la Comunidad Europea, que, a su vez, remite a los arts. 73,86 y 87. Estos artículos encierran una gran complejidad y sería necesario un estudio más detenido sobre sus consecuencias y repercusiones antes de incluirlo en la Carta.

10. Al Artículo 35

Supresión del inciso "de un entorno con la calidad de vida adecuada".

Justificación:

Nos se alcanza a comprender el significado de esta expresión que se separa notablemente del contenido del Tratado de la Comunidad.

11. Al Artículo 49.2

Supresión del último inciso del artículo que empieza "Por consiguiente,..." sustituyéndolo una disposición horizontal ad hoc en un Artículo separado e independiente de un tenor similar al siguiente:

- 1) **Las Instituciones y órganos de la Unión así como los Estados miembros exclusivamente en la ejecución del Derecho Comunitario, deben respetar los derechos, y observar y promover la aplicación de los principios reconocidos en esta Carta, conforme a su respectiva naturaleza.**
- 2) **Los derechos enumerados en los arts. 24, 32, 33, 35 y 36 informarán la legislación positiva, la práctica judicial y la actuación de los poderes públicos. Sólo podrán ser alegados ante la autoridad judicial de acuerdo con lo que dispongan las leyes que los desarrollen"**

Justificación:

Una cosa es asegurar el principio de subsidiariedad y la interdicción de la ampliación de competencias vía Carta, y otra la diferencia entre derechos y principios. Lo primero se asegura con la disposición propuesta, estableciendo el ámbito de aplicación, el principio de subsidiariedad y el de no ampliación de competencias. El principio de subsidiariedad se refuerza en diversos artículos remitiendo, sobre todo en el caso de los derechos sociales, a las legislaciones y prácticas nacionales, remisión que, puede interpretarse fundamentalmente como un criterio de asignación de competencias entre la Comunidad y los Estados.

Cuestión distinta es la reiteradamente expresada posición de España y otros miembros de la Convención en el sentido de que deben diferenciarse los derechos directamente justiciables de aquellos otros, fundamentalmente los de carácter social, que exigen una prestación estatal. En este último

caso, más que hablar de "derechos" procede referirse a "principios", puesto que muchos derechos sociales no son invocables sin su adecuada configuración legal, que se desarrolla en cada caso en función de los recursos presupuestarios que en cada momento pueden disponerse para este fin. Si no se acepta la propuesta española, por considerar que introduce dos diferentes categorías de derechos, al menos debe dejarse clara esa diferencia al intérprete: para ello se propone utilizar la propia formulación del Presidium, que se recoge como apartado 1) de esta propuesta distinguiendo la existencia en la Carta de derechos y de principios para que puedan extraerse las correspondientes consecuencias en el ámbito del amparo judicial. Es cláusula puede completarse con la cláusula prevista en el apartado 2) que aquí se propone.

12. Al Artículo 50.3 y 52.

Supresión del último inciso del artículo 50.3 a partir de "a menos que la presente carta no garantice una protección más elevada o más amplia" hasta el final y del último inciso del artículo 52 desde "o a unas limitaciones más amplias..."

Justificación:

La razón de la supresión es su incoherencia y sus efectos. Como se anticipó, si no se prevén límites en cada derecho, como sería deseable, debe al menos establecerse una buena cláusula horizontal que permita hacerlo. En este sentido se considera que cumplen esta función, los apartados 1,2, y 3 del artículo 50. No sucede sin embargo lo mismo con el último inciso del artículo 50.3 ni con el último inciso del artículo 52. No se entiende el último inciso del artículo 50.3, puesto que si no se incluyen en la Carta los límites a los derechos, entonces la Carta siempre proporcionará una mayor protección, en la medida en que formula los derechos de manera incondicionada por comparación al CEDH, que sí limita los derechos. En tal caso, no podrían entrar en juego las limitaciones del CEDH y Protocolos Adicionales que hayan sido suscritos por los Estados miembros o las contenidas en las Constituciones nacionales y se aplicarían los derechos de la Carta **sin restricción o limitación alguna a su ejercicio**. En contra, incluso, de lo que disponga la Constitución nacional (por ejemplo, en la libertad de asociación, de sindicación, en los trabajos obligatorios ... , arts. 5, 7, 10, 11 y 12). Ello refuerza la necesidad, ya expuesta al principio de estas observaciones, de especificar en cada caso, los límites al ejercicio del derecho reconocido en la Carta, en vez de formularlos como **derechos incondicionados**. Comentarios similares pueden hacerse en relación con

el inciso final del artículo 52. En definitiva, deben suprimirse los dos incisos, puesto que de lo contrario, se neutralizaría el efecto de la cláusula horizontal, y la Carta carecería de límites, algo que es absolutamente inadmisibile para la representación española,

Madrid, 1 de agosto de 2000

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GEORGES BERTHU

Bruxelles, le 29 août 2000

A Monsieur MENDEZ DE VIGO
Président de la délégation du Parlement
européen pour la Charte des droits
fondamentaux

Objet : observations sur le projet de Charte "Convent 45"

Cher Président,

Le projet de Charte des droits fondamentaux "Convent 45" appelle de ma part les observations générales suivantes :

1. Ce projet dépasse de loin les compétences européennes existantes, et empiète sur les droits nationaux. Il ne pourrait donc être rendu contraignant que par un nouveau traité. Toutefois, en l'état présent du texte, il faut admettre que ce nouveau traité bouleverserait complètement la répartition des pouvoirs entre l'Union et les Etats membres, ce qui ne paraît guère envisageable.
2. Dans l'hypothèse plus réaliste d'une simple déclaration politique – hypothèse dans laquelle je me place - il ne semble pas que la forme du texte actuel soit adéquate. On n'imagine pas, par exemple, une déclaration politique qui ne ferait aucune référence à la légitimité principale des nations et au droit fondamental des citoyens à l'expression démocratique dans le cadre national.
3. Ces défauts sont encore plus visibles au niveau du préambule, qui paraît trop étroit et juridique. Le bon niveau, pour un préambule, est celui des valeurs. Je vous joins en annexe, à titre indicatif, une proposition de préambule tel que je l'imagine.
4. D'un point de vue juridique, la présentation du texte – d'abord des droits présentés de manière absolue, puis des limitations éventuelles rejetées de manière globale et allusive en dispositions finales – biaise la compréhension. La première impression, qui conditionne la suite, est celle de droits sans limites. Quand on en arrive enfin aux limites (articles 49 et suivants), on s'aperçoit qu'elles ne sont pas claires.

.../...

Parlement Européen - 288, boulevard Saint-Germain - 75007 PARIS
Tél : 01 45 55 14 36 - 01 45 55 15 31 - Fax : 01 45 51 05 14 – E-mail : cburckel@europarl.eu.int

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5. La Charte est beaucoup trop axée sur les droits individuels, et très peu sur les devoirs. Par exemple, on trouve un article 19 sur la protection en cas d'éloignement, d'expulsion ou d'extradition, mais rien sur les devoirs des étrangers dont l'inobservance peut justifier ces sanctions.
6. Enfin à de nombreuses reprises, le texte actuel mentionne des droits nouveaux, non-existants, ou qui ne sont pas en vigueur, contrairement au mandat de Cologne. Par exemple (entre autres), l'article 43-2 mentionne un droit de libre circulation des ressortissants de pays tiers qui est effectivement cité par le traité d'Amsterdam, mais est soumis, pour entrer en vigueur, à une série de conditions qui ne sont pas réalisées aujourd'hui. Il est donc prématuré d'en parler, a fortiori de l'inscrire dans une Charte de l'Union européenne.

Pour ces raisons, le texte actuel appelle de ma part les plus expresses réserves.

Vous trouverez ci-joint en annexe de nouvelles propositions d'amendements qui concrétisent ces observations générales.

Je vous prie de croire, cher Président, à l'expression de mes meilleurs sentiments.

Georges BERTHU

PJ : Amendements sur le "Convent 45" déposés le 29.08.2000

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BERTHU
29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

PROPOSITION DE NOUVEAU PREAMBULE

Les Etats européens signataires,

Désireux de développer entre eux une Union fondée sur le respect mutuel des peuples, la démocratie et l'Etat de droit,

1. déclarent, conformément à leurs différentes Constitutions nationales, que leurs sociétés reposent sur la valeur fondamentale du respect de la personne, qui découle de son caractère sacré ; ils rejettent toute forme de mépris de l'être humain,
2. reconnaissent, en accord avec les traditions des peuples d'Europe, que cette valeur fondamentale implique :
 - le droit à la vie et à la dignité de tout être humain,
 - l'égalité devant la loi, laquelle définit et protège les droits fondamentaux,
 - la solidarité avec les plus faibles et la protection de la famille, cellule fondamentale de la société,
 - le droit de chaque personne de se gouverner elle-même ; de participer pleinement, en tant que citoyen, à la vie de ses communautés ; de faire un libre usage de ses droits souverains par la démocratie politique et l'économie de marché,
 - le principe de subsidiarité, qui accorde à chaque citoyen le droit d'exercer un contrôle effectif sur ses représentants ; de ne consentir de délégations de pouvoirs que proches, contrôlables et révocables ; de ne jamais accorder aux institutions que des compétences subordonnées,
 - le respect des affections et des solidarités ressenties par chacun, et donc du sentiment d'appartenance fondé sur une culture transmise, une histoire apprise, une langue pratiquée en commun,

3. se déclarent attachés aux spécificités des peuples d'Europe autant qu'à leurs valeurs communes,
4. veulent contribuer à concilier, à ce dernier titre, l'économie de marché et l'expression démocratique, l'initiative individuelle et le soutien mutuel face aux aléas de l'existence,
5. constatent que les citoyens attachent au cadre national une légitimité forte, qui en fait naturellement le niveau principal de l'association politique,
6. estiment que le respect de la diversité des nations et de leurs peuples favorisera la liberté, l'émulation et le pluralisme, sources de la richesse la plus ancienne et la plus constante de la civilisation européenne,
7. déclarent dans ces conditions que l'Union européenne est une Union de nations qui se respectent mutuellement, et respectent l'expression démocratique de chaque peuple,
8. confient à l'Union européenne la mission de favoriser la coopération des peuples d'Europe pour accroître leur prospérité, établir les bases d'un développement durable, protéger leurs valeurs, leurs droits, leurs langues, leurs modèles de société, leurs territoires et leurs frontières,
9. rappellent dans la présente Charte les libertés, responsabilités et droits principaux communs aux Etats membres, qui tirent leur force juridique soit des lois et Constitutions nationales que se sont données les peuples d'Europe, soit des traités européens ou internationaux qu'ils ont régulièrement ratifiés.

Ces droits, responsabilités et libertés ainsi rappelés ne créent aucune compétence ni aucune tâche nouvelle pour la Communauté ou pour l'Union ; ils ne modifient pas la répartition inscrite dans les traités ; ils servent à définir l'esprit du contrôle qu'exerceront les Etats membres sur les institutions européennes.

Justificatif :

Le texte du préambule proposé par le Présidium manque d'ampleur, pour deux raisons :

- il reste trop bref et juridique, alors qu'un document de ce genre devrait élever le débat au niveau des valeurs,
- il n'évoque pas clairement l'expression démocratique dans le cadre national, qui est pourtant le premier fondement de l'Union.

C'est pourquoi nous proposons un essai de rédaction alternative. Si le Présidium maintenait son texte actuel, ou un texte de ce genre, il conviendrait alors que le Conseil européen, dans son rôle politique éminent, réécrive le préambule pour lui donner la dimension nécessaire.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 2 – Droit à la vie –
Paragraphe 2 :**

Auteur : M. Georges BERTHU, MPE

Texte proposé : Supprimer le paragraphe 2
(« Nul ne peut être condamné à la peine de mort, ni exécuté »).

Justificatif :

Ce paragraphe, comme beaucoup d'autres, ne correspond à aucune compétence existante de l'Union européenne.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 3 – Droit à l'intégrité de la personne

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Au paragraphe 2, supprimer « notamment », et ajouter un cinquième tiret ainsi rédigé :

« - et, d'une manière générale, prohibition de toute pratique qui serait contraire à la dignité humaine. »

Justificatif :

Dans le texte proposé par le Présidium, l'adverbe "notamment" donne l'impression d'un article incomplet. Il est préférable de le supprimer, et d'ajouter un cinquième tiret qui couvre de manière générale toutes les autres possibilités.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 8 – Protection des données à caractère personnel

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 8 – Protection des données à caractère personnel

Toute personne a droit à la protection des données à caractère personnel la concernant. Ces données doivent être traitées **exclusivement**, pour des finalités déterminées... (suite inchangée).

Justificatif :

L'adverbe "loyalement" introduit une marge d'interprétation subjective qu'il paraît préférable d'essayer d'éviter dans un texte juridique.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 9 – Droit de se marier et droit de fonder une famille

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 9 – Droit de se marier et de fonder une famille

Le droit de se marier et de fonder une famille est garanti selon les lois nationales qui en régissent l'exercice.

Justificatif :

Le texte proposé par le Présidium a le double inconvénient de sortir du droit communautaire et de créer un nouveau droit (le "droit de fonder une famille", distinct du "droit de se marier").

En outre, le contenu exact de ce nouveau droit est mystérieux, et il rend par contrecoup mystérieux le contenu du droit de se marier. Sachant qu'il est toujours possible de créer une famille en fait, si l'on veut ensuite la créer en droit, cela s'appelle se marier.

Si ce n'était pas le cas, il faudrait supposer que le "droit de se marier" apporte quelque chose de plus que "le droit de fonder une famille". Mais quoi ?

En conclusion, on ne peut pas créer de nouveaux droits sans même connaître leur contenu.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 12 – Liberté de réunion et d'association
Premier paragraphe**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 12 – Liberté de réunion et d'association

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, notamment dans les domaines politique, syndical, civique **et religieux** ».

(Suite inchangée).

Justificatif :

L'addition du mot "religieux" traduit la conséquence pratique de la liberté de religion, déjà reconnue sous la forme de liberté de pensée par l'article 10.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 13 – Liberté de la recherche

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 13 – Liberté de la recherche

Dans le respect de la dignité de l'homme, la recherche scientifique est libre.

Justificatif :

Le texte proposé par le Présidium est trop lapidaire. On n'imagine pas, par exemple, une recherche scientifique qui utiliserait contre leur gré des cobayes humains.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 15 – Liberté professionnelle
Paragraphe 1**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 15 – Liberté professionnelle

1. Toute personne a le droit d'exercer une profession librement choisie, **dans le cadre des dispositions prévoyant des compétences particulières pour certaines professions.**
2. (...)

Justificatif :

Le membre de phrase "afin de gagner sa vie" est trivial, et pas vraiment lié à la liberté professionnelle. Il est possible de le supprimer. Si l'on voulait absolument maintenir une idée de cet ordre, on pourrait écrire : "Afin de subvenir à ses besoins et à ceux de sa famille..."

La deuxième partie de l'amendement est plus importante. Elle vise à rappeler que le choix d'une profession est limité par les réglementations d'ordre public.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 19 – Protection en cas d'éloignement, d'expulsion et d'extradition - Paragraphe 1

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Supprimer le paragraphe 1 («les expulsions collectives d'étrangers sont interdites »).

Justificatif :

La présentation de l'article 21 paragraphe 1 proposée ici est trompeuse. En effet, elle paraît inspirée de l'article 4 du protocole n° 4 à la Convention européenne des droits de l'homme, mais en réalité cet article doit être lu dans son contexte. Il s'insère en effet dans un cadre juridique qui admet les dérogations, notamment "en cas de guerre ou en cas d'autre danger public menaçant la vie de la nation" (article 15 - CEDH).

Dans ces conditions, on ne peut pas laisser subsister une rédaction qui peut faire croire à un lecteur non spécialiste que les expulsions collectives d'étrangers sont interdites à jamais et dans tous les cas. Ou bien cette phrase est supprimée, ou bien on lui ajoute la mention « **sauf en cas de guerre ou d'autre danger public, conformément aux règles internationales en vigueur** ».

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 20 – Egalité en droit

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 20 – Egalité en droit

- 1. Toutes les personnes, hommes et femmes, sont égales en droit.**
- 2. Des droits et devoirs spécifiques sont attachés à la qualité de citoyen, d'un Etat membre ou de l'Union européenne.**

Justificatif :

Cet article 20 pourrait donner lieu à des interprétations erronées si n'étaient pas mentionnés de manière très claire l'existence de droits et devoirs spécifiques attachés à la qualité de citoyen national ou européen.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 21 – Egalité et non-discrimination

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 21 – Egalité et non discrimination

L'Union combat tout traitement inégal entre les personnes, dans le cadre des conditions et compétences fixées par les traités, ainsi que dans le respect des contraintes de l'utilité publique.

Justificatif :

L'article 21, dans la rédaction proposée, énumère des discriminations figurant déjà dans les traités, mais aussi des motifs nouveaux ne figurant nulle part, et pouvant soulever de sérieux débats (minorités nationales, par exemple).

De plus, cet article 21 apparaît beaucoup plus contraignant que le droit existant : il "interdit" absolument, alors que l'article 13 TCE prévoit seulement que *"le Conseil, statuant à l'unanimité... peut prendre les mesures nécessaires en vue de combattre..."*

Dans ces conditions, il paraît opportun de remplacer les paragraphes 1 et 2 du texte du Présidium, par une rédaction plus générale.

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Addition d'un article 25 – A nouveau

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Avant l'article 25, insérer un article 25-A ainsi rédigé :

Article 25 – A – Libre choix du modèle social

Les droits et principes sociaux rappelés au présent chapitre, dans la mesure où ils ne sont pas déjà fixés par le droit communautaire en vigueur, ont un caractère indicatif.

Ils respectent le droit de chaque pays membre de choisir son modèle social.

Justificatif :

Il est indispensable de rappeler qu'en application du principe de subsidiarité, chaque pays membre est libre de choisir son modèle social.

En outre, plusieurs articles de ce chapitre se situant clairement hors du droit communautaire existant, il convient aussi de rappeler qu'en l'absence de nouveau traité, ils ne peuvent avoir qu'un caractère indicatif.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 25 – Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Remplacer le mot « travailleur » par celui de « salarié ».

Justificatif :

Le mot "travailleur", dans le cas où il est opposé à une autre catégorie, exprime implicitement une opinion politique sur le clivage entre ceux qui travaillent et ceux qui ne travaillent pas. Il convient de le remplacer par un mot plus neutre.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 26 – Droit de négociation et d'actions collectives

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Remplacer le mot « travailleur » par celui de « salarié ».

Justificatif :

Le mot “travailleur”, dans le cas où il est opposé à une autre catégorie, exprime implicitement une opinion politique sur le clivage entre ceux qui travaillent et ceux qui ne travaillent pas. Il convient de le remplacer par un mot plus neutre.

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**PROJET DE CHARTE
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DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 29 – Conditions de travail justes et équitables
Paragraphe 2**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 29 – Conditions de travail justes et équitables

1. (...)
2. Tout travailleur a droit à une limitation de la durée maximale du travail, à une période annuelle de congés payés, ainsi qu'à des périodes de repos journaliers et hebdomadaires, **notamment le dimanche dans les pays qui ont cette tradition.**

Justificatif :

Dans une Charte européenne, il n'est pas déplacé d'évoquer les traditions des pays d'Europe.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 34 – Accès aux services d'intérêt économique général

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 34 – Accès aux services d'intérêt général

L'Union respecte le droit d'accès des citoyens aux services d'intérêt général, y compris les services d'intérêt économique général, tels qu'ils sont définis par les législations et pratiques nationales en conformité avec le droit communautaire.

Justificatif :

Cette proposition contient deux amendements de natures distinctes :

1. Il convient de mentionner, non seulement les services d'intérêt économique général, mais aussi l'ensemble des services d'intérêt général, y compris non économiques. Il serait en effet surprenant que la Charte n'y fasse aucune allusion.
2. La rédaction proposée par le Présidium pourrait signifier que les pouvoirs publics nationaux définissent les services d'intérêt économique général sur délégation donnée par le traité. Bien entendu, ce n'est pas exact : les institutions européennes bénéficient de délégations en matière de concurrence, mais le pouvoir de définir les services d'intérêt général reste aux Etats membres.

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**PROJET DE CHARTE
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DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Proposition d'ajout

Insérer, entre les chapitres IV et V, un **chapitre IV bis – Démocratie**, comprenant des articles allant de 36-1 à 36-6.

Auteur : M. Georges BERTHU, MPE

Justificatif :

Ce chapitre a pour but d'expliciter les conséquences du droit à l'expression démocratique des citoyens mentionné par le préambule. C'est évidemment un droit fondamental qui doit occuper une place importante dans la Charte. De plus, il est particulièrement judicieux de l'évoquer ici, car il sert à définir la structure de l'Europe que nous souhaitons.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-1 – Expression démocratique**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-1 – Expression démocratique

Les citoyens s'expriment démocratiquement en pleine souveraineté, dans le cadre national. Ils décident notamment dans ce cadre des attributions de l'Union européenne qu'ils inscrivent dans les traités.

Justificatif :

Le respect de l'expression démocratique dans le cadre national va tellement de soi que les traités ne l'ont pas explicité jusqu'ici. Pourtant, nous sommes parvenus à une étape du développement de l'Union où le besoin d'une clarification se fait sentir.

Ce principe est tellement important que son niveau d'inscription adéquat est celui de la charte (sans préjudice du préambule, qui doit notamment rappeler de son côté que toute autorité publique émane du peuple).

29 août 2000

**PROJET DE CHARTE
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DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-2 – Identité nationale**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-2 – Identité nationale

- 1. Tout citoyen a droit au respect de son identité nationale.**
- 2. Dans l'exercice de ses compétences, à l'intérieur comme à l'extérieur, l'Union défend les identités nationales de ses Etats membres.**

Justificatif :

Le paragraphe 1 reprend sous une forme différente le principe déjà inscrit à l'article 6-3 TUE. Ce principe paraît si important qu'il ne doit pas être laissé noyé dans l'ensemble du traité, mais être élevé au niveau de la charte des droits fondamentaux.

Le paragraphe 2 rappelle que les pays membres ont créé une Union pour mieux défendre en commun leurs identités respectives, et non pas pour les abolir.

29 août 2000

**PROJET DE CHARTE
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DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-3 – Droit de retrait**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-3 – Droit de retrait

Les citoyens de chaque pays décident librement de l'adhésion de leur Etat à l'Union européenne. De même, ils peuvent choisir démocratiquement de s'en retirer.

Justificatif :

Le droit de sécession n'est pas mentionné dans le traité mais, dans un contexte démocratique, il va de soi. Nous proposons ici de l'explicitier dans la charte.

29 août 2000

**PROJET DE CHARTE
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**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-4 – Droit de sauvegarde**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-4 – Droit de sauvegarde

Les citoyens des pays membres possèdent le droit fondamental de prendre démocratiquement des mesures de sauvegarde nationales lorsque des circonstances impérieuses l'exigent. Ces mesures restent en tout état de cause dans les limites de ce que le droit international reconnaît permis lorsque la survie de la nation est menacée.

Justificatif :

Ici encore, le droit de sauvegarde national devrait aller de soi. Pourtant, nous avons constaté qu'il s'est trouvé contesté par les institutions de l'Union dans diverses affaires récentes, liées notamment à la protection de la santé publique. Il importe de rappeler ici, au niveau solennel de la charte, que, quelles que soient les modalités du droit communautaire dans tel ou tel domaine précis, nul ne peut enlever à un peuple le droit de prendre les mesures qu'il estime indispensables à sa survie

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**PROJET DE CHARTE
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**Amendements
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du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-5 – Droit d'organisation des Etats**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-5 – Droit d'organisation des Etats

Les citoyens des pays membres ont le droit de décider librement de l'organisation de leur Etat, et notamment des limites et du fonctionnement de leurs services publics.

Justificatif :

Depuis quelques années, les pays membres et les institutions de l'Union prennent conscience de certains effets pervers du principe de concurrence lorsqu'il est appliqué sans discernement à des services publics. Pour lever toute ambiguïté, il serait utile de saisir l'occasion de la charte pour rappeler que les citoyens de chaque pays membre ont le droit de choisir l'organisation de leurs services publics.

29 août 2000

**PROJET DE CHARTE
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DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-6 – Liberté de choix**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-6 – Liberté de choix

Les citoyens des pays membres ont le droit de décider démocratiquement de ne pas s'associer à une coopération particulière au niveau européen, ou de choisir pour eux des règles plus protectrices que celles d'une coopération à laquelle ils participent.

Justificatif :

Par le biais de la reconnaissance explicite de la liberté de choix démocratique des citoyens des pays membres, la charte pourrait montrer la possibilité d'une conception plus flexible des institutions européennes.

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29 août 2000

**PROJET DE CHARTE
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**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement au titre du chapitre V – Citoyenneté

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Chapitre V – Citoyenneté européenne

Justificatif :

Lorsqu'on examine le contenu de ce chapitre V, on voit qu'il ne traite que de la citoyenneté européenne. Il convient dès lors de lever l'ambiguïté au niveau du titre.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 43 – Liberté de circulation et de séjour
Paragraphe 1**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 43 – Liberté de circulation et de séjour

Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres, **sous réserve des contrôles destinés à préserver, conformément à l'article 6 de la charte, la liberté et la sûreté des personnes.**

Justificatif :

Des affaires récentes (Wijsenbeek) ont montré que la liberté de circulation est parfois interprétée, à tort, comme signifiant automatiquement l'abolition totale des contrôles de toutes natures. Il importe de rappeler, dans l'esprit même de l'article 6 de la charte, que des contrôles peuvent être exercés.

29 août 2000

**PROJET DE CHARTE
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DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 43 – Liberté de circulation et de séjour
Paragraphe 2**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Supprimer le paragraphe 2 de l'article 43 – Liberté de circulation et de séjour.

Justificatif :

Ce paragraphe traite de la liberté de circulation qui "peut être accordée" (sous entendu "dans le futur") aux ressortissants de pays tiers. Or il convient que la Charte ne traite pas de droits futurs et encore potentiels, mais seulement des **droits existants**. En effet, si l'article 62 TCE envisage cette liberté de circulation dans un délai de cinq ans après l'entrée en vigueur du traité d'Amsterdam (1999), il y met tout une série de conditions qui ne sont pas réunies pour le moment. Il est donc prématuré d'évoquer cet aspect au niveau de la Charte.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 50 – Portée des droits garantis
Paragraphe 3**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

3. Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont similaires à ceux que leur confère ladite convention (**Reste supprimé**).

Justificatif :

La suppression du membre de phrase "à moins que la présente Charte n'assure une protection plus élevée ou plus étendue" est justifiée pour les deux raisons suivantes :

- la Charte ne doit pas dépasser les limites du droit existant ;
- ce membre de phrase rend la lecture de la Charte incompréhensible. Par exemple, devant l'article 6 « Toute personne a droit à la liberté et à la sûreté », comment le lecteur peut-il savoir si les limitations de la Convention européenne des droits de l'homme s'appliquent, ou bien s'il s'agit d'un article qui assure volontairement une « protection plus étendue » ?

MEP Jens-Peter Bonde's ændringsforslag til konvent 45 / Amendments to convent 45**New article 20**

Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity *inter alia* through effective participation in cultural, religious, social, economic and public life within the Union.

Comment:

As set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages and other relevant standards.

Ny artikel 53

Intet i Unionens retsregler, traktaterne og dette charter kan tolkes så det strider imod menneskerettighederne, som de fortolkes af Den europæiske Menneskerettighedsdomstol i Strasbourg, eller mod grundrettighederne i de nationale forfatninger, som de fortolkes af de nationale forfatningsdomstole eller højesteretter.

Ny artikel 54

Lande, som i hovedsagen finansierer deres sociale sikringssystem gennem skatter i stedet for forsikrings- og arbejdsmarkedsbidrag, er ikke forpligtede til at stille de sociale sikringsydelser til rådighed for folk, som ikke har betalt skat til landet.

Ny artikel 55

Lande, som i hovedsagen lader arbejdsmarkedet regulere gennem frivillige aftaler på arbejdsmarkedet, kan lade sociale og arbejdsmarkedsmæssige rettigheder implementere gennem overenskomster, uden at være forpligtet til at beskytte dem, der ikke er omfattet af overenskomsterne.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int****LORD BOWNESS****Brussels, 28 July 2000
(OR. fr)****CHARTE 4422/00****CONVENT 45****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium

The Members of the Convention will find below the complete text of the Charter proposed by the Praesidium in the light of discussions in the Convention. Members may forward their general comments on this draft, by 1 September 2000, to the following address:

Jean-Paul.Jacque@consilium.eu.int,

indicating:

- "for the attention of Mr Jansson" (for the representatives of the national Parliaments)
- "for the attention of Mr Mendez de Vigo" (for the members of the European Parliament delegation)
- "for the attention of Mr Braibant" (for the personal representatives).

The Secretariat will forward these comments to the relevant addressee.

GENERAL

The Praesidium draft is welcome.

I would hope to see further changes to ensure

1) No uncertainty arises over rights drawn from ECHR and the Treaties. The horizontals must make clear that the existing Convention Treaties and Court decisions will prevail.

2) In the field of economic and social rights either in each article or in an horizontal it must be clear these are governed by the Treaties or National law.

3) The reasons for other changes are noted below.

4) Other changes are drafting changes to ensure clarity.

5) Article 13 is manageable as drawn.

PREAMBLE

1. ~~The people of Europe have established~~ An ever close union is being established between ~~them~~ and the peoples of Europe who are resolved to share a peaceful future based on common values.

Note: Drafting – it is an ongoing process.

2. The Union is founded on the ~~indivisible, universal~~ principles of ~~the dignity of men and women, freedom, equality and solidarity~~, it is based on the principle of democracy liberty democracy respect for human rights and fundamental freedoms and the rule of law.

Note: Follow TEV.

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

4. ~~In adopting this Charter~~ In the light of changes in Society, social progress and technological developments the Union intends to enhance the protection of fundamental rights in the light of ~~changes in society, social progress and scientific and technological developments by making~~ and to make those rights more visible, the enjoyment of which entails responsibilities and duties with regard to other persons, to the human community and to future generations.

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

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

7. ~~Each person is therefore guaranteed the rights and freedoms set out hereafter.~~

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person man or woman must be respected and protected.

Article 2. Right to life

1. ~~Everyone has~~ The right to life shall be protected by law.
2. ~~No one shall be condemned to the death penalty, or executed.~~

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity and subject to national laws and practice.
2. ~~In the fields of medicine and biology,~~ the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices * ~~in particular those concerned with the selection of persons,~~
 - prohibition on making the human body and its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Note: As drafted is this too wide?

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

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

Article 5. Prohibition of slavery and forced labour

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

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

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

Article 8. Protection of personal data

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

Note: Too detailed and must have reference in national laws.

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

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

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or

in private, to manifest religion or belief, in worship, teaching, practice and observance.

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

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

~~3. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.~~

Note: The principle is agreed – but it is covered by first paragraph European or national legislation may be needed but it is not for the charter.

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

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

~~Political parties at European level contribute to expressing the political will of the citizens of the Union.~~

Note: Agreed but it is not for the Charter.

Article 13. **Freedom of research**

~~Scientific research shall be free of constraint.~~

Note: This absolute right conflicts with Article 3 and would authorize many undesirable practices.

Article 14. **Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training. This right includes the right to receive free compulsory education.

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

Note: Does not add to English texts.

Article 15. **Freedom to choose an occupation**

1. ~~To earn a living~~, Everyone has the right to choose ~~engage in a freely chosen~~ the occupation they wish to follow subject to and in accordance with Community and national laws.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide ~~or receive~~ services in any Member State.
3. Nationals of third countries who are authorised to ~~reside~~ in the territories of the Member States are entitled to legal protection of any employment law applicable to ~~working~~ ~~conditions equivalent to those of citizens of the Union.~~

Article 16. **Freedom to conduct a business**

The freedom to conduct a business is recognised together with the freedom of persons goods and services in accordance with Community law.

Article 17. **Right to property**

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions including intellectual property and shall not ~~No one~~ may be deprived of his possessions, or the use regulated except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation paid without unreasonable delay. ~~The use of property may be regulated insofar as is necessary for the general interest.~~

2. ~~Intellectual property shall be protected.~~

Note: Drafting.

Article 18. Right to asylum

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

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited and
2. No one may be removed, expelled or extradited to a State where he could be subjected to ~~the~~ ~~death penalty~~, torture or other inhuman or degrading treatment.

Note: Would this create problems with other states with which member states have extradition treaties?

CHAPTER III. EQUALITY

Article 20. Equality before the law

Everyone, man or woman, is equal before the law.

Article 21. Equality and non-discrimination

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

Note: As drafted is this too wide – some political parties which do not observe democratic

principles may be banned.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured but this ~~The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.~~ To redress under representation of one sex in any activity or profession whilst maintaining vocational and professional standards and qualifications.

Note: To prevent a lowering of vocational/professional standards.

Article 23. Protection of children

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

Note: Drafting, and to ensure welfare is the primary consideration.

Article 24. Integration of persons with disabilities

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

CHAPTER IV. SOLIDARITY SOCIAL COHESION

Article 25. Workers' right to information and consultation within the undertaking

In accordance with Community and national laws workers and their representatives ~~must be~~ guaranteed information should be informed and consultation consulted in good time on matters ~~which concern them within~~ the undertaking, in accordance with Community law and national laws ~~and practices~~.

Note: The reference to Community and national laws in this Article and those which follow could be avoided if the point is covered in a suitable horizontal article.

Article 26. Right of collective bargaining and action

Employers and workers ~~may have the right~~ to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, subject to and in accordance with Community law and national laws and practices.

Article 27. Right of access to placement services

Everyone has the right of access to any free placement service which may exist.

Note: I would prefer to DELETE. This is not a fundamental right or principle.

Article 28. Protection in the event of unjustified dismissal

~~Every Workers has~~ have the right to protection against ~~unjustified~~ dismissal subject to national laws and practices.

Note; "Unfair" has a particular meaning in this regard.

Article 29. Fair and just working conditions

- ~~1. Every worker has the right to~~ Working conditions which respect the workers' ~~his or her~~ health, safety and dignity shall be promoted and shall include
- ~~2. Every worker has~~ the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave subject to national laws and practices.

Article 30. Protection of young people at work

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

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

Article 31. Reconciling family and professional life

The family shall enjoy legal, economic and social protection and the need to

~~Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid —~~

~~maternity leave and to parental leave following the birth or adoption of a child.~~ shall be recognised subject to national laws and practices.

Article 32. Social security and social assistance

1. The Union recognises and respects the ~~entitlement~~ to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social assistance ~~and housing benefit in order —~~ ~~to ensure a decent existence for persons lacking sufficient resources,~~ in accordance with the

rules laid down by Community law and national laws and practices.

Article 33. **Health care**

~~Everyone has the right of~~ Access to medical care shall be respected ~~preventive health care and the~~
~~right to benefit from medical treatment~~ under the conditions established by national laws and
practices.

Article 34. **Access to services of general economic interest**

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

Note: I would prefer to D E L E T E. It does not have any real meaning.

Article 35. **Environmental protection**

All Union policies shall promote the improvement and ~~ensure the~~ protection and preservation of a
~~good quality living environment and the improvement of the quality of the environment~~, taking into
account the principle of sustainable development.

Article 36. **Consumer Protection**

Union policies shall promote ~~ensure~~ a high level of protection ~~as regards~~ for the health, safety and
commercial interests of consumers.

CHAPTER V. CITIZENSHIP

Article 37. **Right to vote and to stand as a candidate in elections to the**
European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the
European Parliament in the Member State in which he resides, under the same conditions as

nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 38. **Right to vote and to stand as a candidate at municipal elections**

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

Article 39. **Right to good administration**

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

Article 40. Right of access to documents

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

Article 41. Ombudsman

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

Article 42. Right to petition

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

Article 43. Freedom of movement and of residence

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

Article 44: Diplomatic and consular protection

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

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
- ~~3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.~~

Note: Free legal aid is an impossible commitment.

Article 46. Presumption of innocence and right of defence

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

Article 47. Principles of legality and proportionality of criminal offences and penalties

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

3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Article 48. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

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

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

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

Article 50. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority, in accordance with the law. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
4. Insofar as this Charter contains rights which correspond to rights guaranteed by the

Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those the same as those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Note: To avoid uncertainty and conflict.

Article 51. **Level of protection**

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

Article 52. **Prohibition of abuse of rights**

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

BRAIBANT

Le projet de « charte des droits fondamentaux de l'Union européenne », dans la version transmise le 1^{er} août, peut être considéré comme globalement satisfaisant. Rédigé de façon claire et synthétique, ce document couvre non seulement les droits civils et politiques, mais également des droits économiques et sociaux ainsi que des droits dits « nouveaux ». Il répond donc pour l'essentiel au mandat qui avait été arrêté par le Conseil européen de Cologne.

Dans l'esprit des membres de son « praesidium », le travail de substance de la Convention sur le contenu de la Charte est désormais achevé et seules des améliorations rédactionnelles pourraient le cas échéant être apportées à cet avant-projet. Au demeurant et compte tenu des discussions difficiles auxquelles son élaboration a donné lieu, le risque existe que des demandes d'amendements ou de compléments substantiels n'aboutissent à rouvrir les débats et compromettre l'équilibre auquel sont parvenus les négociateurs.

Dans ces conditions, je ne peux que m'opposer à tout recul par rapport au texte actuel, en y incluant les précisions apportées par le Présidium dans sa réunion du 25 août sur les libertés syndicales et les actions collectives « à tous les niveaux ».

Dans l'hypothèse où d'autres Etats membres émettraient des critiques ou proposeraient des modifications de substance, j'insiste pour ma part sur les éléments suivants qui ne sont pas satisfaisants :

- certains droits sociaux essentiels tels que le droit au travail, le droit de grève, le droit à des moyens d'existence (revenu minimum notamment), le droit au logement ne sont pas explicitement mentionnés en tant que tels dans l'avant projet ;

- la formulation de l'article reconnaissant la liberté de circulation aux ressortissants des pays tiers (art. 43.2 de l'avant projet) devrait être revue : en l'état, elle peut, en effet, être interprétée comme allant au delà des dispositions pertinentes du Traité d'Amsterdam ;

- la rédaction actuelle de la liberté de la recherche scientifique (posée à l'article 13) devrait être assortie du rappel selon lequel celle-ci doit s'exercer dans le respect de la protection de l'être humain ;

- l'absence d'un droit à l'accès et à la participation à la vie culturelle est regrettable.

Guy BRAIBANT

**Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits
fondamentaux de l'Union européenne**



BRAUNEDER

(Fettdruck = Vorschlag Präsidium)

PRÄAMBEL

1. (entfällt)

Da hier vieles fraglich ist, sollte dieser Punkt wegfallen, dessen Formulierung überdies so klingt, als sei die Entwicklung der Union bereits abgeschlossen („haben..geschaffen“, „teilen nunmehr dasselbe Schicksal“).

2. Die Völker der Union verbinden die unteilbaren und universellen Grundsätze der Würde der Menschen, ihrer Freiheit, ihrer Gleichheit und ihrer Solidarität sowie die Grundsätze der Demokratie und der Rechtsstaatlichkeit.

In der vorgeschlagenen Form „diese Union gründet sich...“ klingt die Bestimmung zu sehr auf die Organisation bezogen und nicht auf die Grundrechtsträger, die Individuen. Die hier vorgeschlagene Fassung will den Träger der Grundrechte klar gegenüber der Organisation herausstellen.

3. Die Union garantiert diese Grundsätze durch Grundrechte und trägt damit zur Entwicklung dieser gemeinsamen Werte bei. So wie die nationale Identität der Mitgliedstaaten achtet die Union auch die persönliche Identität und die Würde der Menschen.

Die im Vorschlag enthaltene Wortfolge „achtet dabei die Vielfalt der Kulturen und Traditionen der Völker Europas“ erscheint unüblich, da es gerade im Grundrechtsbereich eine nahezu identische Tradition gibt, ohne kulturelle oder traditionelle Varianten, und überdies dieser Passus als eine Einschränkung hinsichtlich der „gemeinsamen Werte“ erscheint. Das Weglassen bzw. die Modifikation der Wortfolge „die nationale Identität der Mitgliedstaaten sowie deren verfassungsmäßigen Aufbau auf nationaler, regionaler und lokaler Ebene“ versteht sich aus der schon zu Punkt 2. angestellten Erwägung, sie klingt in diesem Sinne zu „etatistisch“ und erscheint in einem Grundrechtskatalog fehl am Platz, da sie zum Organisationsrecht gehört. Die vorgeschlagene Wortfolge „garantiert diese Grundsätze durch Grundrechte“ versteht sich daraus, daß zwischen den „Grundsätzen“ in Punkt 2. und den Grundrechten eine Brücke zu schlagen ist. Die hier vorgeschlagene Fassung stellt der „nationalen Identität“ der Staaten die „persönliche Identität“ der Menschen zur Seite, auch, um den ansonsten „etatistischen“ Eindruck zu entschärfen.

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4. (entfällt)

Daß durch die Charta die Grundrechte verankert und sichtbar werden, ist für jeden Leser „sichtbar“ und kann damit als lapidare Feststellung entfallen. Überdies ist die Wortfolge „müssen...verankert werden“ verfehlt, da bei Inkrafttreten der Charta die Grundrechte nicht erst in der Zukunft „verankert werden“, sondern bereits „verankert sind“.

5. Diese Charta bestätigt jene Grundwerte und jene Rechte, die sich vor allem aus der gemeinsamen Grundrechtsauffassung der Mitgliedstaaten und aus der Europäischen Menschenrechtskonvention unter Berücksichtigung des bisherigen Standes der Entwicklung ergeben.

Betont werden soll die hier primär relevante Grundrechts tradition der Mitgliedstaaten bzw. der europäische Grundrechtsstandard, wie er sich zur Zeit der Abfassung der Charta darstellt. Statt „Verfassungsgrundsätze“ ist daher das Wort „Grundrechtsauffassung“ gewählt, da unter „Verfassungsgrundsätzen“ in einigen Staaten primär das demokratische Prinzip, eventuell das republikanische Prinzip, das Prinzip der Gewaltentrennung etc., nämlich überwiegend Organisationsrecht, verstanden werden; aus diesem Grund ist auch der Hinweis auf die Verträge über die Europäische Union und ihre Gemeinschaften entfallen. Der Hinweis auf die Rechtsprechung erübrigt sich dadurch, als einerseits die Europäische Menschenrechtskonvention nicht anders als im Sinne der Rechtsprechung zu verstehen ist, von ihr nicht losgelöst gesehen werden kann, andererseits diese sich als Teil der umfassenden „Entwicklung“ darstellt.

6. (entfällt)

Hiezu gilt das eben Gesagte: Die einzelnen Arten der Entwicklung sind im Wort „Entwicklung“ in Punkt 5. miteingedr.

7. Die durch die Charta gewährleisteten Rechte begründen durch ihre Respektierung Verantwortlichkeiten und Pflichten gegenüber den Mitmenschen.

Die bisherige Fassung klingt zu sehr nach einem do ut des. Ihr gegenüber sollte herausgestrichen werden, daß durch das gegenseitige Respektieren der Rechte Verantwortlichkeiten und Pflichten entstehen, wobei die Wortfolge „gegenüber den Mitmenschen“ sowohl die Einzelperson als auch deren Summe deckt.

8. (entfällt)

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Das Entfallen des ersten Satzes versteht sich daraus, daß eine derart technische Bestimmung in einer Präambel fehl am Platz ist und außerdem einer begründet entgegengesetzten Auslegung und Handhabung auch keinen Riegel vorzuschreiben vermag. Der Entfall des zweiten Satzes begründet die Ansicht, daß er zu sehr als Einschränkung verstanden werden könnte, ebenfalls in einer Präambel fehl am Platz ist und außerdem durch die grundsätzlichen Bestimmungen (horizontalen Bestimmungen) abgedeckt erscheint.

Insgesamt: Durch den obigen Textvorschlag bleibt der Geist der vom Präsidium vorgeschlagenen Präambel wollauf gewahrt, jedoch unter Fortlassung „statistischer“, überflüssiger und anderswo ohnedies geregelter technischer Einzelheiten.

Changements proposés par MEP Prof. Rocco Buttiglione

➤ Dans le Préambule

« 2. L'Union est fondée sur les principes indivisibles et universels de la dignité transcendant des hommes et des femmes, de la liberté, de l'égalité et de la solidarité; elle repose sur le principe de démocratie et l'État de droit. »

« 6 Bis. Soucieuse de ses responsabilités envers le restant du monde, l'Union tient à confirmer son attachement aux droits de l'homme dans toutes ses relations avec des États tiers. »

➤ Dans le texte de la charte

Article 1

Remplacer le mot « *personne* » par « *être humain* » dans le titre de l'article et dans le texte de l'article même.

Article 3

Bien que l'adverbe « notamment » du paragraphe 2 montre que la liste des principes n'est pas exhaustive, il serait souhaitable d'ajouter un principe supplémentaire à respecter :

« interdiction de manière générale de toute pratique méconnaissant la dignité humaine »

En effet, les principes cités se réfèrent à l'état actuel de connaissances. Comme l'évolution de la science est très rapide, il serait bon d'ajouter un principe rédigé de manière plus générale.

Article 12. Liberté de réunion et d'association

« Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, notamment dans les domaines politique, syndical, ~~et~~ civique et religieux. »

Les partis politiques au niveau européen contribuent à l'expression de la volonté politique des citoyens de l'Union. »

Article 13

« La recherche scientifique est libre, sous réserve de ce qui est dit à l'article 3. »

CEDERSCHIÖLD

To the Chair of the Convention, Prof. Dr. Roman Herzog
And to the Vice-Chairs, Inigo Mendez de Vigo, Gunnar Jansson and Prof. Dr. Guy Braibant

COMMENTS AND SUGGESTIONS FOR AMENDMENTS ON CONVENT 45

Submitted by: Mrs. CEDERSCHIÖLD, MEP

General remarks on Convent 45

The Charter, as it is formulated in Convent 45, is in many ways better than earlier drafts. However, I submit some general remarks and some suggestions for amendments.

Pro primo, the Charter should be restructured in the following way:

1. Dignity
2. Freedoms
3. Justice
4. Citizenship
5. Equality
6. Principles of solidarity
7. General provisions

Fundamental rights like everybody's dignity, integrity and equal value are entwined with the rights to be respected before court and to be able to participate in the formation of the society, *i.e.* the justice and citizenship chapters. The rights belong together and it is therefore more logical to group them together. The chapters of equality and the principles of solidarity focus on specific groups, such as women, employees or disabled, whereas the first four chapters in the list above are common to everyone; they are fundamental and universal.

Pro secundo, as regards the principles of solidarity: The means to achieve our political goals (*e.g.*, to provide sufficient resources for a decent existence for everyone) should not be blocked through structures based on experiences only from the industrial society. The door for new alternatives must be kept open – it is the achievement of the *goal* that is important! We can not know what Europe will look like in 100, or even in 50, years. The Charter will soon be outdated if we let it block new - and better! - solutions to these problems. If the Charter is seen as outdated, *all* rights in it will risk to be seen as relative and out-of-date. Secondary legislation is therefore the more suitable level to deal with, and promote, this sort of protection. Every regulation cannot be lifted to constitutional level. (The Convention works under the condition that the Charter may become binding.)

Pro tertio, the question of "he" must be solved. We cannot have a Charter that sometimes explicitly guarantees "his or her" rights but sometimes only "his" rights. It may seem a trivial question when drawing up an entire new Charter of Fundamental Rights. However, that is precisely why we cannot follow *old* drafts of Charters and let "him" include also "her". With this Charter, we make a statement of the fundamental principles from which we will create the new Europe. To only discuss "his" rights does not follow the principles of equality, which we so boldly state in the three Articles 20-22. For countries like Sweden, it would imply a

tremendous step backwards. It is easy to alter this mistake at least in the Swedish version, and in the English.

Finally, the Member States and the institutions and bodies of the European Union should be obliged to inform the citizens about the Charter.

Suggestions for amendments on Convent 45

PREAMBLE (amendment supported by Thierry Cornillet)

2. The Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law **and has a base in humanistic ethics.**

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

7. Each person is therefore, **by the institutions and bodies of the European Union and of the Member States, implementing Union law**, guaranteed the rights and freedoms set out hereafter.

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person, **male or female**, must be respected and protected.

CHAPTER II. FREEDOMS

Article 8. Protection of personal data

It must be stated clearly that "everyone" and "him" include legal persons. This could be done in the part B of the Charter. In that part it must also be clearly stated that information, which represents an asset (of economic value), but are not intellectual rights, are protected under this Article.

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association/**non-association**, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

In Sweden and Denmark, people who do not belong to a trade union may be harassed and sometimes are not allowed to seek employment at all places if they do not belong to a trade union. If they wish to leave the trade union, this may constitute a legal ground to fire them. This is deeply discriminatory. In the same way as it is a fundamental right to not have any religion or faith, it is a fundamental right not to be forced to join or stay with an organisation.

Article 14. Right to education

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

The freedom to found educational establishments can only be guaranteed if these establishments adhere to fundamental democratic principles such as equality. The demand for equality must be expressly stated in the Charter. Young women, not the least from third countries, must be given the same education and the same opportunities as young men to ensure future democracy!

Article 17. Right to property

(amendment supported by Andrew Duff, Ingo Friedrich, Thierry Cornillet and Marie-Thérèse Hermange)

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions except in **specified public interest**, in the cases and under the conditions provided for by law, subject to compensation **for the loss in due time**.

2. Intellectual property shall be protected.

The last sentence of part 1 should be moved as indicated above to ensure that there will not be problems of interpretation.

CHAPTER III. EQUALITY

Article 21. Equality and non-discrimination

Any discrimination based on any ground, such as **nationality**, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion,

membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. (delete)

CHAPTER IV. PRINCIPLES OF SOLIDARITY

Article 26. Right of collective bargaining and action

Delete

Article 137.6 in the EC Treaty explicitly prohibits the interference of EU in national legislation on these matters. This Article cannot, therefore, remain in the Charter.

Article 27. Right of access to placement services

Delete

As stated under "General Remarks" above, this can not be guaranteed as a fundamental right which can and will last for hundreds of years. We can find better ways of solving these matters in the future.

Article 28. Protection in the event of unjustified dismissal

Every worker has the right to protection against **legally** unjustified dismissal.

In this Article, we would like to change the English word "unjustified" to the English equivalence of the Swedish "saklig grund" or the German "sachliche gesetzliche Grund". The nearest equivalent is probably "legally justified".

Article 34. Access to services of general economic interest

Delete

This Article is incomprehensible. Which right is guaranteed, exactly? The Charter should be fairly easy to understand for European citizens. If the Charter contains an incomprehensible text like this one, it is a disgrace, which lowers the quality of the whole document. The Charter shall be "clean", concentrated, clear, solemn and well phrased. This article is most far from that and has no "fundamental character". One could as well turn it around and say that everything that could be run privately should.

Article 35. Environmental protection

[Delete] Union policies shall **promote** the protection and preservation of **[delete]** good **[delete]** environment **[delete]**, respecting sustainable development.

The Articles 35 and 36 should have a similar wording, therefore should “All” be deleted. The language should be made as simple and clear as possible. The Union will not be able to “ensure” environmental protection since the Union can not direct the environment. But it should certainly promote a sustainable development of the environment! If only the living environment is protected and scarcely populated areas are ignored, it will soon create a worse living environment.

Article 36. Consumer Protection

Union policies shall **promote** a high level of protection as regards the health, safety and interests of consumers.

The Union will not be able to “ensure” consumer protection since it cannot control every company and its products - or the consumers. But all Union policies should promote the protection of consumers. To guarantee and ensure things that the Union can not fulfil is to render the Charter useless in the eyes of the European citizens.

CHAPTER VI. JUSTICE

Article 47. Principles of legality and proportionality of **[delete one word]** offences and penalties

1. No one shall be held guilty of any **[delete]** offence on account of any act or omission which did not constitute a **[delete]** offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the **[delete]** offence was committed. If, subsequent to the commission of the **[delete]** offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, **constituted an offence** according to international law.
3. The severity of penalties shall be proportional to the gravity of the **[delete]** offence.

The presumption of innocence and the other principles stated above are the trademarks of a true democracy. They are some of the most important fundamental rights. To abandon these principles in the way that has been done in Convent 45, Article 47, is very serious. We do not know which offences will be criminal in the future, but we must ensure that every man or woman are entitled to these fundamental devices for protection against unjustified punishment, no matter if the offence they are charged with happens to be in the Criminal Code or not. Otherwise politicians could avoid essential principles in a democracy through administrative measures, leading to a dilution of the Charter.

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

3. (new) The Charter applies to legal and physical persons when otherwise has not been stated.

CEDERSCHIÖLD REV

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association/**non-association**, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

In Sweden and Denmark, people who do not belong to a trade union may be harassed and sometimes are not allowed to seek employment at all places if they do not belong to a trade union. If they wish to leave the trade union, this may constitute a legal ground to fire them. This is deeply discriminatory. In the same way as it is a fundamental right to not have any religion or faith, it is a fundamental right not to be forced to join or stay with an organisation. The right to non-association is recognised in Art. 11 of the 1989 Community Charter of the Fundamental Social Right of Workers (referred to in TEU art. 136): "Employers and workers of the European Community shall have the right of association in order to constitute professional organisations or trade unions of their choice for the defence of their economic and social interests. Every employer and every worker shall have the freedom to join or not to join such organisations without any personal or occupational damage being suffered by him"

Article 17. Right to property

(amendment supported by Andrew Duff, Ingo Friedrich, Thierry Cornillet and Marie-Thérèse Hermange)

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions except in **specified** public interest, in the cases and under the conditions provided for by law, subject to compensation **for the loss in due time**.
2. Intellectual property shall be protected.

The last sentence of part 1 should be moved as indicated above to ensure that there will not be problems of interpretation. Without the amendments above, the right to property in the Charter would be weaker than the right as interpreted by the Court of Justice in Luxembourg. This can be seen in the Standley case, C-293/97, para. 54, which is further discussed in my opinion (from 22 February 2000) on the Charter adopted in the Legal Affairs Committee.

**Observation déposée par Thierry CORNILLET
sur le Convent 45 : Charte des Droits fondamentaux 4423/00**

à l'attention de Monsieur MENDEZ DE VIGO

Il me paraît essentiel que le principe de neutralité de l'action publique puisse figurer en tant que tel dans la charte.

La neutralité de l'action publique recouvre à la fois :

- La neutralité dont doit faire preuve l'administration vis-à-vis de celles et ceux qui s'adressent à elle quelle que soient leurs opinions ;
- La neutralité que doit s'imposer l'administration dans son action même et notamment en ne se faisant pas le reflet et le relais d'une idéologie dominante tant politique, philosophique ou religieuse.

Je propose donc que l'article 39 puisse être ainsi précisé, la neutralité venant, à mes yeux, heureusement compléter l'équité et l'impartialité :

Article 39 : Droit à une bonne administration

1. Toute personne a le droit de voir ses affaires traitées impartialement, équitablement SELON LE PRINCIPE DE NEUTRALITE DE L'ACTION PUBLIQUE et ce dans un délai raisonnable par les institutions et organes de l'Union.

Merci

Thierry Cornillet

31 août 2000

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DEHAENE

-----Original Message-----

From: AMANT Martine

Sent: mercredi 30 août 2000 10:43

To: 'JACQUE Jean-Paul'

Subject: BRU-BELGOEUROP - Observations de Monsieur J-L. Dehaene,
représentant personnel du Gouvernement belge

A L'ATTENTION DE MONSIEUR BRAIBANT

OBSERVATIONS DE J-L. DEHAENE, REPRESENTANT PERSONNEL DU
GOUVERNEMENT BELGEOBJET : Projet de Charte des droits fondamentaux de l'Union
européenne (Convent. 45 et 46).

1. Il convient de féliciter le Présidium pour le caractère équilibré du projet de Charte qu'il a élaboré à la base des amendements déposés par les membres de la Convention et des échanges de vues extrêmement riches qui se sont tenus au cours des séances plénières de la Convention.

Le Traité d'Amsterdam a consolidé la base institutionnelle de la protection des droits fondamentaux par l'Union en tant que telle, en étendant l'exercice du contrôle juridictionnel de la Cour de Justice en ce qui concerne le respect de ses droits dans le cadre de l'action des institutions.

Il n'en demeure pas moins que le citoyen dans ses relations avec les institutions et les Etats membres chargés de la mise en oeuvre du droit communautaire doit pouvoir identifier et comprendre la portée des droits fondamentaux dont il bénéficie à l'effet de s'assurer de leurs applications correctes et exiger, le cas échéant, le respect de ceux-ci.

C'est la raison pour laquelle une énonciation de ses droits telle qu'envisagée par la Charte conforte la protection offerte aux citoyens.

2. Dans cette perspective, il serait opportun que le préambule qui constitue en quelque sorte la raison d'être de la Charte exprime de façon plus explicite qu'il s'agit avant toute chose d'un instrument visant à clarifier les liens entre le citoyen et les institutions et à l'informer de ses droits. La protection accrue voulue par la Charte comporte à la fois une mission d'information et une mission de prévention ; une meilleure connaissance de ses droits fondamentaux doit permettre au justiciable de pallier immédiatement toute intervention qui menacerait la substance même de ceux-ci.

3. Le Gouvernement belge se félicite de l'intégration dans la Charte des droits économiques et sociaux qu'elle estime fondamentale.

4. La structure proposée qui regroupe les droits énoncés selon des domaines spécifiques de protection est une solution adéquate dans la mesure où elle évite le clivage traditionnel entre droits classiques et droits économiques et sociaux.

La classification des droits selon des domaines déterminés favorise la lisibilité de la Charte.

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En définissant soit les sphères d'activités des institutions et des Etats membres où les risques d'atteinte aux droits sont omniprésents, comme en matière de Justice, soit en regroupant les droits sans distinction de leur nature selon un principe directeur fondamental tel que l'égalité, on permet au citoyen d'identifier aisément la violation dont il serait victime.

5. Les observations qui suivent quant au libellé des articles du projet de Charte répondent à un souci d'adéquation de ce projet avec les explications reprises dans le doc. Charte 4423/00 Conv. 46.

* Art 15 - Liberté professionnelle.

Comme le précise le doc. Conv. 46, le paragraphe 1er de cet article s'inspire de l'article 1er paragraphe 2 de la Charte sociale européenne signée le 18 octobre 1961 ratifiée par tous les Etats membres.

Il est à noter que la Charte européenne consacre comme tel un droit au travail (cfr. intitulé de l'article 1er). Il paraît dès lors souhaitable que la Charte proclame également de façon explicite un droit au travail dont l'exercice effectif est notamment garanti par la liberté professionnelle (§ 1er), mais également en ce qui concerne le citoyen de l'Union par la libre circulation des travailleurs, la liberté d'établissement et de libre prestation de services (§ 2).

Le libellé suivant est suggéré :

« Art. 15 - Droit au travail

1. Afin de gagner sa vie, toute personne a un droit au travail qui implique notamment le droit d'exercer une profession librement choisie ».

* Art. 48 - Droit a ne pas être jugé ou puni pénalement deux fois pour un même délit.

Le doc. Conv. 46 précise que conformément à l'acquis du droit de l'Union le principe « non bis in idem » ne s'applique pas seulement à l'intérieur de la juridiction d'un même Etat mais aussi entre les juridictions des Etats membres. La version actuelle de l'article 48 implique que le pouvoir juridictionnel de n'importe quel autre Etat au monde doit être reconnu.

Il est dès lors suggéré d'adopter un libellé qui limite la reconnaissance des décisions judiciaires en matière pénale aux Etats membres de l'Union européenne. Ma proposition d'amendement 204 introduite antérieurement répond à cette exigence.

Le texte proposé était le suivant :

« Nul ne peut être poursuivi ou puni pénalement dans un Etat membre de l'Union européenne en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans un Etat membre de l'Union européenne par un jugement définitif (conformément à la loi). »

* Art 50 - Portée des droits garantis.

Le paragraphe 1er de l'article 50 traite du régime des limitations. Comme le précise le doc. Conv. 46 la formule s'inspire de la jurisprudence de la Cour de Justice de Luxembourg.

Par souci de cohérence avec la teneur de cette jurisprudence et en vue d'assurer une protection maximale quant à la nature des restrictions permises, il serait opportun de compléter le § 1er en y ajoutant : « sans pour autant porter atteinte à la substance même de ces droits et libertés ».

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Le paragraphe 3 de l'article 50 précise le régime des droits qui sont également garantis par la Convention européenne des droits de l'Homme .

Ce paragraphe répond de façon adéquate à la nécessité d'assurer la cohérence et la sécurité juridique entre la Charte et la Convention européenne des droits de l'Homme.

Il n'en demeure pas moins que l'on ne peut exclure le risque que la Charte appliquée et interprétée dans le cadre de l'Union européenne, c'est à dire dans le cadre d'un Traité avec ses objectifs propres, ne génère une jurisprudence de la Cour de Justice de Luxembourg qui pourrait diverger de la jurisprudence de la Cour de Strasbourg.

A cet égard, le Gouvernement belge tient à souligner qu'une interprétation harmonieuse des droits fondamentaux serait hautement favorisée par une adhésion de l'Union à la Convention européenne des droits de l'Homme.

Enfin, il serait opportun de citer la Charte sociale européenne à l'art. 50 § 3. Cette référence permettrait de clarifier la portée qu'il convient de donner aux droits sociaux repris dans le projet de Charte et qui émanent de la Charte sociale européenne. L'interprétation de ces droits ont en effet connu, au fil du temps, une évolution en raison de la jurisprudence plus que trentenaire élaborée par un Comité d'experts indépendants, aujourd'hui devenu « Comité européen des droits sociaux ».

Il serait souhaitable de maintenir le dynamisme de la jurisprudence du Comité des droits sociaux dans la même mesure qu'on sauvegarde celui-ci pour la jurisprudence de la Convention européenne des droits de l'homme. De surcroît, la jurisprudence du Comité des droits sociaux tient compte de la jurisprudence de la Cour de Strasbourg là où des chevauchements se font avec les droits de la Convention européenne des droits de l'homme.

Le libellé suivant est suggéré :

« Art. 50.

3. Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales ou par la Charte sociale européenne, leur sens et leur portée sont similaires à ceux que leur confèrent lesdites conventions, à moins que la présente Charte n'assure une protection plus élevée ou plus étendue ».

personnel du

Jean Luc DEHAENE,
Représentant

Gouvernement belge

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MPE/CRL/2000/181/mh

MPE/NEXT/2000/15/mh

Bruxelles, le 31 août 2000

DEHOUSSE

Monsieur Jean-Paul JACQUE

Directeur du Service Juridique du Conseil

À l'attention de M. MENDEZ DE VIGO

Monsieur le Directeur,

Le document (Charte 4422/00 - CONVENT 45) reprenant le texte complet de la Charte proposé le 28 juillet 2000 par le Présidium suite aux discussions de la Convention m'est bien parvenu et a retenu toute mon attention.

Je désire tout d'abord exprimer mes remerciements au Présidium pour les efforts considérables qu'il a accepté de fournir afin que la Convention dispose en temps voulu d'un projet structuré de texte.

En se souvenant des hésitations exprimées de part et d'autre lors des premières réunions de la Convention, on ne peut que mesurer avec satisfaction le chemin parcouru et je n'ignore pas le rôle déterminant rempli à cet égard par le Présidium.

Je m'en tiendrais là si le texte à adopter ne se situait pas dans le domaine primordial et essentiel à l'Europe des droits fondamentaux de la personne humaine.

Dans cette matière, personne ne peut renoncer à proposer des améliorations et c'est dans cet esprit que je formule les propositions suivantes.

1. Préambule

1.1. L'idée du caractère limitable des droits ne peut être exprimée par une clause horizontale introduite à la fin de la Charte sans être annoncée dès le début, par exemple sur base du texte suivant :

Aucune liberté n'est absolue. Le droit, par ses principes et dans des textes, détermine les circonstances dans lesquelles des limitations peuvent être reconnues et, dans le cas échéant, détermine les limites ou les dérogations.

1.2. Il serait utile de déterminer pareillement les titulaires des droits retenus, par exemple sur base du texte suivant:

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Tout étranger qui se trouve sur le territoire de l'Union jouit de la protection accordée par la présente Charte aux personnes et aux biens, sauf si une disposition de la Charte en dispose autrement.
"

A cet égard, je désire faire observer que, lorsque des droits ou des libertés sont garanties ou "respectées" au profit d'individus, le texte proposé spécifie toujours à quel "type" d'individus la disposition s'applique, c'est-à-dire "toute personne", "tout citoyen de l'Union", "tout travailleur", "les ressortissants des pays tiers en séjour régulier" (par exemple à l'article 15 sur la liberté professionnelle). Pourtant, aucune clause horizontale n'est prévue concernant les bénéficiaires de la Charte. Il est seulement indiqué à l'article 49 que la Charte s'adresse aux institutions et organes de l'UE ainsi qu'aux Etats membres lorsqu'ils mettent en oeuvre le droit de l'Union. Il apparaît par conséquent nécessaire d'introduire soit au Préambule soit dans les articles horizontaux le principe, conforme à la jurisprudence internationale et européenne en ce qui concerne les droits fondamentaux, selon lequel les droits conférés par la présente s'appliquent aux ressortissants d'Etats tiers résidant légalement sur le territoire de l'Union Européenne sauf si l'article contient une disposition spécifique relative aux destinataires des prérogatives en question.

2. Article 3, Droit à l'intégrité de la personne:

Ajouts suggérés:

- "Le respect de l'intégrité physique et morale implique l'accès libre de tous aux progrès de la médecine et des autres sciences, et en particulier l'accès égal de tous aux soins de santé.
- La matière vivante ne peut être brevetée ni dans sa globalité ni dans une de ses parties.
- Lorsque le vieillissement d'une personne porte atteinte à l'intégrité, celle-ci bénéficie, indépendamment de son droit à la pension, à une aide et une assistance spécifiques.
- Toute personne a le droit de demander et d'obtenir une mort qui respecte sa dignité, en particulier lorsque la dépendance porte atteinte au respect de l'intégrité physique et morale ou à la dignité de l'être humain.

Justifications:

Ad 1: Le principe de l'accès équitable aux soins de santé est prévu notamment par l'article 3 de la Convention sur les Droits de l'Homme et la biomédecine, élaborée dans le cadre du Conseil de l'Europe, entrée en vigueur le 1 décembre 1999, signée par neuf Etats membres et ratifiée par la Grèce et l'Espagne. Il est d'ailleurs fait référence à cette Convention dans l'exposé des motifs (CONV 46). Une autre base juridique qui permet de plaider en faveur de l'in

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sertion d'un accès libre et égal aux soins de santé est l'article 12 du Pacte des Nations Unies sur les droits économiques et sociaux, ratifié par tous les Etats membres, qui stipule que:

- "1. Les Etats parties au présent Pacte reconnaissent le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale qu'elle soit capable d'atteindre.
2. Les mesures que les Etats parties au présent Pacte prendront en vue d'assurer le plein exercice de ce droit devront comprendre les mesures nécessaires pour assurer:
- a) La diminution de la mortalité et de la mortalité infantile, ainsi que le développement sain de l'enfant;
- b) L'amélioration de tous les aspects de l'hygiène du milieu et de l'hygiène industrielle;
- c) La prophylaxie et le traitement des maladies épidémiques, endémiques, professionnelles et autres, ainsi que la lutte contre ces maladies;
- d) La création de conditions propres à assurer à tous des services médicaux et une aide médicale en cas de maladie."

Ad 2: Le principe de non-brevetabilité de la matière vivante repose dès à présent sur les normes de droit international suivantes: le Pacte des Nations Unies sur les droits économiques et sociaux (article 1, § 1&2), mais surtout la Convention des Nations Unies sur la Biodiversité, ratifiée par tous les Etats membres de l'UE, et la Convention sur le Brevet Européen (CBE), dont l'article 52 établit que "seules sont brevetées les inventions nouvelles".

Ad 3 et 4: Le respect de la dignité de la personne, le droit à la vie (articles 1 et 2 du CONV 45) ainsi qu'une clause sur le droit à une vieillesse et une mort dans la dignité constituent des concepts parfaitement complémentaires.

3. Article 7: Respect de la vie privée

Je propose le maintien de la formulation de l'article 8 CEDH ("Toute personne a droit au respect de sa vie privée et familiale, de son domicile et du secret de sa correspondance") dans la mesure où, face au développement des techniques de communication, les possibilités techniques rendent la garantie du droit au "secret des communications" parfaitement illusoire. Assimiler ce qui est techniquement possible avec ce qui ne l'est pas, c'est construire une parodie de garantie et par conséquent affaiblir toute la Charte.

4. Article 9: Droit de se marier et de fonder une famille

Le texte proposé ne reflète pas les discussions qui ont eu lieu en séance plénière et qui pourraient aboutir sans problème sur un texte tel que celui-ci:

"Deux personnes peuvent contracter une union de longue durée dont les modalités sont définies par la loi, laquelle définit également

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la protection assurée à cette union."

Une formule de ce type prend en compte les nouvelles formes de la vie de couple qui apparaissent dans les différents Etats de l'Union comme ailleurs dans le monde.

5. Article 10 - Liberté de pensée, de conscience et de religion

Je note que le texte proposé par le Présidium affine de façon générale la liberté de pensée, de conscience et de religion.

Il renvoie donc implicitement le problème de la limitation aux clauses dites "horizontales".

Ceci ne me paraît pas satisfaisant en l'espèce. Dans un siècle marqué, y compris ces dernières années, par un retour en puissance de tous les sectarismes, il doit exister une condition de réciprocité.

C'est pourquoi j'avais par amendement demandé qu'il soit écrit que "toute personne a droit à la liberté de pensée, de conscience et de religion dans la mesure où la pensée, la conscience et la religion respectent le principe de tolérance et le principe de démocratie".

Je réitère mon appel en ce sens.

5.2. Par ailleurs, où finit la secte (dont on ne dit rien) et où commence la religion ?

6. Article 11 - Liberté d'expression

6.1. A nouveau, le texte présenté par le Présidium renvoie le problème des limitations aux clauses horizontales (et en l'occurrence au §2 de l'article 10 CEDH).

6.2. Tout d'abord, c'est avec raison que la CEDH formule des restrictions dans le texte, et à tort que l'on propose d'agir implicitement et indirectement pour la Charte.

6.3. Ensuite, la CEDH ne mentionne pas le souci de préserver l'enfance et la jeunesse, pourtant bien plus nécessaire aujourd'hui qu'en 1950.

6.4. Dès lors, je maintiens la proposition d'insérer, après le groupe nominal "ingérence des autorités publiques", les mots "sauf pour assurer la protection de la démocratie, des droits fondamentaux et de la jeunesse".

6.5. Par ailleurs, je suggère l'insertion des dispositions suivantes:

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- "La liberté d'expression implique le droit de s'exprimer dans sa propre langue.
- Là où les exigences d'efficacité sociale impliquent le choix d'une ou plusieurs langues administratives, ce choix doit s'opérer par la loi.
- Là où existe une langue endogène qui ne comporte pas le caractère de langue administrative, elle n'en demeure pas moins un trait culturel fondamental et l'un des éléments de richesse du patrimoine culturel européen.
- A ce titre, toute langue endogène, au sens de langue régionale par rapport à la Charte Européenne des Langues Régionales ou Minorités, mérite respect, protection et aide. La loi détermine les modalités d'application du présent principe, sans que les exigences d'efficacité puissent porter atteinte aux droits et libertés fondamentales."

A cet égard, l'évolution du monde implique une attention accrue au respect et à la protection de la diversité culturelle qui demeure une caractéristique essentielle de l'Europe.

7. Article 14 - Droit à l'éducation

7.1. L'efficacité et pour tout dire la mise en oeuvre du principe demande plusieurs clarifications et compléments. Ainsi, le texte gagnerait à comprendre les dispositions suivantes:

- Toute personne dispose du droit à un accès égal et gratuit aux écoles d'enseignement obligatoire, ce qui implique le devoir pour la collectivité d'assurer l'existence d'écoles en nombre suffisant.
- L'existence et le devenir de l'Union, d'une part, et l'intérêt de chaque enfant pris séparément, d'autre part, convergent pour rendre nécessaire un enseignement systématique et progressif de trois langues, enseignement qui doit commencer dès que possible."

Pour le reste, la garantie de l'accès aux écoles gratuites ne peut être effective que si des infrastructures suffisantes dans ce domaine sont prévues par la collectivité, faute de quoi on exprime un vœu au lieu d'énoncer un droit.

D'autre part, pourquoi la Charte ne tiendrait-elle pas compte de l'article 149.2 CE, qui stipule que "l'action de la Communauté vise à développer la dimension européenne dans l'éducation, notamment par l'apprentissage et la diffusion des langues des Etats membres" ? Si c'est le nombre de trois langues qui gêne le Présidium, je rappellerai que ce nombre a été proposé par le Président DELORS lors que celui-ci dirigeait la Commission Européenne. Mais une disposition se bornant à prévoir l'enseignement de plusieurs langues rencontrerait évidemment ma préoccupation.

7.2. La formule retenue par le Présidium pour l'article 14§2 ("assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses, philosophiques et pédagogiques") e

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engendre plusieurs imprécisions dangereuses qui doivent être levées

Ainsi:

1°) les témoins de Jehovah refusent fréquemment que leurs enfants soient vaccinés en raison de leurs croyances: le Présidium propose-t-il de respecter cette volonté (qui met évidemment les autres enfants en péril)? C'est ce qui découle du texte écrit;

2°) le respect des valeurs implique-t-il pour le Présidium que certains enfants puissent échapper à l'obligation scolaire (ce qui est le cas si les parents "assurent l'enseignement")?

3°) Réapparaît ici la frontière parfois ténue entre sectes, religion et pensée (cf. supra 5.2).

8. Article 18 - Droit d'asile

Le droit d'asile ne se conçoit pas comme un simple droit de présence mais comme un acte d'adhésion aux valeurs qui fondent l'Union, et dont la Charte est du reste l'expression.

Ceci justifie l'insertion dans l'article 18 d'une disposition conditionnant l'octroi du droit d'asile à l'engagement du ou des bénéficiaires de respecter les principes de tolérance, le principe de démocratie ainsi que les lois fondamentales de l'Union et de ses Etats membres.

9. Article 25 - Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

9.1. La proposition du Présidium, en stipulant que les travailleurs ont droit à "une information et une consultation en temps utile sur les questions qui les concernent", est très en retrait par rapport au grand nombre d'amendements déposés à ce sujet, qui tendaient à garantir aux travailleurs une information régulière et fiable afin de corroborer la notion de temps utile mais aussi pour s'assurer que les travailleurs ne doivent pas s'enquérir de leur propre initiative sur la situation de l'entreprise dans son ensemble.

9.2. La formule sur "les questions qui les concernent" laisse de toute évidence une trop grande marge d'appréciation à la direction de l'entreprise pour déterminer quels sont les sujets qui concerneraient l'entreprise mais sans concerner les travailleurs et paraît par conséquent inutile et dangereuse parce que partielle.

10. Article 26 - Droit de négociation et d'action collective

Comme le relevait le Professeur BRAIBANT dans sa "Contribution 188" du 23 mai 2000, l'article 137.6 CE stipule explicitement que le droit de grève ne relève pas des compétences de la Communauté Euro

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péenne mais ne signifie pas pour autant que ce droit ne doit pas être respecté par la CE dans la conduite de ses politiques.

En effet, le droit de grève est non seulement garanti par la Charte sociale européenne (article 6, al.4), texte de référence pour les travaux de la Charte selon le mandat de Cologne, mais aussi par le Pacte international relatif aux droits économiques, sociaux et culturels de 1966, ratifié par tous les Etats membres de l'UE, qui stipule à l'article 8: "Les Etats parties au présent Pacte s'engagent à assurer*d) le droit de grève, exercé conformément aux lois de chaque pays".

11. Article 31 - Conciliation de la vie familiale et de la vie professionnelle

Une adaptation du texte me paraît nécessaire, par exemple dans l'esprit du texte suivant:

"Quelle que soit la composition de la famille, la protection de celle-ci est garantie sur le plan juridique, économique, social et fiscal".

En effet, la formulation actuellement proposée ne tient pas compte de façon suffisamment explicite de la situation des familles qui ne correspondent pas au schéma classique, comme par exemple les familles monoparentales.

12. Article 32 - Sécurité sociale et aide sociale

A la lumière des traditions constitutionnelles d'un grand nombre d'Etats-membres ainsi que du Pacte international relatif aux droits économiques, sociaux et culturels, qui prévoit à l'article 9 que "les Etats parties au présent Pacte reconnaissent le droit à toute personne à la sécurité sociale", le droit à la sécurité sociale doit être reconnu à toute personne.

Il s'agit là d'un principe de droit qui, à l'aube du XXI^e siècle, fonde la spécificité du modèle social européen dans le monde et sa mention dans la Charte me paraît constituer un devoir essentiel.

13. Article 34 - Accès aux services d'intérêt général

Les principes de l'égalité et de la liberté d'accès garanties à toute personne, tel qu'avancés en dernier lieu par la proposition de compromis des Professeurs BRAIBANT et MEYER en date du 13 juin 2000, constituent un seuil en deçà duquel la garantie de l'accès aux services d'intérêt économique général ne peut être apportée dans la vie réelle et il me paraît que le Présidium devrait tenir pleinement compte de cette proposition très adéquate.

Observations Dehousse.txt

Par ailleurs, j'ai pris note de l'invitation inscrite dans le document CONVENT 46 à vous transmettre des commentaires relatifs à ce texte.

A cet égard, lors de la réunion de la Délégation du Parlement Européen qui s'est tenue ce jeudi 31 août, Mme BERES, présidente de séance, a précisé que le document CONVENT 46 constituait un document technique que le Présidium n'avait du reste pas fait sien, du moins à ce jour -- comme le document le souligne indirectement lui-même.

De surcroît, il est également précisé que ce document "est amené à évoluer", ce qui me paraît également naturel.

Dans ces conditions, je ne désire faire aujourd'hui de commentaires ni sur ce que ce document contient ni sur ce qu'il ne contient pas.

Enfin je précise que j'ai mis dans la présente lettre l'accent sur une série de points qui me paraissent particulièrement importants, sans reprendre chacun des amendements que j'ai déposés antérieurement. Ceci ne signifie nullement que je renonce implicitement à ces amendements.

De même, j'ai délibérément omis de développer ici différents arguments dans la mesure où j'ai contresigné des observations formulées collectivement par les membres socialistes de la Délégation, comme j'ai marqué un accord pour partie sur les nouvelles considérations émises par le Professeur MEYER.

En vous remerciant d'avance de votre attention, je vous prie de croire, Monsieur le Directeur, en l'assurance de mes sentiments les meilleurs.

Jean-Maurice DEHOUSSE
Membre du Parlement Européen

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Fundamental.rights@consilium.eu.int

FINAL

ANDREW DUFF'S AMENDMENTS (DRAFT) TO CONVENT 45

**European Parliament
Brussels**

29 August 2000

PREAMBLE

1. — ~~The peoples of Europe have established an ever closer union between them and are resolved to share a peaceful future based on common values.~~

~~2. — The The European Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law. principles of peace, liberty, democracy, respect for human rights and the rule of law. Its task is to organise relations between its Member States and peoples in a manner demonstrating consistency and solidarity.~~

3. — ~~The Union contributes to the development of these common values while respecting The Union respects the diversity of the cultures and traditions of theits peoplesof Europe as well as the national identities of theits Member States and the organisation of their public authorities at national, regional and local levels.~~

~~levels; itThe Union promotes economic and social progress, ensures balanced and sustainable development, through asserts its identity in the world, protects the rights and interests of its citizens, develops an area of freedom, security and justice, and guarantees the free movement of persons, goods, capital and services.~~

4. — ~~In adopting this Charter the Union intends to enhance the protectionmake the overriding importance of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible. and their relevance more visible to its citizens.~~

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

Human Rights.

Enjoyment of these rights contained in this Charter entails responsibilities and duties with regard to ~~other persons, to the human community and~~ towards all other people and society as a whole, as well as to future generations.

7. ~~Each person is therefore guaranteed the rights and freedoms set out hereafter.~~ This Charter guarantees these fundamental rights and principles:

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person must be respected and protected.

Article 2. Right to life

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

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for ~~his~~ their physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition on making the human body ~~and~~ or its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

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

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

Article 5. Prohibition of slavery and forced labour

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

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of ~~the person~~.

Article 7. Respect for private and family life

Everyone has the right to respect for ~~his~~ their private and family life, ~~his~~ home and the confidentiality of ~~his~~ communications.

Article 8. Protection of personal data

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

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

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

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

~~Political parties at European level contribute to expressing the political will of the citizens of the Union.~~

Article 13. Freedom of research learning

The arts, teaching and scientific research shall be free of constraint.

Article 14. Right to education

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

Article 15. Freedom to choose an occupation work

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

Article 16. Freedom to conduct a business

The freedom to conduct a business is recognised.

Article 17. Right to property

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

Article 18. Right to asylum

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

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a sState where ~~he or she~~ could be subjected to the death penalty, torture or other inhuman or degrading treatment.

CHAPTER III. EQUALITY**Article 20. Equality before the law**

Everyone, ~~man or~~ and woman, is equal before the law.

Article 21. Equality and non-discrimination

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

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women ~~as regards~~ in the field of employment and work, including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for ~~disadvantages in professional careers~~.

Article 23. **Protection of children**

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

Article 24. **Integration of persons with disabilities**

Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV. SOLIDARITY

Article 25. **Workers' right to information and consultation within the undertaking**

Workers and their representatives must be guaranteed information and consultation in ~~good~~ reasonable time on matters which concern them within the ~~undertaking, in accordance with~~ Community law and national laws and practices.

Article 26. Right of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, ~~the right to striketake collective action to defend their interests, in accordance with Community law and national laws and practices.~~

Article 27. Right of access to placement services

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

Article 28. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Article 29. Fair and just working conditions

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

Article 30. Protection of young people at work

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

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

Article 31. **Reconciling family and professional life**

The family shall enjoy legal, economic and social protection.

Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 32. **Social security and social assistance**

1. The Union recognises and respects ~~the~~ entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, ~~in accordance with the rules laid down by Community law and national laws and practices.~~
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social ~~assistance~~ and housing ~~benefit welfare~~ in order to ensure a decent existence for persons lacking sufficient resources, ~~in accordance with the rules laid down by Community law and national laws and practices.~~

Article 33. **Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment ~~under the conditions established by national laws and practices.~~

Article 34. **Access to services of general economic interest**

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

Article 35. **Environmental protection**

All Union policies shall ensure the protection and ~~preservation of a good quality living environment and the improvement of the quality of the environment, taking into account in conformity with the~~ principle of sustainable development.

Article 36. **Consumer Protection**

Union policies shall ensure a high level of protection ~~as regards~~ for the health, safety and interests of consumers.

CHAPTER V. CITIZENSHIP**Article 37.** **Right to vote and to stand as a candidate in elections to the European Parliament**

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

Article 38. Right to vote and to stand as a candidate at municipal elections

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

Article 39. Right to good administration government

1. Everyone has the right to a democratic form of government.

21. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

32. This right includes:

- the right of every person to be heard before any individual measure which would affect him or her adversely is taken ~~in relation to him~~;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of business secrecy;
- the obligation of the administration to give reasons for its decisions.

43. Every person has the right to have the ~~Community~~ Union make good any damage caused by its institutions or by its servants in the performance of their duties, ~~in accordance with the general principles common to the laws of the Member States.~~

54. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.

Article 40. **Right of access to documents**

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

Article 41. **Ombudsman**

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

Article 42. **Right to petition**

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

Article 43. **Freedom of movement and of residence**

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

Article 44: **Diplomatic and consular protection**

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

CHAPTER VI. JUSTICE**Article 45. Right to an effective remedy and to a fair trial**

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 46. Presumption of innocence and right of defence

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

Article 47. Principles of legality and proportionality of criminal offences and penalties

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

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Article 48. **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

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

CHAPTER VII. GENERAL PROVISIONS

Article 49. **Scope**

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

Article 50. **Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Article 51. **Level of protection**

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

Article 52. Prohibition of abuse of rights

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

Article 53. Definition of citizenship

Any right, privilege or obligation pertaining to citizens of the Union may be extended in whole or in part to any natural or legal person by a legislative act of the Union where the extension of the scope of such rights shall not limit in any way those of the Union citizen.

Article 54. Informing the citizen

The Union's institutions and bodies and its Member States undertake to inform the citizen comprehensively ~~the citizen~~ of the rights and duties established by this Charter.

Dr Caspar Einem
Vertreter des Österreichischen Nationalrates im Konvent
UnivProf Dr **Michael Holoubek**
Stellvertreter

Wien, 31. 8. 2000

An das
Präsidium des Konvents zur
Erarbeitung der Europäischen Charta
der Grundrechte
zHdn des Stellvertretenden Vorsitzenden
Gunnar Jansson

Sehr geehrter Herr Jansson!

Gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren erlauben wir uns, folgende allgemeine Bemerkungen zum Gesamtentwurf der Europäischen Charta der Grundrechte zu übermitteln:

1. Wir möchten zunächst die Charta ausdrücklich als wesentlichen Schritt der Entwicklung der Europäischen Union und ihrer Mitgliedstaaten begrüßen. Auch danken wir dem Präsidium für die ausgezeichnete Arbeit, die es geleistet hat. Der vorliegende Entwurf ist eine gute und grundsätzlich zustimmungsfähige Grundlage für die weiteren Beratungen.
2. Wir treten der Stellungnahme, wie sie von Professor Jürgen Meyer abgegeben worden ist, bei. Darüber hinaus erlauben wir uns allerdings einige weite-

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re Anmerkungen zu machen, die wir Sie bitten, in die Endformulierung mit einzubringen:

3. Wir erachten die Verabschiedung einer für die Organe der Europäischen Union verbindlichen Grundrechtscharta für einen wesentlichen Schritt zu einer Rechtsgemeinschaft, in der der Einzelne, wohin er sich in der Europäischen Union auch begibt, stets davon ausgehen kann, dass er in Einklang mit einer gemeinsamen Ordnung von Grundwerten behandelt wird, dass er also berechtigt ist zu sagen „civis europæus sum“ und sich auf diesen Status berufen kann, um sich jeder Verletzung seiner Grundrechte zu widersetzen (vgl. in diesem Sinne die Ausführungen von Generalanwalt Jacobs, Rs C-168/91, Konstantinidis, Slg 1993, I-1191). In diesem Lichte ist es im Übrigen ausdrücklich zu begrüßen, dass Art 15 Abs 3 des vorliegenden Entwurfs auch Drittstaatsangehörige in den Schutzbereich der Berufsfreiheit mit einbezieht. Ebenso halten wir es, will man den Gedanken eines einheitlichen europäischen Grundrechtsraumes verwirklichen, für notwendig, dass Art 43 Abs 2 des Entwurfs das Recht auf Freizügigkeit für Staatsangehörige dritter Länder, die sich rechtmäßig im Hoheitsgebiet eines Mitgliedstaates der Union aufhalten, garantiert. Als bloße Ermächtigung, wie sie derzeit Art 43 Abs 2 des vorliegenden Entwurfs enthält, ist eine solche Bestimmung entbehrlich.

Es hieße freilich, die europäische Grundrechtstradition und auch den gemeinsamen Grundrechtsstandard, den zu erfassen ausdrücklicher Bestandteil des Kölner Auftrags des Konvents ist, zu verlassen, wenn eine Europäische Charta der Grundrechte verabschiedet würde, die keine ausdrückliche Garantie des Schutzes ethnischer, religiöser oder sprachlicher Minderheiten enthielte. Ein derartiges Recht ist als Bestandteil einer Europäischen Grundrechtscharta unverzichtbar. Den Angehörigen solcher Minderheiten ist Chancengleichheit und Gleichbehandlung zu garantieren. Als Mindest-

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standard, den eine Europäische Grundrechtscharta keinesfalls unterschreiten darf, um aus unserer Sicht zustimmungsfähig zu sein, muss daher jedenfalls ein Artikel über den Minderheitenschutz aufgenommen werden, der mindestens den Inhalt aufweist, den Sie, sehr geehrter Herr Jansson, in Ihrem Schreiben vom 21.7.2000 an die Vertreter der nationalen Parlamente im Grundrechtskonvent vorgeschlagen haben. Es darf im übrigen im Lichte der Haltung aller Fraktionen im österreichischen Parlament darauf hingewiesen werden, dass ein Text der Grundrechtscharta ohne jeden ausdrücklichen Minderheitenschutz wohl auch im Rat nur schwerlich Zustimmung finden wird, bedenkt man das Recht des Parlaments den österreichischen Ratsvertreter in dieser Frage rechtlich binden zu können.

Wir sind aber auch der Auffassung, dass schon in der Präambel unmißverständlich zum Ausdruck gebracht werden muss, dass die Europäische Union die im Folgenden in der Charta enthaltenen Rechte und Freiheiten nicht nur sichtbar macht und bekräftigt, sondern sie vor allem garantiert und gewährleistet. Dieses Anliegen könnte dadurch realisiert werden, dass in Punkt 5 der Präambel davon gesprochen wird, dass diese „Charta *gewährleistet und* bekräftigt ... die Rechte“, die sich aus den im Folgenden näher bezeichneten Quellen ergeben.

Der erwähnte Grundgedanke eines einheitlichen europäischen Grundrechtsraumes, in dem keine grundrechtsfreien Rechtsbeziehungen bestehen, ist zu vorderst durch die Bindung der Europäischen Union an die Europäische Charta der Grundrechte zu verwirklichen. Um diesem Anliegen umfassend Rechnung zu tragen müssen aber auch die Mitgliedstaaten nicht nur bei der unmittelbaren Durchführung, sondern immer im Anwendungsbereich des Rechts der Europäischen Union an die Rechte und Freiheiten der Charta gebunden werden. Art 49 sollte daher diesen einheitlichen europäischen

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Grundrechtsschutz auch dadurch zum Ausdruck bringen, dass „*diese Charta für die Organe und Einrichtungen der Union unter Einhaltung des Subsidiaritätsprinzips und für die Mitgliedstaaten im Anwendungsbereich des Rechts der Europäischen Union*“ gilt.

4. Wir sind der Auffassung, dass die Formulierung in Art 2 Abs 2 der Charta unmißverständlich zum Ausdruck bringt, dass auf dem Gebiete der Europäischen Union die Todesstrafe zu keiner Zeit und zu keinem wie immer garteten Zweck eingeführt, verhängt oder vollstreckt werden darf. Eine Anwendung des Horizontalartikels 50 auf dieses Recht schließen wir insofern aus, als das Verbot der Todesstrafe keinem allgemeinen Gesetzesvorbehalt im Sinne des Art 50 Abs 1 des Entwurfs unterliegen kann. Insofern gewährleistet die Charta – anders als die Erläuternden Bemerkungen zum Entwurf meinen – einen höheren Standard als Art 2 des 6. Zusatzprotokolls zur EMRK. Wir begrüßen dies ausdrücklich, da es keinen ersichtlichen Grund gibt, auch heute noch die Todesstrafe, selbst bloß für den Kriegsfall, aufrecht zu erhalten.

In systematischer Hinsicht ist weiters zu bemerken, dass entsprechend der grundsätzlichen Konzeption der Charta der „horizontale“ Gesetzesvorbehalt des Art 50 des vorliegenden Entwurfs die Basis für Einschränkungen und Ausgestaltungen der in der Charta anerkannten Rechte und Freiheiten darstellt. Im Lichte dieser Systementscheidung ist es inkonsequent, in einzelnen Artikeln ausdrücklich auf die Ausgestaltung durch das Gemeinschaftsrecht oder das Recht der Mitgliedstaaten zu verweisen. Diese Verweise auf das Recht der Europäischen Union oder mitgliedstaatliche Rechtsvorschriften sollten daher aus den betreffenden Artikeln eliminiert werden (konkret insbesondere aus den Artikeln 25, 26, 32, 33 und 34). Überdies würde damit einem weiteren Grundanliegen des Konvents Rech-

nung getragen, nämlich zu vermeiden, Aussagen über Kompetenzzuweisungen an die Europäische Union und/oder die Mitgliedstaaten vorzunehmen.

5. Das Recht auf persönliche Freiheit bildet eine der Wurzeln des europäischen Grundrechtsschutzes überhaupt. Im Kern dieses Rechts steht die Garantie, dass einem Menschen seine Freiheit nur in den gesetzlich vorgeschriebenen Fällen und nur auf Grund einer richterlichen Entscheidung entzogen werden darf. Dies sollte in Art 6 des vorliegenden Entwurfs auch ausdrücklich gesagt werden, weil ansonsten ein wesentlicher Inhalt des Rechts auf Freiheit und Sicherheit nicht ersichtlich wird.

Die Garantie der Versammlungs- und Vereinigungsfreiheit ist ein wesentlicher Bestandteil einer demokratischen Gesellschaftsordnung. Dies schließt in der europäischen Tradition das Recht der Gewerkschaftsbildung und der Gründung politischer Parteien mit ein. Art 12 des vorliegenden Entwurfs sollte die grundlegende Bedeutung dieses Rechts und seine historischen Traditionen unmißverständlich zum Ausdruck bringen, wie dies insbesondere die ursprüngliche Fassung des Art 17 (Convent 37 [Charte 4360/00] – *„Jede Person hat das Recht, sich frei und friedlich mit anderen zu versammeln und sich frei mit anderen zusammenzuschließen; dazu gehört auch das Recht, Gewerkschaften oder politische Parteien zu gründen und diesen beizutreten.“*) getan hat. Die auf eine Abänderung dieser Formulierung zielenden Änderungsvorschläge und Diskussionsbemerkungen bezogen sich hauptsächlich auf die Vermeidung von Überschneidungen mit einem eigenen Recht, politische Parteien zu gründen (Art 24 Convent 37). Durch die vom Präsidium gewählte kluge Vorgangsweise, diese Punkte in einen Artikel zusammenzuziehen, ist dieses Problem weggefallen.

Im Lichte der gemeinsamen Verfassungstraditionen der Mitgliedstaaten und der kulturellen Tradition Europas überhaupt sollte in Art 13 des Entwurfs ausdrücklich auch die Freiheit der Wissenschaft und die Freiheit der Kunst garantiert werden.

6. Der Grundsatz der Gleichheit zählt zu den Eckpfeilern europäischer Grundrechtstradition. Es ist ausdrücklich zu begrüßen, dass Art 22 des vorliegenden Entwurfs ausdrücklich dazu verpflichtet, die Gleichheit von Männern und Frauen auch tatsächlich sicherzustellen.

Für eine demokratische und soziale Gesellschaft ist es von entscheidender Bedeutung und Aussagekraft, wie sie die Rechte von Menschen schützt, die diese auf Grund ihres Lebensalters nicht in ausreichendem Maß selbst durchsetzen können. Daher zählt die Anerkennung der Persönlichkeitsrechte von Kindern ebenso zum essentiellen Bestandteil eines europäischen Grundrechtskatalogs wie eine Garantie, die die Lebensinteressen älterer Menschen grundrechtlich berücksichtigt. Art 23 Abs 1 des vorliegenden Entwurfs sollte das vordringliche Anliegen der Anerkennung der Persönlichkeitsrechte der Kinder (wie es etwa Art 23 Convent 37 in seiner ursprünglichen Fassung – *„Kinder müssen als eigenständige Personen behandelt werden und die Möglichkeit haben, auf Angelegenheiten, die sie selbst betreffen, entsprechend dem Grad ihrer persönlichen Reife Einfluss zu nehmen.“* – trefflich zum Ausdruck gebracht hat) ebenso zum Ausdruck bringen wie eine eigene Bestimmung über den Schutz der Lebensinteressen alter Menschen in die Grundrechtscharta aufzunehmen wäre.

Um in Art 31 des vorliegenden Entwurfs tatsächlich den Einklang von Familien- und Berufsleben herzustellen und nicht ausschließlich auf Aspekte im Zusammenhang mit der Geburt von Kindern abzustellen, sollte der An-

spruch auf Pflegeurlaub für pflegebedürftige nahe Angehörige in Art 31 Abs 2 des Entwurfs verankert werden.

Der gleiche Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse zu angemessenen und kontinuierlich gewährleisteten Bedingungen, der allen Menschen in der Europäischen Union gewährleistet ist, zählt zu den wesentlichen Errungenschaften europäischer Kultur und Tradition. Das Konzept der Dienste von allgemeinem wirtschaftlichen Interesse und die damit gewährleistete Versorgungssicherheit und soziale Versorgungsgerechtigkeit für die Bevölkerung ist eine genuin europäische Entwicklung. Es ist daher ausdrücklich zu begrüßen und unbedingt notwendig, dass eine Europäische Charta der Grundrechte eine Garantie des Zugangs zu derartigen Diensten von allgemeinem wirtschaftlichen Interesse enthält. Entsprechend der Tatsache, dass die Charta Rechte und Freiheiten garantiert, sollte auch Art 34 als Zugangsrecht zu derartigen Diensten formuliert werden.

Mit besten Empfehlungen

Caspar Einem

Michael Holoubek

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION

Änderungsanträge zu KONVENT 45 / Charte 4422/00

Verfasser: Dr. Ingo Friedrich, MdEP

1.
<p>Präambel Ziffer 3</p> <p>Die Union trägt zur Entwicklung dieser gemeinsamen Werte, <u>die auf die christlich-jüdischen und humanistischen Wurzeln zurückgehen</u>, bei. Sie achtet dabei die Vielfalt der Kulturen und Traditionen der Völker Europas sowie deren <u>nationale Identität</u> und die Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene; sie stellt durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung sicher.</p>
2.
<p>Art. 3: Recht auf Unversehrtheit</p> <p>(1) Jede Person hat das Recht auf körperliche und psychische Unversehrtheit.</p> <p>(2) Im Rahmen der Medizin sowie <u>der Forschung und Wissenschaft</u> müssen folgende Grundsätze eingehalten werden:</p> <ul style="list-style-type: none"> - Streichung - Verbot eugenischer Praktiken, welche die Auswahl von Personen zum Ziel haben; - Verbot, den menschlichen Körper <u>oder</u> Teile davon <u>als solche</u> zur Erzielung von Gewinnen zu nutzen; - Verbot des Klonens von Menschen <u>in allen Stadien ihrer Entwicklung</u>.
3.
<p>Artikel 7: Achtung des Privat-, <u>Ehe</u> und Familienlebens</p> <p>Jede Person hat das Recht auf Achtung ihres Privat-, <u>Ehe-</u> und Familienlebens, ihrer <u>Wohn- und Geschäftsräume</u> sowie ihrer Kommunikation.</p>
4.
<p>Artikel 8: Schutz personenbezogener Daten</p> <p>Jede Person hat das Recht auf Schutz der sie betreffenden personenbezogenen Daten.</p> <p>Streichung des 2. Satzes Streichung des 3. Satzes Streichung des 4. Satzes</p>
5.
<p>Artikel 10: Gedanken-, Gewissens- und Religionsfreiheit</p> <p>Jede Person hat das Recht auf Gedanken-, Gewissens- und Religionsfreiheit. Dieses Recht umfaßt die Freiheit, seine Religion oder Weltanschauung zu wechseln, und die Freiheit, seine Religion oder Weltanschauung einzeln oder gemeinsam mit anderen öffentlich oder privat durch Gottesdienst, Unterricht, Bräuche und Riten zu bekennen. <u>Die Religionsfreiheit schließt das das Recht von Kirchen und Religionsgemeinschaften zur Ordnung und Verwaltung ihrer Angelegenheiten nach den einzelstaatlichen Gesetzen ein.</u></p>
6.
<p>Artikel 11: Freiheit der Meinungsäußerung und Informationsfreiheit</p> <p>(1) Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben.</p>

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(2) Presse, Rundfunk, Film und die übrige an die Allgemeinheit gerichtete Kommunikation sind frei und unabhängig.

(3) Eine Zensur findet nicht statt.

7.

Artikel 12: Versammlungs- und Vereinigungsfreiheit

(1) Jede Person hat das Recht, sich insbesondere im politischen, gewerkschaftlichen und staatsbürgerlichen Bereich frei und friedlich mit anderen zu versammeln und sich frei mit anderen zusammenzuschließen.

(2) Politische Parteien auf europäischer Ebene tragen dazu bei, den politischen Willen der Unionsbürger zum Ausdruck zu bringen.

Diese politischen Parteien müssen die durch diese Charta gewährleisteten Rechte und Freiheiten achten.

8.

Artikel 13 Freiheit der Wissenschaft, Forschung und Lehre

Wissenschaft, Forschung und Lehre sind frei.

9.

Artikel 14: Recht auf Bildung

(1) Niemand darf das Recht zur Bildung verwehrt werden.

Der Zugang zur beruflichen Ausbildung und Weiterbildung nach Maßgabe der einzelstaatlichen Vorschriften ist zu achten.

(2) Die Freiheit zur Gründung von Lehranstalten unter Achtung der demokratischen Grundsätze sowie das Recht der Eltern, die Erziehung und den Unterricht ihrer Kinder entsprechend ihren eigenen religiösen, weltanschaulichen und erzieherischen Überzeugungen sicherzustellen, werden nach den einzelstaatlichen Regeln für ihre Ausübung gewährleistet.

10.

Artikel 15: Berufsfreiheit

(1) Jeder Unionsbürger hat das Recht, einen frei gewählten Beruf auszuüben, um seinen Lebensunterhalt zu verdienen.

(2) Jeder Angehörige eines Mitgliedstaats der Europäischen Union hat die Freiheit, in einem anderen Mitgliedstaat unter den gleichen Bedingungen wie die Angehörigen dieses Mitgliedstaats zu arbeiten, sich niederzulassen oder Dienstleistungen zu erbringen oder in Anspruch zu nehmen.

(3) Die Staatsangehörigen dritter Länder, die rechtmäßig im Hoheitsgebiet der Mitgliedstaaten arbeiten, haben Anspruch auf Arbeitsbedingungen, die denen der Unionsbürger entsprechen.

Dies umfasst nicht das Recht auf Zugang zum Arbeitsmarkt.

11.

Artikel 18: Asylrecht

Der Schutz politisch verfolgter Personen, die nicht der Union angehören, wird nach Maßgabe des Genfer Abkommens vom 28. Juli 1951 und des Protokolls vom 31. Januar 1967 über die Rechtsstellung von Flüchtlingen gewährt.

12.

(neu) 19a Recht auf Heimat

Die Bürger der Europäischen Union haben ein Recht auf ihre Heimat. Niemand darf durch Gewalt oder Zwang aus seiner angestammten Heimat, seiner Wohnstätte und seinem Land vertrieben oder zur Flucht genötigt werden. Vertriebene und Flüchtlinge haben das Recht auf Rückkehr in ihre angestammte Heimat.

13.

(neu) 19b Minderheitenschutz

Die Identität und die Rechte von historisch gewachsenen und alteingesessenen Minderheiten und ihren Angehörigen

sowie die sprachliche und kulturelle Vielfalt in der Europäischen Union werden geachtet und geschützt.
14.
Artikel 20: Gleichheit vor dem Gesetz Alle Menschen sind vor dem Recht gleich.
15.
Artikel 21: Gleichheit und Nichtdiskriminierung (1) Diskriminierungen insbesondere wegen des Geschlechts, der Rasse, der Hautfarbe, der ethnischen oder sozialen Herkunft, der genetischen Merkmale, der Sprache, der Religion oder der Weltanschauung, der politischen oder sonstigen Anschauung, der Zugehörigkeit zu einer nationalen Minderheit, der Geburt, einer Behinderung, des Alters oder der sexuellen Ausrichtung sind verboten.
16.
Artikel 22: Gleichheit von Männern und Frauen (1) Die Chancengleichheit und Gleichbehandlung von Männern und Frauen in den Bereichen Arbeit und Beschäftigung, einschließlich des Grundsatzes des gleichen Entgelts bei gleicher oder gleichwertiger Arbeit, sind sicherzustellen. (2) Der Grundsatz der Gleichbehandlung steht der Beibehaltung oder der Einführung spezifischer Vergünstigungen durch die Mitgliedstaaten zur Erleichterung der Berufstätigkeit des unterrepräsentierten Geschlechts oder zur Verhinderung oder zum Ausgleich von Benachteiligungen in der beruflichen Laufbahn nicht entgegen.
17.
Artikel 24: Integration von behinderten Menschen Behinderte Menschen haben Anspruch darauf, daß für sie Maßnahmen zur Gewährleistung ihrer Eigenständigkeit, ihrer sozialen und beruflichen Eingliederung und ihrer Teilnahme am Leben der Gemeinschaft nach Maßgabe der einzelstaatlichen Gesetze getroffen werden..
18.
Artikel 25: Recht auf Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen Für die Arbeitnehmer oder deren Vertreter muß eine rechtzeitige Unterrichtung und Anhörung zu den sie betreffenden Fragen im Unternehmen nach dem Gemeinschaftsrecht und nach den einzelstaatlichen Rechtsvorschriften und Gepflogenheiten gewährleistet sein.
19.
Artikel 28 :Schutz bei ungerechtfertigter Entlassung Jeder Arbeitnehmer hat Anspruch auf Schutz vor willkürlicher Entlassung.
20.
Artikel 29: Gerechte und angemessene Arbeitsbedingungen (1) Jeder Arbeitnehmer hat das Recht auf gesunde, sichere und würdige Arbeitsbedingungen. (2) Jeder Arbeitnehmer hat das Recht auf eine Begrenzung der Höchstarbeitszeit, auf Ruhezeiten sowie auf bezahlten Jahresurlaub.
21.
Artikel 31: Einklang von Familien- und Berufsleben (1) Der rechtliche, wirtschaftliche und soziale Schutz der Familie wird nach Maßgabe der einzelstaatlichen Gesetze gewährleistet. (2) Das Recht auf Schutz vor Entlassung bei Mutterschaft sowie der Anspruch auf einen bezahlten Mutterschaftsurlaub und auf einen Elternurlaub nach der Geburt oder Adoption eines Kindes sind zu achten.
22.

Artikel 32: Soziale Sicherheit und soziale Unterstützung

- (1) Die Union anerkennt und achtet das Recht auf Zugang zu den Leistungen der sozialen Sicherheit und zu den sozialen Diensten, die bei Mutterschaft, bei Krankheit, bei einem Arbeitsunfall, bei Pflegebedürftigkeit oder im Alter sowie bei Verlust des Arbeitsplatzes Schutz gewährleisten, nach Maßgabe des Gemeinschaftsrechts und der einzelstaatlichen Rechtsvorschriften und Gepflogenheiten.
- (2) Arbeitnehmer, die Angehörige eines Mitgliedstaates sind und ihren Beschäftigungsort in einem anderen Mitgliedstaat haben sowie ihre Familienangehörigen haben nach Maßgabe des Gemeinschaftsrechts Anspruch auf die gleichen Leistungen der sozialen Sicherheit, auf die gleichen sozialen Vergünstigungen und auf den gleichen Zugang zur Gesundheitsfürsorge wie die Angehörigen dieses Mitgliedstaats.
- (3) Die Union anerkennt und achtet das Recht auf eine soziale Unterstützung und eine Wohnungsbeihilfe, die für jede Person, die nicht über ausreichende Mittel verfügt, ein menschenwürdiges Dasein sicherstellen sollen, nach Maßgabe des Gemeinschaftsrechts und der einzelstaatlichen Rechtsvorschriften und Gepflogenheiten.

23.

Artikel 34: Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse
Streichung

24.

Artikel 35 Umweltschutz

Der Schutz und die Erhaltung der Umwelt sowie die Verbesserung ihrer Qualität werden zur Förderung einer nachhaltigen Entwicklung durch alle Politiken der Union auf hohem Niveau sichergestellt.

25.

Artikel 37: Aktives und passives Wahlrecht bei den Wahlen zum Europäischen Parlament

- (1) Jeder Unionsbürger besitzt in dem Mitgliedstaat, in dem er seinen Wohnsitz hat, das aktive und passive Wahlrecht bei den Wahlen zum Europäischen Parlament, wobei für ihn dieselben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaats.
- (2) Die Mitglieder des Europäischen Parlaments werden in allgemeiner, unmittelbarer, freier und geheimer Wahl gewählt.
- (3) Das Nähere wird durch das Gemeinschaftsrecht geregelt.

26.

Artikel 39: Recht auf eine gute Verwaltung

- (1) Jede Person hat ein Recht darauf, daß ihre Angelegenheiten von den Organen und Einrichtungen der Union unparteiisch, gerecht und innerhalb einer angemessenen Frist behandelt werden.
- (2) Dieses Recht umfaßt insbesondere
 - das Recht einer jeden Person, gehört zu werden, bevor ihr gegenüber eine für sie nachteilige, individuelle Maßnahme getroffen wird,
 - das Recht einer jeden Person auf Zugang zu den sie betreffenden Akten unter Wahrung des legitimen Interesses der Vertraulichkeit und des Geschäftsgeheimnisses,
 - die Verpflichtung der Verwaltung, ihre Entscheidungen zu begründen.
- (3) Streichen

(4) Jede Person kann sich in einer der Amtssprachen der Organe der Union an diese wenden und eine Antwort in derselben Sprache erhalten.

27.

Artikel 40: Recht auf Zugang zu Dokumenten

Streichung

28.

Artikel 41: Der Bürgerbeauftragte

Jeder Unionsbürger sowie jede natürliche oder juristische Person mit Wohnsitz oder satzungsmäßigem Sitz in einem Mitgliedstaat hat das Recht, Beschwerden über Mißstände in der Verwaltung der Organe und Einrichtungen der Gemeinschaft, mit Ausnahme des Gerichtshofs und des Gerichts erster Instanz in Ausübung ihrer Rechtsprechungsbe-fugnisse, an den Bürgerbeauftragten zu richten

29.

Artikel 45: Recht auf einen wirksamen Rechtsbehelf und ein unparteiisches Gericht

(1) Jede Person, deren Rechte oder Freiheiten durch die öffentliche Gewalt verletzt worden sind, hat das Recht, bei einem Gericht einen Rechtsbehelf einzulegen.

(2) Jede Person hat ein Recht darauf, daß ihre Sache von einem unabhängigen, unparteiischen und zuvor durch Gesetz errichteten Gericht in einem fairen Verfahren, öffentlich und innerhalb angemessener Frist verhandelt wird. Jede Person hat die Möglichkeit, sich beraten, verteidigen und vertreten zu lassen.

(3) Streichung

30.

Artikel 47: Grundsätze der Gesetzmäßigkeit und der Verhältnismäßigkeit im Zusammenhang mit Straftaten und Strafen

(1) Niemand darf wegen einer Handlung oder Unterlassung verurteilt werden, die zur Zeit ihrer Begehung nach innerstaatlichem oder internationalem Recht nicht strafbar war. Es darf auch keine schwerere Strafe als die zur Zeit der Begehung angedrohte Strafe verhängt werden. Wird nach Begehung dieser Straftat durch Gesetz eine mildere Strafe eingeführt, so ist diese zu verhängen.

(2) Dieser Artikel schließt nicht aus, daß jemand wegen einer Handlung oder Unterlassung verurteilt oder bestraft wird, die zur Zeit ihrer Begehung nach internationalem Recht strafbar war.

(3) Das Strafmaß muß im Verhältnis zur Schwere der Straftat und zur Schuld des Täters stehen.

31.

Kapitel VII Allgemeine Bestimmungen

Artikel 49: Anwendungsbereich

(1) Diese Charta gilt für die Organe und Einrichtungen der Union unter Einhaltung des Subsidiaritätsprinzips und für die Mitgliedstaaten ausschließlich bei der Anwendung des Rechts der Union. Dementsprechend achten sie die Rechte, halten sie sich an die Grundsätze und fördern sie deren Anwendung gemäß ihren jeweiligen Zuständigkeiten.

(2) Diese Charta begründet weder neue Zuständigkeiten noch neue Aufgaben für die Gemeinschaft und für die Union, noch ändert sie die in den Verträgen festgelegten Zuständigkeiten und Aufgaben.

(3) neu Die durch diese Charta gewährleisteten Rechte und Freiheiten gelten auch für juristische Personen und sonstige Vereinigungen, soweit sie ihrem Wesen nach auf diese anwendbar sind.

FRIEDRICH**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****Änderungsvorschlag zu Ziffer 3 der Präambel aus dem Dokument Charte 4422/00****Verfasser: Dr. Ingo Friedrich, MdEP****Textvorschlag:**

Neuer Text:

Die Union trägt zur Entwicklung dieser gemeinsamen Werte, die auf die christlich-jüdischen und humanistischen Wurzeln zurückgehen, bei. Sie achtet dabei die Vielfalt der Kulturen und Traditionen der Völker Europas sowie der nationalen Identität der Mitgliedstaaten und der Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene; sie stellt durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung sicher.

Begründung:

Auch bei einer strikten Trennung von Kirche und Staat dürfen die Menschen nicht diskriminiert werden, die sich auf Gott als Quelle der Grundwerte beziehen. Dies trifft mit Sicherheit auf den größten Teil der Bürger Europas zu.

Bei strikter Neutralität wäre eine Anlehnung an die polnische Verfassung auch denkbar: Die Völker Europas haben untereinander eine immer engere Union begründet und beschlossen, eine friedliche Zukunft zu teilen, die auf den Werten gründet, die den Menschen gemein sind, die an Gott als Quelle der Wahrheit und Gerechtigkeit glauben, wie auch den Menschen, die diese universellen Werte aus anderen Quellen ableitend achten.

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GNAUCK

Erfurt, den 31.08.2000

Entwurf der Charta der Grundrechte der Europäischen Union

Allgemeine Bemerkungen des Vertreters des Bundesrates im Konvent, Herrn Minister Jürgen Gnauck, zu dem Dokument CONVENT 45 vom 28. Juli 2000

Der vom Präsidium vorgeschlagene vollständige Text (CONVENT 45) kann insgesamt gesehen **mitgetragen** werden; er stellt eine gute Grundlage für die abschließenden Beratungen dar.

Es erscheint jedoch angebracht, den Entwurf als **Rechtstext** in einigen entscheidenden Punkten präziser zu fassen, die bereits in der rechtswissenschaftlichen Diskussion in Deutschland aufgegriffen worden sind. So bestimmt der Entwurf nicht mit hinreichender Klarheit, welche Gewährleistungen als unmittelbar geltende subjektive Rechte gedacht sind. Dies wirkt sich insbesondere im Bereich der sozialen Rechte aus, hinsichtlich derer klargestellt werden sollte, dass sie als Besitzstand aus der Europäischen Sozialcharta entnommen und fortgeschrieben wurden, ohne indes die rechtliche Ausrichtung der Sozialcharta aufzugeben, die nicht unmittelbar subjektive Leistungsrechte verleihen will. Ferner bleibt unklar, in welchen Fällen es eine sogenannte Drittwirkung, d.h. eine Wirkung zwischen Privaten geben soll. Schließlich bleiben die Einschränkungsmöglichkeiten jener Rechte undeutlich, die keine Entsprechung in der EMRK haben und hinsichtlich derer somit nicht auf die dortigen Kautelen zurückgegriffen werden kann.

Im Übrigen ist darauf hinzuweisen, dass angesichts des Prinzips der begrenzten Einzelermächtigung eine Reihe von Grundrechten keine rechtliche Bedeutung erhalten werden. Gerade in diesen Fällen muss eine Harmonisierung und insbesondere Nivellierung der in den Mitgliedstaaten und Regionen geltenden Grundrechte ausgeschlossen sein.

Im Einzelnen wären noch **folgende Verbesserungen wesentlich**:

1. Präambel Ziffer 1

Es wird weiterhin angeregt, dass die Eingangsformel der Präambel die **christlichen und humanistischen Grundlagen Europas** deutlich macht. Dies wäre mit einem **Hinweis auf Gott** verbunden. So könnte man an die ausgewogene Einleitung der Verfassung der Republik Polen vom 2. April 1997 anknüpfen, die sowohl diejenigen anspricht, die an Gott glauben, als auch diejenigen, die diesen Glauben nicht teilen, sondern die universellen Werte aus anderen Quellen ableiten.

2. Präambel Ziffer 2

Es wäre besser, im ersten Halbsatz statt von „Würde der Männer und der Frauen“ von der **„Würde des Menschen“** zu sprechen. Dies entspräche Artikel 1 und würde einer möglicherweise verkürzten Sichtweise (Würde der Kinder?) entgegen wirken. Weiter sollte im 2. Halbsatz der **Grundsatz der Subsidiarität** genannt werden.

3. Präambel Ziffer 3

Es wird empfohlen, auf den **letzten Halbsatz** in Ziffer 3 zu **verzichten**. Die enge Verknüpfung zwischen dem freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr

auf der einen und der Sicherstellung einer ausgewogenen nachhaltigen Entwicklung auf der anderen Seite würde einer zu engen, rein ökonomischen Nachhaltigkeitsdefinition Vorschub leisten. Dies widerspräche dem völker- und europarechtlichen Verständnis des Nachhaltigkeitsprinzips als Trias ökonomischer, sozialer und ökologischer Zielsetzungen und könnte daher vor allem im Zusammenspiel mit Artikel 35 zu der missverständlichen Interpretation von Nachhaltigkeit als einer Begrenzung des Umweltschutzes führen.

4. Artikel 3 Absatz 2

In Absatz 2 sollte der dritte Anstrich wie folgt formuliert werden: „Verbot, den menschlichen Körper und Teile davon als solche zur Erzielung von Gewinnen zu nutzen.“ Durch den Einschub der Worte „als solche“ würde die **Konformität mit Artikel 21 der Biomedizin-Konvention** gewahrt, der Grundlage der Formulierung der Charta ist. Ziel der Bestimmung in der Biomedizin-Konvention wie in der Charta ist schließlich, dass die Gewinnerzielung bei Organ- und Gewebehandel als solche, also insbesondere seine Kommerzialisierung, verboten werden soll, nicht aber Arzneimittel und Patente auf Gene.

5. Artikel 10

Es erscheint weiterhin wichtig, das **Recht zur Kriegsdienstverweigerung** als Bestandteil der Gewissensfreiheit in der Charta zu verankern.

6. Artikel 11

In **Absatz 1** sollte es eingangs „Jeder“ statt „Jede Person“ lauten, um klarzustellen, dass das Recht auf freie Meinungsäußerung nicht nur natürlichen, sondern zudem **juristischen Personen** zusteht. Im Übrigen wird angeregt, eine allgemeine Bestimmung zu den juristischen Personen und sonstigen Vereinigungen aufzunehmen (siehe unten Ziffer 16).

Die derzeitige Regelung der **Medien- und Informationsfreiheit** in **Absatz 2** erscheint nicht tragbar, insbesondere die Erwähnung des sehr auslegungsbedürftigen und missverständlichen Begriffes „Pluralismus“. Weiter wäre es wünschenswert, ausdrücklich ein Zensurverbot aufzunehmen. Artikel 11 Absatz 2 sollte daher wie folgt formuliert werden: „Presse, Rundfunk, Film und die übrige an die Allgemeinheit gerichtete Kommunikation sind frei und unabhängig. Eine Zensur findet nicht statt.“

In einem **neuen Absatz 3** sollte die **Freiheit der Kunst** ausdrücklich erwähnt werden. Gerade im Bereich der Kunst, d.h. in Architektur, Musik, Bildender Kunst, dem Schauspiel sowie in Film und Rundfunk zeigt sich das spezifisch europäische Erbe. Ein entsprechender neuer Satz 3 könnte lauten: „Die Kunst ist frei.“

7. Artikel 12 Abs. 1

Zur Klarstellung und Präzisierung wird angeregt, hinter dem Passus „friedlich“ den Zusatz „**ohne Waffen**“ einzufügen, so dass die Vorschrift lauten könnte: „Jede Person hat das Recht, sich insbesondere im politischen, gewerkschaftlichen und staatsbürgerlichen Bereich frei und friedlich ohne Waffen mit anderen zu versammeln und sich frei mit anderen zusammenzuschließen.“

8. Artikel 13

Es ist unverständlich, dass nur die Freiheit der Forschung, nicht aber die **Freiheit der Wissenschaft** allgemein und der **Freiheit der Lehre** in den Text der Vorschrift aufgenommen worden ist. Daher wird folgende weiter gehende Formulierung empfohlen: „Wissenschaft, Forschung und Lehre sind frei.“

9. Artikel 15/Artikel 16

Die Berufsfreiheit und die unternehmerische Freiheit sollten den **Unionsbürgerinnen- und -bürgern** vorbehalten bleiben. Es erscheint nicht sinnvoll, diese Grundrechte auch Drittstaatsangehörigen zu öffnen, da dies faktisch zu einer personellen Ausweitung der den Unionsbürgern zukommenden Grundfreiheiten des EG-Vertrages führen würde. Zudem besteht die Gefahr, dass bestimmte Beschränkungen im EG-Vertrag und in den Abkommen mit Drittstaaten unterlaufen werden. Nur so wird man zudem dem Mandat von Köln gerecht, dass es auch Rechte geben soll, die nur für die Unionsbürger gelten.

10. Artikel 18

Der Wortlaut gibt die Position des Konvents, dass Artikel 18 kein individuell einklagbares Recht auf Asyl verbürgt, nicht hinreichend zweifelsfrei wieder. Daher empfiehlt sich folgende Formulierung: „Der Schutz politisch verfolgter Personen, die nicht der Union angehören, wird nach Maßgabe des Genfer Abkommens vom 28. Juni 1951 und des Protokolls vom 21. Januar 1967 über die Rechtsstellung von Flüchtlingen gewährt.“

11. Artikel 22

Es wird vorgeschlagen, in Artikel 22 einen **neuen Absatz 1** einzufügen: „Frauen und Männer sind gleichberechtigt.“

Weiter erscheint es angebracht, in den „Erläuterungen“ zu Artikel 3 darauf hinzuweisen, dass die Beschneidung der weiblichen Genitalien eine gravierende Verletzung der körperlichen Unversehrtheit darstellt.

12. Artikel 23

In Absatz 2 empfiehlt sich eine **Angleichung** an die entsprechende **Formulierung in dem UN-Übereinkommen über die Rechte des Kindes** (Artikel 3 Abs. 1): „Bei allen Kinder betreffenden Maßnahmen öffentlicher oder privater Einrichtungen ist das Wohl des Kindes ein Gesichtspunkt, der vorrangig zu berücksichtigen ist.“

13. Artikel 32

Die Aufzählung in **Absatz 1** nach den Worten „sozialen Diensten“ bezieht sich sinngemäß nicht auf „soziale Dienste“, sondern auf „soziale Sicherheit“, und müsste daher nach den Worten „soziale Sicherheit“ folgen. Im Übrigen ist die Aufzählung nicht abschließend, was mit dem Wort „insbesondere“ zum Ausdruck gebracht werden sollte. Außerdem ist das wichtige Risiko der Invalidität zu erwähnen.

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Es erscheint notwendig, in **Absatz 2** die Worte „nach Maßgabe des Gemeinschaftsrechts“ einzufügen. Das geltende Gemeinschaftsrecht enthält nämlich, vor allem im Hinblick auf Familienangehörige, Einschränkungen gegenüber dem formulierten Gleichbehandlungsgrundsatz, die allerdings zu kompliziert sind, um in die Chartavorschrift aufgenommen zu werden. Durch die Charta sollen in diesem Bereich keinesfalls finanzielle Lasten begründet werden, die derzeit nicht bestehen.

Darüber hinaus ist es zwingend erforderlich, das Wort „Wohnsitz“ durch das Wort „Beschäftigungsort“ zu ersetzen. Im Bereich der sozialen Sicherheit knüpft das Gemeinschaftsrecht an den „Beschäftigungsort“ (lex loci laboris) an. Nach alledem empfiehlt sich folgende Fassung des Absatzes 2: „Arbeitnehmer, die Angehörige eines Mitgliedstaates sind und ihren Beschäftigungsort in einem anderen Mitgliedstaat haben sowie ihre Familienangehörigen haben nach Maßgabe des Gemeinschaftsrechts Anspruch auf die gleichen Leistungen der sozialen Sicherheit, auf die gleichen sozialen Vergünstigungen und auf den gleichen Zugang zur Gesundheitsfürsorge wie die Angehörigen dieses Mitgliedstaates.“

14. Artikel 34

Der **letzte Halbsatz** „um den sozialen und territorialen Zusammenhalt der Union zu fördern“ sollte **entfallen**. Seine Übernahme aus Artikel 16 EGV in ein Grundrecht wirkt sinnentstellend.

15. Artikel 35

Die **Formulierung des Artikels 35** sollte sich stärker an Artikel 6 und an Artikel 174 EGV orientieren. Damit soll vor allem vermieden werden, dass das bisher im EG-Vertrag verankerte Schutzniveau durch die Bezugnahme auf den völlig unbestimmten Begriff der „hohen Lebensqualität“ nivelliert werden könnte. Es wird daher folgende Formulierung vorgeschlagen: „Der Schutz und die Erhaltung der Umwelt sowie die Verbesserung ihrer Qualität werden zur Förderung einer nachhaltigen Entwicklung durch alle Politiken der Union auf hohem Niveau sichergestellt.“

16. Allgemeine Bestimmungen

Um Unklarheiten und Schwierigkeiten bei der Auslegung zu vermeiden, sollten in einer allgemeinen Bestimmung klargestellt werden, dass **juristische Personen** und **sonstige Vereinigungen** Träger von Grundrechten sein können. Es wird daher folgende Formulierung vorgeschlagen: „Die in der Charta aufgeführten Rechte und Freiheiten gelten auch für juristische Personen und für sonstige Vereinigungen mit Sitz in der Europäischen Union, soweit sie ihrem Wesen nach auf diese anwendbar sind.“

Bereits mit Schreiben vom 21. August 2000 habe ich mitgeteilt, dass der **Schutz von Minderheiten** ausdrücklich in der künftigen Charta Aufnahme finden muss. Dabei sollte allerdings die Formulierung so gewählt werden, dass die betroffenen Personen aus dem Minderheitenschutz keine Leistungsansprüche gegenüber der Europäischen Union herleiten könnten.

Lord Goldsmith
STATEMENT OF REASONS FOR PROPOSED AMENDMENTS TO
CONVENT 45

Comments on Specific Articles

THE PREAMBLE

General: The Preamble should reflect the purpose of the Charter and should also be legally accurate. Point 7 in particular gives a false impression as to the purpose of the Charter. It is also appropriate to use the Preamble to help maintain the balance referred to in my letter of general comments - so the proposed Article 3a. The reasons for the individual changes are as follows:

Point 1:

Amend to:

“The peoples of Europe in developing an ever closer Union are resolved to share a peaceful future based on common values”

Reasons: The Praesidium text is not a necessary statement in the Preamble; it is more appropriate to a Constitution which this document is not. However, if something along these lines is to be included, the proposed amendment is a more accurate statement of the position; compare Preamble to Treaty of Amsterdam

Point 2:

Amend to:

“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to

all Member States”

Reason: this is the statement in Article 6(1) of the Treaty of Amsterdam. It is neither desirable nor within the powers of the Convention to amend the Treaty.

Point 3:

Amend to:

“The Union contributes to the maintenance of these principles while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to ensure balanced, socially cohesive and sustainable development through the free movement of persons, goods, capital and services and the freedom of establishment.”

Reasons: To make the statement legally accurate; the Treaty does not provide for the development of common values. To add a reference here to social cohesion (a better expression in the English text than “solidarity”) and to add a reference to freedom of establishment.

New point 3a:

Add:

“The Union is committed to action for jobs, innovation, economic reform and social cohesion”

Reason: It is appropriate that the Charter should recognise explicitly the agenda of the Union as reflected in the Conclusions of the Feira Council para 19)

Point 4:

Amend to:

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“At this stage in the Union’s development and in the light of changes in society, social progress, and scientific and technological developments, there is a need to consolidate in a Charter the fundamental rights and freedoms, including principles common to Member States, to make them more visible”

Reason: This is closer to the Cologne Conclusions which are our mandate. However, this formulation adds references to changes (as in the Praesidium draft) and introduces the concept of principles.

Point 5:

Amend to:

“This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principles of subsidiarity, these rights, freedoms and principles and as they result from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights and taking account of the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.”

Reason: To delete the reference to “in particular” as there is nothing else; to include a reference to principles. And to recognise the somewhat different status of the Social Charters in the exercise as recognised explicitly in the Cologne Conclusions which uses this different language to which this text is faithful.

Point 6a:

Add:

“The dignity of the person, from which all individual rights and freedoms flow, must

be respected and protected.”

Reason: This concept appears best in the Preamble or as an introductory principle and not in a substantive article. This recognises its overriding importance as the justification from which all other rights flow.

Point 7:

Amend to:

“This Charter therefore sets out the rights, freedoms and principles which must be respected by the Union’s institutions and bodies, as well as by the Member States when they implement Union law so as to fulfil all the values set out above and the task of the Community

Reason: This is a more accurate statement of the purpose of the Charter. It is inappropriate to say that the Charter “guarantees” rights and freedoms especially when many of the provisions are in fact already guaranteed by national constitutions and laws as well as by the ECHR. Further it implies all that follows can be the subject of individual action in Court which cannot be stated to be the intention of the Charter.

INDIVIDUAL ARTICLES

The changes in the individual articles are to give effect to the points made in my letter of general comments. A number are therefore to align the text more closely with the corresponding ECHR articles: see eg Articles 2,7, 11, 12, 13,14, 17, 45. Others are to achieve a more consistent approach to setting certain economic and social rights as principles whose content is defined by national law and practice or by Community law where it exists; see eg Articles 24, 28,29, 33. The essential changes to the horizontal articles and other articles are also explained.

Article 1 : Dignity of the person

Reword as Introductory Principle:

“All fundamental rights of the individual flow from the dignity of the person and the equality of each and every person before the law”

It has previously been suggested that this reference should be moved to the Preamble. I consider that would be a better place for this important concept. I have serious reservations as to this remaining as a substantive provision where the content and definition of the right is legally uncertain. It is not a provision common to the constitutional traditions of all Members States.

Article 2 : Right to life

Amend to “*Everyone’s right to life shall be protected by law.*”

Reasons: The formulation of the right needs to be aligned with the ECHR, otherwise there is a risk of confusion about its meaning.

Article 3 : Right to the integrity of the person

Amend to:

“In the application of biology and medicine everyone has the right to respect of his or her physical and mental integrity in the conditions recognised by national law and practice. This includes respect for the following principles:

- *respect for the informed consent of the patient subject to the limitations recognised by law*
- *prohibition of making the human body and its parts as such a source of financial gain*
- *prohibition of the reproductive cloning of human beings.*”

Reasons: This article is intended to cover aspects of bioethics which figure in the Council of Europe Convention on Human Rights and Biomedicine. However, there are difficulties in achieving that end because the Convention has not yet been ratified by the majority of Member States.

The drafting needs to recognise that we are at this intermediate stage of development in this field and focus therefore on those areas which are presently the subject of national laws whilst recognising the limitations and conditions of the Biomedicine Convention.

An additional but important problem is that the first paragraph has now been separated from the concept of bioethics, giving rise to an apparent right of potentially great width. That would be unacceptable.

There are also certain important drafting changes:

- The reference to eugenic practices has been deleted as the expression is too vague and how it is intended to apply to prenatal diagnosis is uncertain.
- It is important to include the words “as such” (which reflect the Biomedicine Convention) so as to prevent the sale of blood, organs, etc, but to allow for the development of, for example, pharmaceutical products from research on donated tissue.

Article 5(3): Trafficking

Comment: There is no difficulty accepting the principle in Article 5(3), but it is important to be able to point to an appropriate legal base so that the reader of the Charter can find out what is meant legally by the terms “trafficking” and “human beings” and what protection is available. The legal sources referred to in Convent 46 do not answer any of these questions and are in any case not part of EU law. This matter requires further discussion in the Convention.

Article 7 : Respect for private and family life

Amend to:

“Everyone has the right to respect for his private and family life, his home and his communications”

Reasons: Deleting the words “the confidentiality of” avoids narrowing the protection recognised by the Article

Article 8: Protection of personal data

Amend to:

“Everyone has the right to the protection of personal data concerning him in accordance with the provisions of Community law.”

Reasons: This area is covered by existing Community law, notably Directive 95/46/CE on Data Protection made under Article 286 TEC. There is a risk of confusion unless the legal basis for this particular right is identified. That short statement of the right is more in keeping with other formulations in the Charter and avoids misleading elaborations.

Article 9 : Right to marry and found a family

Comment: The essence of the right expressed here is clearly not that in the corresponding Article of the ECHR, which is limited to marriage between a man and a woman. It needs to be established that the legal drafting permits national laws to limit the right to marriage between a man and a woman, ie that doing so is not an impermissible interference with the essence of the right.

Article 11 : Freedom of expression and information

Delete paragraph (2)

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Reasons: First, it is of course the case that the freedom of the press is already protected under Article 10(1) ECHR; it is one of the classic cases where the right has been repeatedly recognised; see eg *Sunday Times v UK, Judgment of 26 April 1979, Series A No 30*. So it is not necessary to single out the rights of this category of persons for special mention. But also it carries real risks. The clause suggests that the media should have greater rights of freedom of expression than other citizens. I cannot agree that this should be the case. Nor is it apparent what those additional rights should be. Such uncertainty is dangerous. For example, the clause is open to the interpretation that the freedom of the press should override other interests, such as the right of privacy (under Article 7 of the Charter), an argument which is strengthened by divorcing this particular freedom from the main body of Article 10 ECHR which would otherwise attract the limitations in Article 10(2) ECHR.

Second, it is not clear whether the reference to “due respect for pluralism and transparency” is supposed to limit the rights which the media have, or to justify what the extra rights broadcasters and newspapers are to have. Nor is it clear what this expression means. Transparency of what, for example?

Third, the reference to “freedom of information” is misplaced as it implies, at least in the English text, the wholly different area of the rights of citizens to obtain information from public bodies. To the extent this topic is to be dealt with in the Charter it is covered by proposed Article 40.

Article 12 : Freedom of assembly and of association

Delete second sentence.

Reasons: The second sentence is a statement having no place in a Charter of fundamental rights. It gives rise also to the risk that it could be used to undermine national controls on cross border party funding.

Article 13: Freedom of research

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Delete.

Reasons: I do not see the need for this article nor could it be accepted without many qualifications.

As to the need for the article, the right to publish the results of research and the right of others to receive such information is protected already by Article 10 ECHR and therefore by intended Article 11 of the Charter: see case *Hertel v Switzerland* (59/1997/843/1049) - judgement of 25th August 1998. Articles 8 ECHR (Article 7 Charter - right of privacy) and 9 ECHR (Charter article 10 - freedom of thought) are also relevant. So there is no need to have a separate article as the rights which do exist in relation to research would already be recognized in the articles which are to be included.

The right as drafted in any event would need many qualifications: scientific research is in fact constrained - and rightly so - in many areas. For example, there are restrictions on research in the bioethical field (recognised by the Declaration of Helsinki and the Biomedicine Convention); and in legislation protecting animals. The formulation "scientific research shall be free of constraint" implies also no standards of control over research eg in the safety and quality of clinical trials (which is inconsistent with existing EU acquis in medicines licensing); or in the safeguarding of sourcing and use of materials to prevent the transmission of communicable diseases eg BSE or CJD. It also implies that there should be no licensing requirements or health and safety requirements. It even implies that States should take steps to ensure that there is the funding to carry out particular research.

One of the disadvantages of separating this right from other existing ECHR rights is that it removes the limitations which are to be found in the ECHR and the case law which supports it.

Article 14 : Right to education

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Amend to:

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

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

“3. This right includes the right to receive free compulsory education.”

Reasons: This Article is a good illustration of the problems of divergence from the ECHR text. The second sentence of the first article (“This right includes the right to receive free compulsory education”) does not of course come from the ECHR. It may still be retained but it would be easier to put it into a separate paragraph (3) so that the horizontal article on convergence with the ECHR can distinguish between that right and the rest of the Article.

So far as the rest of the article is concerned, it should be made clear that this is otherwise the same rights as are contained in Article 2 to the First Protocol to the ECHR. This would require: (a) a clear horizontal article saying so (b) that the Commentary should make that fact clear and (c) the deletion of the word “pedagogical” in the list “religious, philosophical and pedagogical”. This word does not appear in Article 2 to the First Protocol to the ECHR which guarantees the right of parents to ensure teaching in conformity with “their own religious and philosophical convictions”. The word “philosophical” has been interpreted widely to include, for instance, convictions about the use of corporal punishment in schools (*Campbell and Cosans v UK, Judgment of 25 February 1982, Series A, No 48*). The addition of the word “pedagogical” is therefore either unnecessary or it is adding something even wider of uncertain width. For example, if a parent believes that formal education should start at the age of 4 (common in the UK) should that parent have the right to

insist on this in a Member State where formal education does not start until the age of 6? Or again could this be taken to undermine systems of selection for primary or secondary education where parents are disappointed with the choice available to their children. It is necessary therefore to remove this additional word of uncertain application or purpose.

Article 15 : Freedom to choose an occupation

“1. Everyone has the right to choose freely the occupation which they wish to pursue in accordance with Community law and national laws and practices.”

“2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.”

“3. Nationals of third countries who are legally-entitled to work within the territory of a Member State are entitled to protection under the employment law of that Member State equivalent to that of citizens of the Union.”

Reasons: Article 15(1) does not recognize that there are many proper restrictions which need to be put on the practice of individual occupations so as, for example, to require appropriate professional or vocational qualifications and that there are certain legal restrictions eg that certain occupations, such as prostitution, may not be carried on or not carried on in a particular way. Some qualification to this apparently unlimited right is therefore appropriate. The formula used elsewhere “in accordance with Community and national law” would solve that problem.

The opening words “To earn a living” are unnecessarily restrictive and potentially discriminatory. Does the right not apply to women who choose to work although their husbands could support them? They would be better deleted.

Subparagraph (2): Art 49 TEC deals with the freedom to provide services and not their receipt.

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Subparagraph (3): This is not acceptable as drafted as it goes beyond existing rights in apparently according rights to work to third party nationals merely on the basis of lawful residence in a Member State. This would apparently apply to those admitted to enter a Member State for purposes other than employment. Article 137(3) cited in the Commentary gives a power to the Council acting with unanimity to regulate working conditions for such persons but the power has not been exercised. I believe that the intention may have been to ensure equivalent protection under the employment law of those legally entitled to work to that for citizens of the EU. That was the tenor of the Commission's observations on this point at the last Convention meeting.

Notes:

- (1) *Entitlement to work is determined on a State by State basis so it is appropriate to refer to individual States and not the Community as a whole.*
- (2) *The United Kingdom requires that the reference be to protection under the employment law of the Member State as the expression "working conditions" might be held to apply to certain tax credits which are related to working status but which are of the nature of benefits not necessarily accorded to non EU workers.*

Article 16 : Freedom to conduct a business

Amend to:

"Freedom to conduct a business and the free movement of workers, goods, capital and services and the freedom of establishment in accordance with Community law shall be protected."

Reasons: I welcome this reference but believe it can be improved:

First, it would be very valuable to expand this reference to include the other economic freedoms which are at the heart of the Communities and are of enormous importance

to many people in the Union whose jobs and livelihoods depend on them.

Secondly, the word “recognised” sits unhappily with the sort of word “protected” “guaranteed” “respected” etc used in relation to other rights. Freedom of enterprise is an important right which should attract similar protection.

Article 17 : Right to property

Amend to:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions”

Reasons: To reflect more closely the language in Article 1 of the First Protocol to the ECHR. This is an important provision in the ECHR which affects many areas of public and private life. It is encouraging that the Commentary says that this article corresponds to Article 1 of the First Protocol but no reason is given in the Commentary for the change of language other than a suggestion that this is to modernise the language. The language of the existing Article 1: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions” is clear and direct and perfectly understandable to the modern citizen and therefore better than the proposed first sentence.

Of specific concern is that the first sentence would apparently rule out requiring property to be used for death duties or taxation of the words of the First Article.

As to the new subparagraph (2): “Intellectual property shall be protected.”, it is unnecessary in my view to single out this one category of property for special mention. Intellectual property constitutes “possessions” (French: “biens”) for the purposes of the First Protocol as one would expect: see Commission Decision in *Smith Kline and French Laboratories v Netherlands* (application 12633/87. Decisions and Reports Vol 66 p70).

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Article 18 : Right to asylum

Amend to:

“The right to asylum, under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, shall be guaranteed in accordance with national law and with the Treaty establishing the European Community.”

Reasons: The UK would prefer that this Article should be deleted. It falls into a different category from all the other rights in the Charter in that it is not concerned with showing the rights which citizens and others lawfully residing within the Union should enjoy. Asylum is at the moment an essentially national matter. When Community competence is exercised under Article 63 TEC it will be in accordance with the conditions in that Article which include specific reference to the Geneva Convention. So there is no real need for the Charter to say what is already covered by the Treaty. However, if there is a consensus in favour of including something in the Charter on this sensitive topic, the drafting must be very precise in stating the existing position as accepted by the Member States. I have suggested a small reformulation of the text to clarify and limit the reference to source of the right.

Article 19 : Protection in the event of removal, expulsion or extradition

Amend to:

“No one may be removed, expelled or extradited to a State where he would be subjected to torture or other inhuman or degrading treatment”

Reasons:

The first paragraph is based on Article 4 of the 4th Protocol to the ECHR. But not all Member States have ratified this Protocol. Consistently with the approach taken on other Articles this cannot therefore be taken as a common right to be included in the Charter.

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The second paragraph is said to be based on ECHR jurisprudence. However, it goes beyond that jurisprudence in two respects:

First, the ECtHR has not said that it is the threat of the death penalty alone which should prevent extradition; it is where there is a real risk of associated inhuman or degrading treatment eg through the application of long “death row” waits. This is the basis of the *Soering* decision referred to in the commentary. Therefore, countries may continue, in accordance with their international obligations, to extradite to other countries where this risk does not apply.

Second, in any event, the threshold is too low. The jurisprudence would be better reflected by replacing the word “could” (which connotes a mere possibility - and one unconnected with the offence in question) with “would”.

Article 21 : Equality and non-discrimination

Amend to:

21(1) “Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prohibited to the extent that the Council has, in accordance with the Treaty establishing the European Community, so provided”.

21(2) “The enjoyment of those rights and freedoms in this Charter which are guaranteed by the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

21(3) “Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.”

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Reasons: Article 21(1) is unacceptable. It would constitute a new and open-ended prohibition on all discrimination in all fields. Whilst this may be a desirable political objective in the long run, such a statement would go beyond existing rights and would constitute a misleading promise. Moreover, such rights unless introduced in a careful and measured way risk imposing very substantial financial burdens. As evidence of the fact that this goes beyond existing law is the fact that there is a proposal from the Council of Europe for a more open-ended non-discrimination article (Protocol 12) but this has not been accepted by a number of the EU Member States. They cannot be expected to accept in the Charter what they are not prepared to accept in the Council of Europe.

The Commentary indicates that the source of this article is Article 13 TEC and Article 14 ECHR. Neither provision justifies the proposed article. As for Article 13 TEC this empowers the Council to take action in a closed list of cases. Proposals are being made but it is not possible to say that there are existing prohibitions in all areas. As for Article 14 ECHR it provides an open-ended list but its ambit is confined to the freedoms and rights given under the Charter. This is therefore overall an area where there may be objectives and aspirations but at this moment the Charter cannot anticipate the development of an open-ended across the board non-discrimination provision covering all areas of activity. What is more the present formulation would apparently by a side-wind grant to all nationals the rights which are restricted under the Treaty to nationals of Member States.

Article 24 : Integration of persons with disabilities

Amend to:

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

Reasons: to reflect the article more clearly as a principle rather than a subjective right.

Article 25 : Workers right to information and consultation within the undertaking

Delete.

Reasons: The United Kingdom cannot accept this right. Its legislation contains no general right of consultation and information such as is contained in this Article but believes this to be a matter to be regulated by best practice save in the few specific cases where a right is granted by legislation. Nor is there any general EC legislation creating such a right.

As this is not therefore a right which is recognised in all the Member States it is not right, in the UK's view, to insist on the inclusion of something which is not a general and common right.

Article 26 : Right of collective bargaining and action

Amend to:

“Employers and workers are free to negotiate and conclude collective agreements, and in the event of conflict between them on matters which impact on them directly, to take collective action in accordance with national laws governing the exercise of such freedoms.”

Reasons: The reference to a “right” here creates the appearance of an obligation on the other party to negotiate ie to create a compulsory negotiating right which is not generally recognised in all countries.

The problem could, however, be solved by expressing this Article more consistently as a principle and as a freedom.

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Article 28 : Protection in the event of unjustified dismissal

Amend to:

“Workers are protected in the event of unfair dismissal subject to the conditions laid down by national law and practice.”

Reasons: This should be expressed as a principle tied to implementation by national law:

Article 29 : Fair and just working conditions

Amend to:

“(1) The provision of safe and healthy working conditions shall be protected by law.”

“(2) In general workers are entitled to limitation of maximum working hours, to daily and weekly rest periods and to annual period of paid leave in accordance with Community and national law and practice”

Reasons: First, this is an article which needs to be expressed as a principle implemented by Community and national law.

Second, the second paragraph is too unqualified and does not recognise for example, specific limitations and exceptions.

Article 30 : Protection of young people at work

Amend to:

“(1) The minimum age of admission to employment must generally not be lower than the minimum school-leaving age, except where Community or

national law allow for rules that are more favourable to children and young people or provide derogations.

(2) [As existing Praesidium text]

Reasons: The first sentence is new and might be taken to contradict what follows. It is unnecessary as what follows defines more clearly what the limits on the employment of young persons are.

It desirable also to identify the provenance of the rules which may allow for different treatment.

Article 31 : Reconciling family and professional life

Amend to:

“(1) The family shall enjoy legal, economic and social protection in accordance with national laws and practices.

(2) With a view to reconciling work and family responsibilities and protecting, where necessary, the health and safety of pregnant workers, protection from dismissal on grounds of pregnancy, and maternity leave and parental leave following the birth or adoption of a child, are available in accordance Community law and national law and practice.”

Reasons: This Article risks offering a lot more than it is capable of delivering and thereby creating disappointment and dashed expectations. It should therefore be adjusted to provide more realistic promises.

Article 32 : Social security and social assistance

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Amend to:

(1) The Union recognises and respects the entitlement to social security benefits providing protection in such events as maternity, illness, industrial accidents, dependency, old age or loss of employment, subject to conditions laid down by Community law and national laws and practices.

(2) Workers who are nationals of a Member State, and members of their families, residing in another Member State have the right to the same social security benefits, social advantages and access to health care as nationals of that State.

(3) The Union recognises and respects the entitlement to social assistance, subject to conditions laid down by Community law and national law and practice.

Reasons: Social security and assistance are matters essentially for national competence. This Article must therefore operate as it is drafted, as a principle, which recognises national differences. It cannot therefore be prescriptive about the events in which such benefits are to be available. Nor can the Charter be prescriptive about the level of benefits or open this question up to judicial interpretation rather than to the decision of those elected by the democratic choice of the people to govern.

Further the reference to “social services” for the first time is unacceptable. At least in the United Kingdom it refers to a range of services which are not provided by central government but by local authorities in accordance with the resources available to them.

Article 33 : Health care

Amend to:

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“Provision shall be made for access to medical care and health protection in the circumstances established by national legislation and practice”

Reasons: to reword as a principle.

Article 34 : Access to services of general economic interest

Amend to:

“The Union recognises the important place occupied by services of general economic interest and their role in promoting social and territorial cohesion subject to the provisions of the Treaty establishing the European Community.”

Reasons: To align with the Treaty. This Article was the subject of much debate at the last meeting of the Convention. The draft in Convent 45 goes beyond Article 16 TEC.

Article 35 : Environmental protection

Amend to:

“Environmental protection requirements must be integrated into the definition and implementation of all Community policies, in particular with a view to promoting sustainable development.”

Reasons: The Praesidium text is too strong a statement of the position as the Articles of the Treaty do not go so far as to “ensure” the protection of the environment. We should follow more closely Article 6 TEC.

There would be no objection, if desired, to adding a reference to Article 174 TEC by adding “The Community’s policy on the environment is required to contribute towards the following objectives: the protection, preservation and improvement of the quality of the environment, the protection of human health, the prudent and rational

use of natural resources and the promotion of measures at international level to deal with regional or world-wide environmental problems.”

Article 36 : Consumer protection

Amend to:

“In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers.”

Reasons: The statement that Union policies “shall ensure” is too strong and promises what cannot be delivered. We should follow more closely Article 153.

Article 43 : Freedom of movement and of residence

Amend to:

“Every citizen of the Union, and any other persons to whom the Council accords such rights pursuant to the powers in the TEC and in accordance with the conditions laid down, has the right to move and reside freely within the territory of the Member States.”

Reasons: The second paragraph does not seem a very elegant way of anticipating rights which may be granted in the future by virtue of the exercise of the powers in Articles 62(3) and 63(4) TEC.

Article 45 Right to an effective remedy and to a fair trial, and

Article 46 Presumption of innocence and right of defence

Amend to:

“(x) Everyone whose directly enforceable rights and freedoms granted under

Community law are violated by the Institutions or bodies of the Union or by Member States exclusively when implementing Union law has the right to an effective remedy before a Court.”

In such proceedings the rights guaranteed by [Article 45(2)] shall apply notwithstanding the character of such proceedings.”

(y) Everyone is entitled to a fair and public hearing in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.”

Reasons: These Articles divide into two parts:

First, a substantive right to effective recourse to a tribunal where rights or freedoms are violated. This is contained in Article 45 (1).

Second, the essentially procedural guarantees of fair trial. These are contained in Article 45(2) and (3) and 46

Substantive right

This right is said to be based on Article 13 of the ECHR and on ECJ jurisprudence.

So far as Article 13 ECHR is concerned, in two important areas, the proposed Article goes significantly further. First, Article 13 ECHR applies only to the rights and freedoms set out in the ECHR alone. It does not therefore apply to any rights which do not derive from the Convention eg rights provided by a national Statute for which special provision may be made for the remedy. Secondly, the requirement is that there should be an effective remedy before a national authority; it is not essential that it should be before a Judge. The jurisprudence of the ECtHR shows that there are cases in which an effective remedy may be provided even though it is not before a judge (see eg Klass v FRG Series A No28: remedy before a Parliamentary Commission in surveillance cases held sufficient).

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But the Praesidium have suggested that this is appropriate because of ECJ jurisprudence eg *Johnston*. However, that jurisprudence has no application in purely domestic matters but only applies where there is a contravention of enforceable legal rights under a directly effective Community provision (see eg Opinion of AG Tesaro in Factortame No 1 C-213/89 [1990] ECR I-2433 . The proposed Article however goes beyond this area. It may be said that as the Charter is only intended to apply to Union Institutions and Member States when implementing Union law this is what is intended. However, this is not clear from the Article which appears to have general application.

The result is an article whose breadth cannot be justified by the source of law on which it is said to be based.

The solution is to redraft this part of the Article to make it clear that it only applies in the cases where ECJ jurisprudence applies.

Procedural Guarantees

Article 6 of the ECHR is one of the most widely used rights in the whole of the ECHR. It is in daily use in Courts and Tribunals throughout the Union and is constantly considered by judges and lawyers. Any changes from its text must therefore be very anxiously considered. Although the UK would have preferred not to split its provisions between two articles (45 and 46) we are prepared to accept that the rights in Article 6(3) ECHR are dealt with in Article 46 provided there is a strong horizontal article making it clear that this is the same right as in the ECHR

Part of the problem with this Article is that it does not distinguish between domestic proceedings and purely Community matters.

In so far as the Article appears to deal with domestic proceedings, it is unacceptable that there should be any gloss on the Article 6 guarantees. There is a wealth of jurisprudence of the ECtHR and the Commission, interpreting the nature of the

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guarantees which people are entitled to enjoy in relation to the justice system. Member States have organised their laws and systems to comply with those requirements. It is unreasonable to attempt to rewrite these guarantees. So far therefore as domestic proceedings are concerned, there are a number of points:

- The Article 6 guarantees only apply to civil and criminal proceedings although these have been given a wide and autonomous interpretation by the ECtHR (see eg. Engel v Netherlands Series A No 22, König v FRG Series A No27) There remain other cases where these guarantees do not apply eg [certain administrative proceedings]. Those Member States which operate such systems cannot be expected to change them because of the Charter nor subscribe to a Charter which misrepresents the position under domestic law. The first sentence of Article 45(2) must therefore be corrected.
- The second sentence of Article 45(2) relates to legal representation. Outside the criminal law, the right to legal representation is not always essential So this would be creating a new right. Moreover the language appears to create a positive obligation to provide the resources for someone who does not possess them, thus creating new financial obligations.
- Article 45(3) both reduces the protection of criminal defendant and produces new financial obligations which are not acceptable in other cases. The position as to criminal proceedings under the ECHR is clear because it is provided expressly by ECHR Article 6(3) a person should be given legal assistance free “when the interests of justice so require.” This has been interpreted as requiring legal aid to be provided for all but the simplest criminal cases. This Article therefore risks reducing the protection for criminal defendants. So far as other proceedings are concerned, the ECJ jurisprudence (Airey, Series A No3) requires that legal aid be provided where a person cannot effectively plead his case himself. The test proposed in this article is not the same. The provision of legal aid carries with it enormous budgetary implications. The extent of this right should in domestic cases be left to ECHR jurisprudence

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It is said however, that in one respect the ECJ case law has gone further in allowing that the guarantees of Article 6 should apply to all proceedings in Community law even if administrative. If there is an extension, it only applies where proceedings in Community matters are concerned. We would not object therefore to the inclusion of the following sentence at the end of the new Article 45(1) we have proposed above:

“In such proceedings the rights guaranteed by [Article 45(2)] shall apply notwithstanding the character of such proceedings.”

Article 47 (3) : The severity of penalties shall be proportional to the gravity of the criminal offence.

Delete Paragraph 3.

Reasons: It is not acceptable to suggest that the ECJ should have the power to judge the appropriateness of sentences passed in domestic courts. This paragraph is therefore unacceptable and should be deleted.

Article 50 : Scope of guaranteed rights

Amend to:

“1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for in accordance with the law. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.”

“2. The rights in Articles [here will be set out all the articles which cover the TEC/TEU field] have the same scope and meaning as the corresponding rights guaranteed under the Community Treaties or the Treaty on European Union and shall

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be exercised under the conditions and within the limits defined by those Treaties.”

“3. The rights in Articles [here will be set out all the articles which cover the ECHR field] have the same scope and meaning and are subject to the same permissible limitations as the corresponding rights guaranteed under the ECHR. These rights [ie the ones which correspond to the ECHR rights] apply to a Member State only to the extent to which it has consented to be bound in relation to that Convention and its protocols and subject to any reservations or derogations in force for that Member State.”

Reasons:

As explained in my letter of general comments the UK regards it as unacceptable that there be a lack of consistency between the rights in the Charter and the corresponding rights under the ECHR. The strong conviction has repeatedly been expressed in the Convention of the risks of creating a divergence from those rights or of creating the risk of uncertainty in those rights. These are the rights (liberty, security, freedom of thought and expression, of assembly, of property and of respect for private life etc) which are enjoyed by all persons within the EU and which are the bedrock of our democratic and free societies. We believe that we would be doing a grave disservice to the citizens of Europe if we created confusion and uncertainty about the freedoms which they are to enjoy. We believe that this would be the consequence of appearing to create a parallel and competing system of human rights protection in the areas of the freedoms covered by the ECHR. Such confusion would provide excuses for administrators and work for lawyers but no protection for citizens. The President of the European Court of Human Rights in a speech on 7 March 2000 noted that *“the Court’s main concern in the context of this discussion is to avoid a situation in which there are alternative, competing and potentially conflicting systems of human rights protection both within the Union and in the greater Europe. The duplication of protection systems runs the risk of weakening the overall protection offered and undermining legal certainty in this field.”* It is worth recalling in this context that legal certainty is itself an essential principle of Community law: see eg *Germany v Commission* 44/81 [1982] ECR 1855. Nor can Member States be expected to see a

situation in which the Charter would impose different obligations of uncertain ambit in the field already covered by the obligations they have accepted under the ECHR.

As our purpose is to make clear what existing rights are, our starting point must be what are the existing common rights in this area. The position here we believe is clear: in the field of rights covered by the ECHR it is the rights in that Convention which are the fundamental rights to be respected by the Union institutions and not different rights. Thus Article 6(2) of the Treaty of Amsterdam demands that the Union “shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms”. It does not suggest that the Union should respect “similar” rights but the same rights. This is clear also from the jurisprudence of the ECJ; see for example the statement of AG Jacobs in the *Bosphorus Case* (1996 ECR I - 3953) “...for practical purposes the Convention can be regarded as a part of Community law and can be invoked as such both in this Court and in national courts where Community laws are in issue.” This is a logical and satisfactory position: each and every Member State has agreed to be bound by the provisions of the ECHR and so all citizens are entitled to the protection of those rights against the Member States. Neither the Union nor the Communities are parties to the European Convention but it is logical and right that they should be subject to the same constraints when acting within their field of competence as the Member States are when acting within theirs.

We believe that it is essential that the Charter should make clear that the rights which cover the same area as the ECHR rights are the same rights. There are, as has previously been discussed, different methods of achieving this. The UK preference would have been for a clear definition of rights which provided a clear definition in relation to each right eg that it was the right guaranteed by such and such an article of the ECHR. I am prepared to consider, however, an alternative way of achieving this clarity of definition by an unambiguous and strong horizontal article and by ensuring that the wording of the Article in question, if not identical to the ECHR article, does not stray too

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As to the necessary horizontal article the proposed Article 50(3) requires amendment to make it acceptable.

First, it uses the expression “similar” rather than “same”. This is a very important difference which defeats the objective of the clause which is to maintain consistency between the rights in the ECHR and the Charter and not to create merely similarity. Secondly, even with the change to the word “same” we consider that the formulation does not in any event achieve the desired effect. The reason is that, given the way that the Charter has been drawn up, there is no way of telling whether the “Charter affords greater or more extensive protection.” as indicated by the final words other than by interpreting the words of the respective articles. Where those words are different from the ECHR article it will be argued that the Charter must therefore have been intending to afford greater or more extensive protection. In other words, Article 50(3) will have no effect except in the case where the words of the Article is identical to that of the ECHR.

Further, the reference to “competent legislative authority” in the first sentence does not allow for the different legal traditions of those countries where limitations may derive from the common law.

Saving for existing reservations. There is a further important technical issue. The majority of Member States have lodged reservations or derogations in relation to specific aspects of the ECHR. For example, a number of Member States have registered reservations in relation to Article 2 of the First Protocol (education): It is unreasonable to expect a Member State to agree to a Charter which did not recognise the reservations it had made under the ECHR on the same matter. Equally it would be undesirable to take the lowest common denominator to apply to the Union institutions. It is proposed therefore to allow the continued application of the appropriate reservation or derogation but only in so far as concerns that Member State.

Article 51 : Level of protection

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As the United Kingdom does not have a written constitution, we would prefer the final words to be amended to, or add a reference to, “the law of the Member States”

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President Roman Herzog
Bundespräsident a.D.
Prinzregentenstrasse 89
D-81675 89 Munchen.

Fax: 00 49 89 4702 7168

21 August 2000

Copies to Representatives of Other Member States

EU CHARTER OF FUNDAMENTAL RIGHTS

1. I thank the Praesidium for the latest draft of the Charter (Convent 45), which I have studied closely.
2. The UK Government's goal remains successful adoption of the Charter at Nice. The latest draft is in some respects a step forward. I welcome this. But there remains a long way to go before we have a text to which the UK and - I suspect - several others could subscribe.
3. You asked for general comments on the text. I have four. Each entails changes which are in our view necessary to make the Charter acceptable and bring it into line with the mandate of the Cologne European Council:
 - (i) The text must make clear that the civil and political rights derived from the ECHR are the same as those in the ECHR. The current text fails to achieve this. Unless corrected, this risks dangerous legal confusion. We would be doing a grave disservice to the citizens of Europe if we were to create uncertainty about the freedoms which they enjoy. Such uncertainty would provide work for lawyers and excuses for administrators, but no help for citizens.

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There are a number of solutions. My preference remains for a two-part (A/B) approach throughout the Charter, under which each right is accompanied by a statement clearly defining the right and specifying the instrument from which it derives.

But there is an alternative approach which I would be willing to consider, as follows. First, there must be a stronger and unambiguous horizontal article making clear that the rights concerned have exactly the same scope and meaning, and are subject to the same limitations, as the corresponding right in the ECHR. The proposed article 50(3) does not achieve that end: it says the rights are “similar” rather than the “same” and the final phrase deprives the article of most of its benefit by leaving it to interpretation which articles are intended to give greater protection. Second, we must deal with significant deviation from the language used to describe each of the relevant rights in the Charter by bringing this into line with the language used in the relevant article of the ECHR. Third, the text must make clear that the rights apply to a Member State only to the extent to which they have consented to be bound by the ECHR and subject to any derogations or reservations.

- (ii) The text must not go beyond existing rights. The current text still seeks to introduce "new " rights which do not appear in either the European Convention of Human Rights or the European Union treaties, or in the national law or constitutions of all Member States. This was not what Heads of State and Government agreed at Cologne. There can be no proper consensus among member states on what such new rights should be. Nor is the Convention the right place to seek to invent them. Trying to do so will simply cause confusion and delay, and discredit the Charter and the Union.
- (iii) It must deal with social and economic issues differently and correctly. The text must recognise that social and economic rights are different in nature from civil and political rights, though this does not mean they are inferior; that these rights essentially take the form of principles, which will be respected and recognised by the Union’s institutions and Member States when implementing Community law; that these principles in themselves do not create justiciable rights but the national or Community law through which they are implemented may do so; and that they are recognised and given effect in different ways and to different extents by different Member States.

This problem too can be fixed relatively easily, through new horizontal articles, greater clarity in the drafting of the individual articles, and ensuring consistency between the articles (eg the formula “The Union recognises and respects” and the phrase making clear that the content is in accordance with Community law where it exists and national law and practice should be used more consistently in relation to these articles).

- (iv) It must maintain balance between the various rights it proclaims and between these and the Union's other objectives. The Charter must avoid creating a new or different hierarchy of rights. It must permit legislators and courts to strike a proper balance between the various rights in the Charter; and between other objectives of the Union. For example, it is important that the Charter cannot be interpreted as having the effect of changing the task of the Community (Article 2 TEC), undermining the four freedoms of the Single Market, or affecting the political and economic decisions taken at the Lisbon and Feira European Councils. The text, including the Preamble, must therefore reflect these various objectives fully.

4. I hope that these four points will attract broad support from other Member States. Several have already made them forcefully in the Convention meetings. I hope therefore that they can be properly reflected in the next draft of the Charter. In order to facilitate this, I will shortly be circulating amendments illustrating how the necessary changes could be made, together with a commentary on each proposed change.

Yours sincerely,

Lord Goldsmith QC

[no signature as the document has been created electronically]

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int****Brussels, 28 July 2000****(OR: fr)****London: 23 August 2000****CHARTE 4422/00****CONVENT 45
SHOWING LORD
GOLDSMITH'S
PROPOSED CHANGES****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium

The Members of the Convention will find below the complete text of the Charter proposed by the Praesidium in the light of discussions in the Convention. Members may forward their general comments on this draft, by 1 September 2000, to the following address:

Jean-Paul.Jacque@consilium.eu.int,

indicating:

- "for the attention of Mr Jansson" (for the representatives of the national Parliaments)
- "for the attention of Mr Mendez de Vigo" (for the members of the European Parliament delegation)
- "for the attention of Mr Braibant" (for the personal representatives).

The Secretariat will forward these comments to the relevant addressee.

PREAMBLE

1. The peoples of Europe ~~in developing have established~~ an ever closer Union between them and are resolved to share a peaceful future based on common values.
2. The Union is founded on the ~~indivisible, universal~~ principles of liberty, democracy, respect for human rights and fundamental freedoms ~~the dignity of men and women, freedom, equality and solidarity~~; it is based on the ~~principle of democracy~~ and the rule of law, principles which are common to all Member States.
3. ~~3.~~—The Union contributes to the ~~maintenance development~~ of these ~~principles common values~~ while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it ~~seeks to~~ ensures balanced, socially cohesive and sustainable development through the free movement of persons, goods, capital and services and the freedom of establishment.
- 3a The Union is committed to action for jobs, innovation, economic reform and social cohesion.
4. At this stage in the Union's development and In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments. there is a need to consolidate in a Charter the fundamental rights and freedoms, including principles common to Member States, to by make ing them these rights more visible.
5. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principles of subsidiarity, these rights, freedoms and principles and as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights and taking account of the European Social Charters and the Community Charter of the Fundamental Social Rights of Workers. adopted by the Community and by the Council of Europe and the

~~ease law of the Court of Justice of the European Communities and of the European Court of Human Rights.~~

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

~~6a The dignity of the person, from which all individual rights and freedoms flow, must be respected and protected.~~

~~*[or as specific introductory principle for Chapter 1 – see below]*~~

~~7. 7.—This Charter therefore sets out the rights, freedoms and principles which must be respected by the Union's institutions and bodies, as well as by the Member States when they implement Union law so as to fulfil all the values set out above and the task of the Community.~~

~~Each person is therefore guaranteed the rights and freedoms set out hereafter.~~

CHAPTER I. DIGNITY**Article 1. — Dignity of the person****Introductory Principle**

All fundamental rights of the individual flow from the dignity of the person and the equality of each and every person before the law. must be respected and protected.

Article 12 [and renumber remainder]. Right to life

1. Everyone's has the right to life shall be protected by law.
2. No one shall be condemned to the death penalty, or executed.

Article 3. Right to respect for bio-ethical principles the integrity of the person

1. In the application of biology and medicine Everyone has the right to respect for his or her physical and mental integrity in the conditions recognised by national law and practice. This includes respect for the following principles:-
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - Respect for the free and informed consent of the patient subject to the limitations recognised by law person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition of making the human body and its parts as such a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

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

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

Article 5. Prohibition of slavery and forced labour

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

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

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

Article 8. Protection of personal data

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

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

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights [*See covering letter*].

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11. Freedom of expression and information

- 1.—Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- 2.—~~Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.~~

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

~~Political parties at European level contribute to expressing the political will of the citizens of the Union.~~

Article 13. Freedom of research

~~Scientific research shall be free of constraint.~~

Article 14. Right to education

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

Article 15. **Freedom to choose an occupation**

1. ~~To earn a living, E~~everyone has the right to choose freely engage in a freely chosen the occupation which they wish to pursue in accordance with Community law and national laws and practices.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide ~~or receive~~ services in any Member State.
3. Nationals of third countries who are legally entitled to work within authorised to reside in the territories of a the Member States are entitled to protection under the employment law of that Member State ~~working conditions equivalent to that~~ of citizens of the Union.

Article 16. **Freedom to conduct a business**

~~The f~~Freedom to conduct a business and the free movement of workers, goods, capital and services and the freedom of establishment in accordance with Community law shall be protected is recognised.

Article 17. **Right to property**

1. Every natural or legal person is entitled to the peaceful enjoyment of has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18. **Right to asylum**

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

shall be guaranteed in accordance with national law and in accordance with the Treaty establishing the European Community.

Article 19. Protection in the event of removal, expulsion or extradition

1. — ~~Collective expulsions are prohibited.~~
2. — No one may be removed, expelled or extradited to a State where he ~~could~~ would be subjected to the ~~death penalty~~, torture or other inhuman or degrading treatment.

CHAPTER III. EQUALITY**Article 20. Equality before the law**

Everyone, man or woman, is equal before the law.

Article 21. Equality and non-discrimination

1. Any discrimination based on any ~~ground such as sex, racial or race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation~~ shall be prohibited to the extent that the Council has, in accordance with the Treaty establishing the European Community, so provided.
2. The enjoyment of those rights and freedoms in this Charter which are guaranteed by the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
3. ~~2.~~ Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women as regards employment and work,

including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

CHAPTER : ECONOMIC AND SOCIAL RIGHTS

1. The following articles (x to y) set out social and economic principles which are common to all Member States but are implemented differently in their national laws and practices.
2. The principles give rise to rights only in so far as Community law or national law provides such rights.
3. The Union's institutions and bodies shall observe these rights and principles when acting within the scope of their competences (as shall the Member States when implementing Community law). The Institutions of the Union recognise that the means and extent to which these principles are applied are matters solely for the national law and practice of the Member States, except such as are specifically provided for by provisions of the Treaties or Community legislation.

Article 23. Protection of children

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

Article 24. Integration of persons with disabilities

The Union recognises and respects the right of pPersons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and

participation in the life of the community.

CHAPTER IV. SOLIDARITY

Article 25. — Workers' right to information and consultation within the undertaking

Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.

[Please refer to commentary on Article 25]

Article 26. Right of collective bargaining and action

Employers and workers ~~are free have the right~~ to negotiate and conclude collective agreements and, in the event of ~~eases of~~ conflicts between them on matters which impact on them directly ~~of interest~~, to take collective action ~~to defend their interests~~, in accordance with ~~Community law and national laws governing the exercise of such freedoms and practices~~.

Article 27. Right of access to placement services

Everyone has the right of access to a placement service.

Article 28. Protection in the event of unjustified dismissal

~~Workers are protected in the event of~~ Every worker has the right to protection against unjustified unfair dismissal subject to the conditions laid down by national law and practice.

Article 29. Fair and just working conditions

1. ~~The provision of safe and healthy~~ Every worker has the right to working conditions shall be protected by law, which respect his or her health, safety and dignity.
2. ~~In general~~ Every workers are entitled has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave in accordance with Community and national law and practice.

Article 30. Protection of young people at work

~~The employment of children is prohibited.~~ The minimum age of admission to employment must generally not be lower than the minimum school-leaving age, except where Community or national law allow for ~~without prejudice to such rules that are as may be more favourable to children and young people and except for limited~~ or provide derogations.

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

Article 31. Reconciling family and professional life

The family shall enjoy legal, economic and social protection in accordance with national laws and practices.

With a view to reconciling work and family responsibilities and protecting, where necessary, the health and safety of pregnant workers, Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal on grounds because of pregnancy, and the right to paid maternity leave and to parental leave following the birth or adoption of a child, are available in accordance with Community law and national law and practice.

Article 32. Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits ~~and social services~~ providing protection in such the events as of maternity, illness, industrial accidents, dependency, ~~or~~ old age or and in the event of loss of employment, subject to conditions in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State, and members of their families, residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the entitlement ~~right~~ to social assistance ~~and housing benefit~~ in order to ensure a decent existence for persons lacking sufficient resources, subject to conditions in accordance with the rules laid down by Community law and national laws and practices.

Article 33. Health care

Provision shall be made for access to medical care and health protection in the circumstances
~~Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national~~ legislation ~~aws~~ and practices.

Article 34. Access to services of general economic interest

The Union recognises the important place occupied by ~~respects the access to~~ services of general economic interest ~~and their role in promoting as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.~~ subject to the provisions of the Treaty establishing the European Community.

Article 35. Environmental protection

Environmental protection requirements must be integrated into the definition and implementation of all Community policies. ~~in particular with a view to promoting~~ All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Article 36. Consumer Protection

In order to promote the interests of consumers and ~~Union policies shall~~ to ensure a high level of consumer protection, the Community shall contribute to ~~protecting as regards~~ the health, safety and economic interests of consumers.

CHAPTER V. CITIZENSHIP**Article 37. Right to vote and to stand as a candidate in elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the

European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 38. **Right to vote and to stand as a candidate at municipal elections**

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

Article 39. **Right to good administration**

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

Article 40. **Right of access to documents**

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

Article 41. **Ombudsman**

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

Article 42. **Right to petition**

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

Article 43. **Freedom of movement and of residence**

1. Every citizen of the Union, and any other persons to whom the Council accords such rights pursuant to the powers in the TEC and in accordance with the conditions laid down, has the right to move and reside freely within the territory of the Member States.
2. ~~Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.~~

Article 44: **Diplomatic and consular protection**

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

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose directly enforceable rights and freedoms granted under Community law are violated by the Institutions or bodies of the Union or by Member States exclusively when implementing Union law has the right to an effective remedy before a eCourt.

In such proceedings the rights guaranteed by [Article 45(2)] shall apply notwithstanding the character of such proceedings.

2. Everyone is entitled to a fair and public hearing in determining his or her civil rights and obligations. Hearings shall be within a reasonable time by an independent and impartial tribunal previously established by law. ~~Everyone shall have the possibility of being advised, defended and represented.~~
3. ~~Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.~~

Article 46. Presumption of innocence and right of defence

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

Article 47. Principles of legality and proportionality of criminal offences and penalties

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

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. ~~The severity of penalties shall be proportional to the gravity of the criminal offence.~~

Article 48. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

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

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

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

Article 50. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for ~~in accordance with the law by the competent legislative authority~~. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.

2. The rights in Articles [here will be set out all the articles which cover the TEC/TEU field] ~~Rights recognised by this Charter which are based on~~ have the same scope and meaning as the corresponding rights guaranteed under the Community Treaties or the Treaty on European Union and shall be exercised under the conditions and within the limits defined by those Treaties.

3. The rights in Articles [here will be set out all the articles which cover the ECHR field] have the same scope and meaning and are subject to the same permissible limitations as the corresponding rights guaranteed under the ECHR ~~Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.~~

These rights [ie the ones which correspond to the ECHR rights] apply to a Member State only to the extent to which it has consented to be bound in relation to that Convention and its protocols and subject to any reservations or derogations in force for that Member State.

Article 51. Level of protection

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



Article 52. Prohibition of abuse of rights

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

GRIFFITH

FOR THE ATTENTION OF MR JANSSON

WIN GRIFFITHS M.P., OBSERVATIONS ON CONVENT 45

Subject: Draft Charter of Fundamental Rights of the European Union – Complete Text
Of the Charter proposed by the Presidium.

Preamble

1. Delete 'have established', replace with 'in developing'. Delete, 'between them and'.
2. Insert after 'women' "democracy, respect for human rights, the rule of law" delete all after 'solidarity'.
3. Line 4, delete 'ensures' replace with 'seeks', after 'balanced' insert 'socially cohesive'.

Article 2: 1. Amend to: 'Everyone's right to life shall be protected by law'.

Article 3: 1. After 'his' insert "/her" (or delete 'his' and replace with 'their')
N.B. 3: 2 I have no amendments at this stage but I believe further discussion is needed.

Article 6: Add at end 'except in limited specific cases prescribed by law'.

Article 8: Delete 'him' in lines 1 and 4, replace with 'them'

Article 10: Add 10:2, Article 9.2 of E.C.H.R.

Article 11: 1. Add at the end, new sentence "Limitations can be placed on this right only in limited, specified circumstances."
2. add after transparency ', and the right of Member States to require if desired the licensing of broadcasting, television and cinema enterprises'

Article 12: Add new sentence at end of first paragraph, "These rights may be restricted only in limited specified circumstances".
delete second paragraph.

Article 13: delete – or reword significantly

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Article 14: delete all and replace with Article 2 of the Additional Protocol to the ECHR.

Article 17: 2. Delete – or significant re-wording is required.

Article 21: 1a. Insert after 1, “Persons belonging to minorities shall have the right to maintain and develop their own language and culture”.
N.B. re 2, Why not delete and insert ‘nationality’ after ‘as’ 21.1?

Article 22: Delete and replace with ‘Equality between men and women must be ensured with regard to pay, work, employment and measures for social protection’.

Article 23: delete and replace with, “All children in the European Union shall have the right to expect their best interests, care and protection to be of primary consideration when developing and implementing policies which concern children”.

Article 24: Delete ‘participation’ and replace with ‘enjoyment of equal civil rights’.

Article 25: I believe this requires further thought and clearer expression of the fundamental rights at stake.

Article 31: Delete first paragraph

Article 32: 3. Delete after ‘assistance’ up to ‘in’
i.e. from “and.....resources”.

Article 34: Delete or re-word significantly.

Article 36: delete ‘a high’ and replace with “an appropriate”.

Article 39: 3. I am not sure of the intention here and look forward to a discussion of its purpose.

Article 45: 3. Further discussion of purpose needed.

Article 47: 3. Very subjective. Further discussion required.

Article 50: 3. Line 3 After ‘Convention’ insert, “and the case law of its Court”.

HERZOG
Allemagne
Berlin, le août 2000

Position

sur le projet de Charte des droits fondamentaux de l'Union européenne du 28 juillet 2000

- I. Le texte complet proposé par le Présidium (CONVENT 45) peut être approuvé.
- II. Les améliorations suivantes devraient encore être apportées :

1. Préambule, paragraphe 2

Au lieu la "dignité des hommes et des femmes", il est suggéré de parler de la "dignité de la personne humaine". En effet, la référence à la "dignité des hommes et des femmes" n'apparaît en tout état de cause linguistiquement pas heureuse en allemand et, située à cet endroit important, prêterait peut-être le flanc à des critiques de l'opinion publique. La reformulation proposée correspond à l'article 1. L'égalité des droits entre les hommes et les femmes est régie par des articles ultérieurs.

2. Préambule, paragraphe 3

Il apparaît souhaitable de renoncer au dernier membre de phrase du paragraphe 3, parce que le lien entre la libre circulation des personnes, des biens, des capitaux et des services et la garantie d'un développement équilibré et durable est équivoque.

3. Art. 3

Il est proposé de rédiger le troisième tiret du paragraphe 2 comme suit : "interdiction de faire du corps humain et de ses parties en tant que tels une source de profit".

Cette rédaction devrait être choisie pour coïncider avec l'article 21 de la convention sur la biomédecine, qui est la base de la formulation de la Charte. La suppression des termes "en tant que telles" pourrait conduire à de mauvaises interprétations selon lesquelles un

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changement concret serait recherché. Les termes "en tant que telles" sont surtout considérés comme importants pour la brevetabilité.

4. Art. 11

Il est suggéré de supprimer le terme "transparence" au paragraphe 2 concernant la liberté des médias et d'information. En effet, sa signification n'est pas claire et son maintien pourrait conduire à une incertitude juridique.

5. Art. 13

Il paraît souhaitable de mentionner aussi la liberté des sciences, de telle sorte que l'article s'établirait comme suit : "les sciences et la recherche scientifique sont libres":

6. Art. 20

Il est suggéré de modifier la formulation actuelle "toutes les personnes, hommes et femmes,...". Cette formulation est linguistiquement maladroite et est également malheureuse, entre autres parce qu'elle soulève la question de l'égalité des enfants. Elle mélange le principe général de l'égalité avec l'aspect spécifique de l'égalité des droits entre hommes et femmes, qu'il vaudrait mieux séparer. La rédaction suivante est suggérée :

„(1) Toutes les personnes sont égales devant la loi.

(2) les hommes et les femmes sont égaux en droits.“

Le dernier alinéa pourrait aussi être intégré à l'article 22 sous la forme d'un paragraphe 1.

7. Art. 22

Rédactionnellement, il est tout indiqué de parler d' "égalité de traitement" dans le titre, puisque l'article dans sa rédaction actuelle ne traite que de cette question.

8. Art. 23

Rédactionnellement, il est tout indiqué de conformer le paragraphe 2 au texte de l'article 3 paragraphe 1 de la convention des Nations Unies sur les enfants sur lequel il s'appuie : "Dans toutes les décisions qui concernent les enfants, qu'elles soient le fait des institutions publiques ou privées, l'intérêt supérieur de l'enfant doit être une considération primordiale".

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La définition de l'enfant dans la convention devrait être autant que possible mentionnée dans l'explication, eu égard également à l'article 30.

9. Art. 25

Il est proposé de commencer l'article par les termes "les travailleurs ou leurs représentants" au lieu des termes "les travailleurs et leurs représentants". La formulation proposée tend à éviter de devoir toujours informer les travailleurs directement ainsi que leurs représentants, ce qui ne serait pas conforme au droit secondaire. La formulation proposée correspond à l'article 21 de la Charte sociale révisée et aux directives 98/59/CEE et 77/187/CEE.

Il est par ailleurs suggéré d'introduire, conformément à la distinction opérée dans la directive 77/187/CEE, les mots "ou exploitations" après "entreprises".

11. Art. 27

Il conviendrait d'étudier la possibilité d'introduire à nouveau le terme "gratuitement". Ceci serait conforme à l'article 1 de la Charte sociale et au paragraphe 6 de la Charte communautaire. L'absence de ce terme fait perdre à cet article beaucoup de sa substance.

12. Art. 30

L'emploi du terme "enfants" à l'article 23 et à l'article 30 paragraphe 1 première phrase et du terme "jeunes" à l'article 30 paragraphe 1 phrase 2 et paragraphe 2 pose rédactionnellement un problème de délimitation différente des deux expressions.

13. Art. 32 paragraphe 1

L'énumération après les mots "services sociaux" est source de difficultés. Elle n'est pas exhaustive, ce qui pourrait être explicité par le terme "notamment". Elle ne se réfère pas en substance aux services sociaux mais à la sécurité sociale et devrait de ce fait être placée après les mots "sécurité sociale". Enfin, elle ne mentionne entre autres pas le risque important de l'invalidité.

Pour ces raisons, la rédaction suivante apparaît souhaitable : " L'Union reconnaît et respecte le droit d'accès aux prestations de sécurité sociale assurant notamment une protection en cas de maternité, de maladie, d'invalidité, d'accident du travail, de dépendance ou de

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vieillesse et en cas de perte d'emploi, ainsi qu'aux services sociaux, selon les modalités établies par le droit communautaire et les législations et pratiques nationales."

14. Art. 32 paragraphe 2

Il est proposé d'introduire l'expression "selon les modalités établies par le droit communautaire". L'introduction de la formule "selon les modalités établies par le droit communautaire" est nécessaire parce que le droit communautaire en vigueur, eu égard notamment aux membres d'une même famille, contient des restrictions par rapport au principe formulé d'égalité de traitement qui sont trop compliquées pour être intégrées dans le texte. Il s'agit d'une demande prioritaire car la Charte ne doit créer dans ce domaine aucune charge financière n'existant pas actuellement. Les paragraphes 1 et 3 de cet article contiennent aussi une référence au droit communautaire.

Il est par ailleurs suggéré de remplacer le terme "résidant" par le terme "employés". En effet, le droit communautaire (règlement 1408/71, règlement 1612/68) se réfère toujours, dans le domaine de la sécurité sociale, au lieu d'emploi au lieu d'emploi (lex loci laboris). Selon le droit communautaire, le travailleur est toujours soumis à la législation du lieu d'emploi. Ceci est approprié puisque le travailleur règle ses contributions et ses taxes dans le pays où il est employé. Cette règle est également valable dans le cas où, comme par exemple pour les travailleurs transfrontaliers, les lieux de résidence et d'emploi sont distincts. Dans le cas contraire, l'Etat de résidence devrait verser des prestations sans avoir perçu les contributions et taxes correspondantes.

Il en résulte dans l'ensemble la rédaction suivante : "(2) les travailleurs ressortissants d'un Etat membre et employés dans un autre Etat membre, ainsi que les membres de leur famille, ont droit selon les modalités établies par le droit communautaire aux mêmes prestations de sécurité sociale, aux mêmes avantages sociaux et à un même accès aux soins de santé que les ressortissants de cet Etat."

15. Art. 34

Le dernier membre de phrase à caractère uniquement programmatique n'a pas sa place dans le contexte de l'accès non discriminatoire.

16. Art. 35

Il apparaît souhaitable de mieux calquer cet article sur l'article 6 TCE sur lequel repose le texte de la Charte, c'est-à-dire de supprimer l'expression "en tenant compte du principe du

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développement durable" et d'ajouter à la fin de l'article "en particulier afin de promouvoir le développement durable".

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HIRSCH BALLIN
31 augustus 2000

Aan het presidium van de Conventie
Ter attentie van de heer Jansson

Geachte collega,

1. Graag wens ik het presidium geluk met de herziening van de tekst van het Handvest. Er ligt nu een goed geredigeerde, uitgebalanceerde tekst voor die op veel punten redelijke oplossingen bevat. Voor de beide kamers van het Nederlandse parlement is de relatie met het Europese Verdrag tot bescherming van de Rechten van de Mens en de Fundamentele Vrijheden (EVRM) een belangrijk punt. Met genoegen stel ik vast dat de artikelen van het Handvest die zich daarvoor lenen nu woordelijk gelijkkluidend zijn aan de kernbepalingen van het EVRM. Graag vertrouw ik erop dat dit ook in de eindtekst het geval zal zijn.

2. Evenals de andere Nederlandse vertegenwoordigers zou ik er verre de voorkeur aan geven, uitdrukkelijk – via een van de eerder gesuggereerde methodes – te verwijzen naar de relevante beperkingclausules van het EVRM. Artikel 50, derde lid, bevat zo'n verwijzing in algemene bewoordingen. Wanneer in een later stadium wordt besloten aan het Handvest juridisch bindende kracht te geven, zou dit alsnog aan de orde moeten komen in samenhang met de in onze ogen vereiste toetreding van de EU/EG tot het EVRM. Beter zou het dan ook zijn, nu reeds aan artikel 50, derde lid, een tabel toe te voegen waaruit blijkt naar welke bepalingen van het EVRM wordt verwezen.

3. In de preambule mis ik een verwijzing naar het *religious and cultural heritage* van Europa.

3. Een groot deel van het Handvest is nieuw in vergelijking met het EVRM. Dat geldt met name voor de economische en sociale rechten en de rechten verbonden aan het burgerschap van de Unie. De argumenten daarvoor acht ik in het algemeen steekhoudend. Op de volgende punten zie ik mogelijkheden om nog enige verbeteringen aan te brengen:

a. Artikel 16 zou wat meer substantie kunnen krijgen met de volgende tekst:

- (1) Freedom of enterprise is recognised in the framework of the social market economy.
- (2) Every citizen of the Union has the right to set up a business and to provide services.

b. De bepaling over de onderwijsvrijheid (artikel 14) zou kunnen worden aangevuld met een lid luidende: "The right of parents to educate their children in accordance with their religious and philosophical convictions shall be respected."

4. Een gemis is in mijn ogen dat het Handvest geen bepaling over de bescherming van minderheden bevat. Ik suggereer een nieuw artikel met als tekst: "The Union shall respect the cultural, religious, ethnic and linguistic diversity in Europe."

5. Artikel 34 steunt op artikel 16 van het EG-Verdrag. Daarmee staat echter niet vast dat het in het Handvest op zijn plaats is. Het omschrijft immers geen grondrecht.

6. Enkele punten van redactionele aard:

- a. Artikel 31 omvat twee leden; de nummers voor de artikelleden ontbreken echter.
- b. Het Nederlandse opschrift van Hoofdstuk VI ("Rechtvaardigheid") doet wat vreemd aan. Ook andere delen van het Handvest (bijvoorbeeld hoofdstuk IV) gaan over rechtvaardigheid. Beter zou zijn: "Rechtspleging."

- c. In artikel 48 zou moeten worden toegevoegd: "binnen de Europese Unie en haar lidstaten"; anders zou het *ne bis in idem* een veel te ruime toepassing kunnen krijgen (vgl. artikel 4 van het Zevende Protocol bij het EVRM).
- d. Waar wordt verwezen naar het EVRM moet - net als in artikel 19 EVRM - worden toegevoegd: "en de Protocollen daarbij."

Graag wens ik het presidium en het secretariaat succes bij de afronding van de werkzaamheden.

Met vriendelijke groeten,

Ernst M.H. Hirsch Ballin,
vertegenwoordiger van de Eerste Kamer der Staten-Generaal.

Dr. Sylvia-Yvonne Kaufmann, MdEP
Vizepräsidentin der Delegation des Europäischen Parlaments
im Konvent

Sylvia-Yvonne Kaufmann, MdEP-Büro Berlin Friedrichstr. 95, Zi. 304/4

Brüssel

Dr. Sylvia-Yvonne Kaufmann
Parlement Européen
ASP 9G206 Rue Wiertz
1047 Bruxelles
Tel: (00322) 2845756
Fax: (00322) 2849756
Email: skaufmann@europarl.eu.int

Berlin

Dr. Sylvia-Yvonne Kaufmann
Europabüro, Zi. 304/4
Friedrichstr. 95
10117 Berlin
Tel: (030) 20961372
Fax: (030) 20961380
Email: europabuero.pds@bundestag.de

Berlin, den 24. August 2000

An den Vorsitzenden des Konvents
zur Erarbeitung der Europäischen Charta der Grundrechte
Prof. Dr. Roman Herzog

sowie zu Händen der stellvertretenden Vorsitzenden
Prof. Dr. Guy Braibant, für die persönlichen Beauftragten
Gunnar Jansson, für die Vertreter der nationalen Parlamente
Mendez de Vigo, für die Mitglieder der Delegation des Europäischen Parlaments

Sehr geehrte Herren,

gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren, reiche ich folgende allgemeine Bemerkungen zum Gesamtentwurf der Charta ein:

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I. Allgemeines

1. Dem Präsidium möchte ich ausdrücklich für den vorgelegten Entwurf danken. Anregungen aus schriftlichen Änderungsanträgen und mündlichen Beiträgen einzelner Delegierter sind eingearbeitet worden, so dass der Entwurf eine Grundlage für das weitere Verfahren sein kann.
2. Aus Gründen der Verständlichkeit und auch aus systematischen Gründen sollte jedoch davon abgesehen werden, in einzelnen Artikeln Verweise auf „einzelstaatliche Rechtsvorschriften“ bzw. „nach Maßgabe des Gemeinschaftsrechts“ aufzunehmen. Diese stehen m.E. im Widerspruch zu den horizontalen Bestimmungen in Art. 49 Abs. 1 und 2. Auch in den bisherigen Diskussionen im Konvent, u.a. im Bereich wirtschaftliche und soziale Grundrechte, hat sich eine Mehrheit der Konventsmitglieder gegen gesonderte Festlegungen des Geltungsbereiches in Einzelartikeln mit dem Verweis auf die horizontalen Artikel festgelegt. In diesem Sinne spreche ich mich dafür aus, die entsprechenden Verweise aus den Artikeln 18, 25, 26, 32, 33 und 34 zu streichen. Gegen die gesonderte Formulierung horizontaler Bestimmungen in einzelnen Artikeln spricht auch die Missverständlichkeit dieses Vorgehens. So könnte bei den Bürgerinnen und Bürgern der Eindruck entstehen, bestimmte Artikel seien weniger gewichtig als andere. Darüber hinaus könnte das Missverständnis auftreten, dass die Grundrechte unter den Vorbehalt einzelstaatlicher Regelungen und künftiger Vertragsrevisionen gestellt würden. Beides kann nicht die Intention des Konvents sein. In zahlreichen Dokumenten und Erklärungen hat die Europäische Union klargestellt, dass sie Menschenrechten und Grundfreiheiten absolute Priorität einräumt. Deshalb appelliere ich an Sie, den Art. 50 Abs. 2 ersatzlos zu streichen.
3. In Absatz 5 der Präambel werden die Hauptquellen, die zur Erarbeitung der EU-Grundrechtecharta herangezogen wurden, genannt. Diese Quellen sollten aber auch in Art. 51 genannt werden. Die Präambel und Art. 51 bilden die Klammer der Grundrechtecharta, insofern sollten auch in Artikel 51 die von der Gemeinschaft und dem Europarat beschlossenen Sozialcharten als Mindestschutzniveau erwähnt werden. Es ist nicht einsehbar, warum gerade die Europäische Sozialcharta nicht als Quelle in Art. 51 benannt wird, soll sie doch nach den Kölner Beschlüssen ausdrücklich Grundlage zur Erarbeitung der Grundrechtecharta sein.
4. Der Art. 15 „Berufsfreiheit“ des Präsidiumsentwurfs ist in das Kapitel IV „Solidarität“ einzugliedern. Es lässt sich nur schwer ein sachlicher Grund finden, diesen Artikel in Kapitel II

„Freiheiten“ einzugliedern. Ein solches Ansinnen widerspräche auch einer Mehrheit der Konventsmitglieder. Im übrigen ist nicht ersichtlich, warum die Kompromissfassung, die auf der Mehrheit der Änderungsanträge der Konventsmitglieder beruhte und unter dem Titel „Berufsfreiheit und Recht auf Arbeit“ (Convent 41) stand und die in Art. 31 die Formulierung „Jede Person hat das Recht zu arbeiten“ enthielt, sich im vorliegenden Präsidiumsentswurf nicht mehr wiederfindet.

5. Wie schon von zahlreichen deutschsprachigen Konventsmitgliedern bemerkt, ist die Formulierung „Behinderte Menschen“ im deutschen Entwurfstext in Artikel 24 selbst diskriminatorisch. Sie sollte daher unbedingt durch die Formulierung „Menschen mit Behinderung“ ersetzt werden, will man nicht selbst gegen Diskriminierungen mit einem diskriminatorischen Chartatext vorgehen (CONTRIB 262 Kaufmann).
6. Darüber hinaus durchzieht die deutsche Fassung des Präsidiumsentswurf eine in den Text selbst eingeschriebene geschlechterdiskriminierende Sprache, die angesichts des Wandels von Geschlechterrollen und Geschlechterbeziehungen schlicht untragbar ist. Auch hier sollte berücksichtigt werden, dass die Charta Grundrechte im 21. Jahrhundert garantieren soll und explizit auch für die Bürgerinnen der EU erkennbar sein muss. Ich schlage deshalb vor, in Artikeln, in denen ausschließlich die männliche Sprachform vorkommt, diese entweder durch eine geschlechtsneutrale Formulierung oder eine geschlechtsspezifisch ausgewogene zu substituieren.

II. Zum Entwurfstext

1. Präambel

a) In Absatz 1 wird ausschließlich Bezug auf die Völker Europas genommen, die „eine immer engere Union begründet und beschlossen haben“. Diese Formulierung trägt weder der Tatsache Rechnung, dass es bislang in erster Linie die Regierungen sind, die insbesondere über die Revision der Verträge im Ergebnis von Regierungsverhandlungen den Integrationsprozess gestalten noch widerspiegelt sie die doppelte Legitimation der Europäischen Union als „Union der Völker und Union der Staaten“. Ich halte es daher für unabdingbar, die doppelte Legitimation der EU im Chartatext auch entsprechend auszuweisen.

b) Schon in der Präambel im Absatz 2 fällt auf, dass eine Sozialstaatsverpflichtung oder ein Sozialstaatsprinzip keinerlei Erwähnung findet. Stattdessen wird durch den Verweis auf die 4 Freiheiten des EG-Binnenmarkts eine Marktorientierung zum alleinigen Maßstab gesellschaftlicher Entwicklung in der EU erhoben. Dies schlägt sich dann in der Formulierung nieder, dass „durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung“ (Convent 45, Präambel, Abs. 3) sichergestellt wird.

c) In Absatz 6 der Präambel wird die Inanspruchnahme der Grundrechte an Pflichten gebunden. Dies stellt m.E. die Grundrechtecharta in ihrem Kern in Frage. Es sei noch einmal hervorgehoben, dass mit der Grundrechtecharta **die Rechte der Bürgerinnen und Bürger** gegenüber der Hoheitsgewalt der EU-Institutionen geschützt werden sollen. Rechte mit Pflichten zu verknüpfen, zeugt m.E. von einem rückwärtsgewandten Grund- und Menschenrechtsverständnis, das hinter die Allgemeine Erklärung der Menschenrechte von 1948 zurückfällt.

2. Würde des Menschen/Kapitel I

a) Art. 1 Würde des Menschen

Art. 1 ist insgesamt zu schwach formuliert. Die Würde des Menschen, die zu schützen ist, ist als Fundament der Grundrechtecharta ein so hohes Rechtsgut, dass die Formulierung lauten müsste: „Die Würde des Menschen ist unantastbar“. In diese Richtung gehen zahlreiche Änderungsanträge von Konventsmitgliedern (Convent 35: Änderungsanträge Nr. 2 Kaufmann, Nr. 4 Laborda, Nr. 6 Rodota, Paciotti, Manzella, Nr. 10 Melogranni, Nr. 11 Voggenhuber, Nr. 13 Bereijo). Es ist aus meiner Sicht unverständlich, warum die starke Formulierung des früheren Präsidiumsentwurfs „Die Würde des Menschen ist unantastbar“ (Convent 5) aufgegeben wurde. Selbst noch in Convent 13 lautete die Formulierung von Art.1 „Die Würde des Menschen wird unter allen Umständen geachtet und geschützt.“

3. Freiheiten/Kapitel II

Auf dem Feld der politischen Grund- und Freiheitsrechte trägt der vorliegende Präsidiumsentwurf im Bezug auf einige Artikel aus meiner Sicht keinen zukunftsweisenden Charakter.

a) Art. 9 Recht eine Ehe einzugehen und eine Familie zu gründen

Der ausschließliche Verweis auf die Regelungen in den einzelnen Mitgliedstaaten entspricht nicht dem Schutzcharakter einer Grundrechtecharta. Es ist nicht schlüssig, warum hier eine offensichtliche Abweichung des Vorgehens bei anderen Artikel vorgenommen wird. Die frühere Formulierung „Jede Person hat das Recht auf Achtung ihres Familienlebens“ (Convent 28) als Abs. 1 des Artikels, so wie sie noch in der ersten Fassung des Präsidiumsentswurfs vorlag, wurde auch in zahlreichen Änderungsanträgen unterstützt und verstärkt (Convent 35: Änderungsanträge Nr. 229 Berès, Nr. 230 Friedrich, Nr. 231 Gnauck, Nr. 234 Einem/Holoubek, Nr. 238 Dehousse). Die Mehrheitsmeinung bei den Diskussionen im Konvent und verschiedene Änderungsanträge (Convent 35: Änderungsanträge Nr. 232 Kaufmann, Nr. 238 Dehousse, Nr. 239 Voggenhuber/Buitenweg, Nr. 241 Tura) stützten dies und sprachen sich für eine möglichst weite, moderne Auslegung des Familienbegriffs aus.

b) Art.10 Gedanken-, Gewissens- und Religionsfreiheit

Dem Artikel ist ein Abs. 2 hinzuzufügen, in dem das „Recht auf Kriegsdienstverweigerung“ aufgenommen wird. Die Aufnahme eines solchen zweiten Absatzes entspricht einer Reihe von Änderungsanträgen (Convent 35: Änderungsanträge Nr. 256 Voggenhuber/Buitenweg, Nr. 257 Meyer/Leinen/Martin, Nr. 261 Gnauck und Nr. 262 Kaufmann u.a.). Zudem wies die Mehrheitsmeinung im Konvent deutlich in diese Richtung. Eine Nichtaufnahme des Grundrechts auf Kriegsdienstverweigerung würde einen Rückschlag hinsichtlich aller Bemühungen bedeuten, das Individualrecht auf Kriegsdienstverweigerung als unabdingbaren Teil des internationalen Menschenrechtsschutzes zu verankern.

c) Art. 18 Asylrecht

In Artikel 18 „Asylrecht“ findet sich keine individuelle Rechts- und Rechtsweggarantie für Asylsuchende in der Europäischen Union. Die Verankerung des Asylrechts als Individualrecht war von zahlreichen Konventsmitgliedern (Convent 35: Änderungsanträge Nr. 403 Duff, Nr. 404 Melogranni, Nr. 406 Voggenhuber/Buitenweg, Nr. 407 Meyer/Leinen/Martin/ Van den Burg, Nr.

408 Berès, Nr. 413 Kaufmann) gefordert worden. Der vorliegende ausschließliche Bezug auf die Genfer Konvention ohne die Formulierung „Jede Person hat das Recht“ wird diesem Ansinnen nicht gerecht.

4. Gleichheit/Kapitel III

a) Art. 22 Gleichheit von Männern und Frauen

Im früheren Präsidiumsentswurf wurde noch eine inhaltlich stärkere Formulierung gewählt: „Die Union wirkt darauf hin, Ungleichheiten zu beseitigen und die Gleichstellung von Männern und Frauen zu fördern“ (Convent 28). Im jetzigen Entwurf ist statt von „Gleichstellung“ nur noch von „Chancengleichheit“ und „Gleichbehandlung“ von Männern und Frauen die Rede. Diese Abschwächung ist aus meiner Sicht mit Blick auf die Diskussionen im Konvent nicht gerechtfertigt. Auch war in dem in Convent 28 vorgelegten Präsidiumsentswurf noch von einer Gewährleistung der „Gleichheit der Geschlechter ... insbesondere bei der Festsetzung der Arbeitsentgelte und der sonstigen Arbeitsbedingungen“ die Rede, während in Convent 45 sich die Maßgabe der Chancengleichheit und der Gleichbehandlung ausschließlich auf die Bereiche Arbeit und Beschäftigung bezieht. Auch dieses Abgehen von einem stärkeren Text, scheint mir im Ergebnis der Diskussionen im Konvent nicht gerechtfertigt. Die Grundrechtecharta muss jedoch gerade für die Unionsbürgerinnen erkennbar sein. Der Kampf gegen geschlechtsspezifische Ungleichheiten und die Gewährleistung der Gleichstellung von Frau und Mann ist als Rechtsgrundsatz der EU-Grundrechtecharta dafür unabdingbar. In diesem Sinne appelliere ich an Sie, auf die stärkere, in Convent 28 niedergelegte Fassung zurückzugehen und diese im Sinne des Änderungsantrags Nr. 185 Berès (Convent 39) zu präzisieren: „Die Gleichheit von Männern und Frauen ist insbesondere zu gewährleisten im Bildungsbereich, bei den Beschäftigungs- und Lohnbedingungen, den Arbeitsbeziehungen und den sozialen Sicherungssystemen. Ihre Umsetzung kann zu positiven Diskriminierungen führen.“

5. Solidarität/Kapitel IV

Die sozialen Grundrechte sind durch den Chartaentwurf nur unzureichend gewährleistet. Weder ein Recht auf Arbeit, noch wesentliche Grundrechte bei der Arbeit, noch ein Recht zu arbeiten,

wie von zahlreichen Konventsmitgliedern vorgeschlagen und wie in den ILO-Konventionen erwähnt und garantiert, fanden eine Aufnahme. Es ist nicht nachvollziehbar, weshalb die noch in Convent 41 (Art. 31 Berufsfreiheit und Recht auf Arbeit) enthaltenen Bestimmungen nunmehr weggefallen sind. Stattdessen wurde ein Grundrecht auf „unternehmerische Freiheit“ postuliert und keine Sozialbindung des Eigentums verankert. Hier zeigt sich ganz deutlich, dass der vorliegende Präsidiumsvorschlag ein gravierender Rückschritt im Bezug auf den bisher international erreichten Grundrechtsschutz ist. Wie ich schon in der Begründung meines diesbezüglichen Änderungsantrags (CONTRIB 262) ausgeführt habe, ist das „Recht auf Arbeit“ Bestandteil internationaler Menschenrechtskonventionen und verschiedener Verfassungen. So wird das „Recht auf Arbeit“ in der „Allgemeinen Erklärung der Menschenrechte“ in Art. 23 garantiert, im „Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte“, in der „Europäischen Sozialcharta“. Es findet es sich zudem in den Landesverfassungen der fünf neuen Bundesländer der Bundesrepublik Deutschland oder in den Verfassungen der Beitrittskandidaten Polen, Ungarn und Tschechien. Insofern ist es umso unverständlicher, dass im vorliegenden Präsidiumsentwurf dieses grundlegende Menschenrecht nicht berücksichtigt wurde. Nicht zuletzt wiesen zahlreiche Änderungsanträge und die Diskussionen im Konvent in Richtung der Aufnahme eines Rechts auf Arbeit.

a) Art. 26 Recht auf Kollektivverhandlungen

In Artikel 26 wird nicht einmal das Streikrecht erwähnt. Dies stellt nicht nur eine Missachtung internationaler Standards (zahlreiche ILO-Konventionen, Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, Europäische Sozialcharta) dar. Insbesondere in der Europäischen Sozialcharta (Art. 6 Abs. 4) ist das Streikrecht als kollektive Maßnahme der Arbeitnehmerinnen und Arbeitnehmer ausdrücklich erwähnt. Die Europäische Sozialcharta stellt aber nach dem Mandat von Köln eine der Grundlagen der Arbeit des Konvents dar. Insofern ist es zwingend, die kollektiven Maßnahmen, „einschließlich des Streikrechts“, im Rahmen der EU-Grundrechtecharta zu garantieren. Im übrigen sei noch einmal auf die zahlreichen Änderungsanträge von Konventsmitgliedern, die ausdrücklich eine Aufnahme des Streikrechts in den Text der Grundrechtecharta einforderten, verwiesen (Convent 39: Änderungsanträge Nr. 93 Voggenhuber, Nr. 94 Dehousse, Nr. 95 Rodota/Paciotti/Manzella, Nr. 97 Braibant, Nr. 99 Dieulangard, Nr. 102 Fayot, Nr. 103 Berès, Nr. 104 van den Burg, CONTRIB 262 Kaufmann).

b) Art. 32 Soziale Sicherheit und soziale Unterstützung

Artikel 32 ist nicht als individueller Rechtsanspruch formuliert und läuft so Gefahr, rein symbolischen Charakter zu tragen. So wie auch die anderen sozialen Grundrechte rein symbolischen Charakter zu tragen drohen, was einer künftigen Rechtsverbindlichkeit der Grundrechtecharta zuwiderliefe. Darüber hinaus ist die Aufzählung der Gründe, bei denen soziale Leistungen in Anspruch genommen werden können, weder vollständig noch formulierungsoffen für zukünftige Entwicklungen. Daher sollte vor die Aufzählung die Formulierung „u.a.“ gestellt werden. Im übrigen sei auf die zwingende Unteilbarkeit und international anerkannte Gleichrangigkeit aller Grundrechte verwiesen.

In Art. 32 Abs.3 ist aus dem international und auch von den Mitgliedstaaten anerkannten „Recht auf Wohnen“, die Anerkennung und Achtung des Rechts auf Wohnungsbeihilfe geworden. Dies steht dem in der Allgemeinen Erklärung der Menschenrechte in Art 35 Abs.1 explizit fixierten „Recht auf Wohnen“ entgegen, nicht zu reden von Art. 11 Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, Art. 27 Abs. 3 UN-Kinderrechtskonvention und Art. 31 Europäische Sozialcharta. Die Nichtaufnahme dieses Rechts kommt einer Verletzung völkerrechtlicher Garantien gleich. Ich appelliere daher an Sie, Art. 32 im Sinne internationaler Menschenrechtsnormen zu revidieren.

c) Art. 33 Gesundheitsschutz

Für Art. 33 forderten zahlreiche Mitglieder des Konvents eine nachdrückliche Formulierung im Sinne eines subjektiven Rechts des Anspruchs auf ärztliche Versorgung, Gesundheitsvorsorge und Gesundheitsfürsorge (Convent 39: Änderungsanträge Nr. 279 Dehousse, Nr. 280 Tura, Nr. 281 Berès, Nr. 283 Rodota/Paciotti/Manzella, Nr. 284 Dieulangard, Nr. 108 Meyer, CONTRIB 262 Kaufmann). Es besteht ein großer Unterschied zwischen dem „Recht auf Gesundheitsfürsorge“ und dem „Recht auf Zugang zur Gesundheitsfürsorge“ (Convent 45). Diesen Änderungsanträgen sollte Rechnung getragen werden. Aus meiner Sicht gingen auch die Diskussionen im Konvent mehrheitlich in diese Richtung.

d) Art. 35 Umweltschutz

Es ist unverständlich, warum das Präsidium nicht den zahlreichen Änderungsanträgen einer Mehrheit der Konventsmitglieder Rechnung getragen hat, die die nachdrückliche Formulierung dieses Artikels im Sinne eines Rechtsanspruchs einforderten (Convent 39: Änderungsanträge Nr. 325 Duff, Nr. 327 Tura, Nr. 328 Burg, Nr. 329 Rodota/Paciotti/Manzella, Nr. 330 Voggenhuber/Buitenweg, Nr. 331 Dehane/De Gucht/Lallemand, CONTRIB 262 Kaufmann). Aus meiner Sicht wiesen auch die Diskussionen im Konvent in diese Richtung. Daher sollte Artikel 35 im Sinne eines individuellen Rechtsanspruchs formuliert werden.

e) Art. 36 Verbraucherschutz

Auch für Art. 36 gilt, dass zahlreiche Änderungsanträge von Konventsmitgliedern eine Formulierung im Sinne eines Rechtsanspruchs einforderten (Convent 39: Änderungsanträge Nr. 344 Griffiths, Nr. 345 Duff, Nr. 346 Tura, Nr. 347 Voggenhuber/Buitenweg, Nr. 348 van den Burg, CONTRIB 262 Kaufmann). Gerade hier erwarten Bürgerinnen und Bürger der EU einen umfassenden Schutz und umfassende Rechte, um sich gegen Gesundheits- und Umweltgefährdungen zur Wehr setzen zu können. Daher sollte die Formulierung des Artikels im Sinne eines individuellen Rechtsanspruchs auf Verbraucherschutz abgeändert werden.

6. Bürgerrechte/Kapitel V

a) Art. 43 Freizügigkeit und Aufenthaltsrecht

Zahlreiche Änderungsanträge zu Art. 43 Abs. 1 gingen zumindest in die Richtung, Drittstaatsangehörigen, die sich seit fünf Jahren in der Europäischen Union aufhalten, die gleichen Rechte zu gewähren wie Unionsbürgerinnen und Unionsbürgern (Convent 35: Änderungsanträge Nr. 583 Berès, Nr. 584 Einem/Holoubek, Nr. 588 Hirsch/Patijn/Van Oven, Nr. 589 Voggenhuber/Buitenweg, Nr. 591 Kaufmann). Erstaunlicherweise findet sich davon nichts im Entwurf des Präsidiums.

Der vorliegende Entwurf von Art. 43 Art. 2 enthält kein eigentliches Grundrecht, sondern nur einen Verweis auf zukünftige Vertragsrevision, mit der eventuell ein Recht auf Freizügigkeit auch Drittstaatsangehörigen eingeräumt werden könnte. Diese Formulierung entspricht aus meiner Sicht nicht der Mehrheitsmeinung, wie sie in den Diskussionen im Konvent artikuliert wurde (u.a. Voggenhuber, Meyer, van den Burg, Brax, Einem, Berès, Kaufmann, Paciotti, Leinen, Martin). Nach Art. 63 Nr. 4 EGV ist eine Gleichstellung von Drittstaatsangehörigen möglich. Darüber hinaus ist Freizügigkeit ein Menschenrecht, fixiert in der Allgemeinen Erklärung der Menschenrechte, im Internationalen Pakt über bürgerliche und politische Rechte und Art. 2 Protokoll Nr. 4 Europäische Menschenrechtskonvention. Daher appelliere ich an Sie, Art. 43 Abs. 2 in dem Sinne abzuändern, dass Freizügigkeit als Grundrecht für alle in der Union lebenden Menschen fixiert wird.

Fazit

Ich möchte mit Nachdruck dafür plädieren, im o.g. Sinne entscheidende Änderungen am Präsidiumsentswurf vorzunehmen, denn ich befürchte, die Grundrechtecharta könnte sonst von den Bürgerinnen und Bürgern und in der europäischen Öffentlichkeit als vergebene Chance für die Sicherung eines umfassenden Grundrechtsschutzes wahrgenommen werden.

Mit freundlichen Grüßen

Dr. Sylvia-Yvonne Kaufmann

Dr. Sylvia-Yvonne Kaufmann, MdEP
Membre de la Convention à l'élaboration de la Charte des
droits fondamentaux de l'Union européenne

Sylvia-Yvonne Kaufmann, ASP 9 G 206, Tel. 45756

KAUFMANN + 14 FEMMES

au Président de la Convention
à l'élaboration de la Charte des Droits fondamentaux de l'Union européenne
M. Roman Herzog

aux Vice-présidents

M. Guy Braibant, pour les représentants personnels des Gouvernements
M. Gunnar Jansson, pour les représentants des Parlements nationaux
M. Mendez de Vigo, pour les représentants du Parlement européen

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Bruxelles, 31 août 2000

Messieurs,

conformément à la procédure proposée par le présidium (document Convent 45 / Charte 4422/00) les femmes membres de la Convention:

Mme Maria Eduarda AZEVEDO

Mme Anna BENAKI-PSAROUDA

Mme Pervenche BERÈS

Mme Alima BOUMEDIENNE-THIERRY

Mme Tuija BRAX

Mme Ieke van den BURG

Mme Charlotte CEDERSCHIÖLD

Mme Marie-Madeleine DIEULANGARD

Mme Pernille FRAHM

Mme Marie-Thérèse HERMANGE

Mme Ulpu IIVARI

Mme Sylvia-Yvonne KAUFMANN

Mme Catherine LALUMIERE

Mme Hanja MAIJ-WEGGEN

Mme Elena Ornella PACIOTTI

présentent les amendements suivants, considérant qu'il est indispensable de les intégrer au texte final de la Charte des Droits fondamentaux de l'Union européenne.

L.L.

1. Toutes les versions linguistiques du texte du présidium contiennent un langage discriminatoire vis à vis du genre que nous ne pouvons pas accepter, étant donnés les changements profonds concernant les rôles et les relations entre les hommes et les femmes dans nos sociétés. La Charte qui est chargée de garantir les droits fondamentaux au 21^e siècle, doit s'adresser notamment aussi à la population féminine, les citoyennes. Nous vous demandons donc de modifier tous les articles où ne figure que la forme linguistique masculine en sorte que celle-ci soit remplacée par une formule équilibrée au niveau des sexes.
2. Nous proposons de formuler l'article 22 comme suit:

Article 22. Égalité entre hommes et femmes

L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines, y compris en matière d'emploi, de travail et de rémunération.

Le principe de l'égalité n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques en faveur du sexe sous-représenté.

Explication:

Les traités, notamment l'article 2 et l'article 3 du Traité instituant la Communauté européenne, ne parlent pas de "l'égalité des chances et de traitement", comme cela est le cas dans le texte proposé par le présidium. La notion qui figure - à juste titre - dans les traités est "l'égalité entre les hommes et les femmes". Il s'agit là d'une notion qui va beaucoup plus loin.

En outre, les deux articles mentionnés ci-dessus fixent l'égalité entre les hommes et les femmes en tant que principe fondamental et comme mission et objectif de la Communauté dans tous les domaines. Il est indispensable que l'article 22 ne soit pas inférieur à ce qui est fixé comme acquis communautaire.

Dr. Sylvia-Yvonne Kaufmann, MdEP
Mitglied im Konvent zur Erarbeitung der Charta der
Grundrechte der Europäischen Union

Sylvia-Yvonne Kaufmann, ASP 9 G 206, Tel. 45756

KAUFMANN + 14 FRAUEN

An den Vorsitzenden des Konvents

zur Erarbeitung der Europäischen Charta der Grundrechte

Prof. Dr. Roman Herzog

sowie zu Händen der stellvertretenden Vorsitzenden

Prof. Dr. Guy Braibant, für die persönlichen Beauftragten

Gunnar Jansson, für die Vertreter der nationalen Parlamente

Mendez de Vigo, für die Mitglieder der Delegation des Europäischen Parlaments

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Brüssel, 31. August 2000

Sehr geehrte Herren,

gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren reichen die weiblichen Mitglieder des Konvents:

Frau Maria Eduarda AZEVEDO
Frau Anna BENAKI-PSAROUDA
Frau Pervenche BERÈS
Frau Alima BOUMEDIENNE-THIERRY
Frau Tuija BRAX
Frau Ieke van den BURG
Frau Charlotte CEDERSCHIÖLD
Frau Marie-Madeleine DIEULANGARD
Frau Pernille FRAHM
Frau Marie-Thérèse HERMANGE
Frau Ulpu IIVARI
Frau Sylvia-Yvonne KAUFMANN
Frau Catherine LALUMIERE
Frau Hanja MAIJ-WEGGEN
Frau Elena Ornella PACIOTTI

nachstehende Änderungsanträge ein, deren Aufnahme in die Endfassung des Entwurfs der Charta der Grundrechte der Europäischen Union wir als unverzichtbar erachten.

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1. Alle Sprachfassungen des Präsidiumsentwurfs enthalten eine geschlechterdiskriminierende Sprache, die für uns angesichts des gravierenden Wandels von Geschlechterrollen und Geschlechterbeziehungen in unseren Gesellschaften nicht akzeptabel ist. Die Charta, die Grundrechte im 21. Jahrhundert garantieren soll, muß insbesondere auch die weibliche Bevölkerung, die Bürgerinnen, ansprechen. Wir appellieren daher an Sie, alle Artikel, in denen ausschließlich die männliche Sprachform vorkommt, dahingehend zu ändern, daß diese entweder durch eine geschlechtsneutrale oder eine geschlechterspezifisch ausgewogene Formulierung ersetzt werden.
2. Wir schlagen vor, Artikel 22 wie folgt zu formulieren:

Artikel 22. Gleichstellung von Männern und Frauen

Die Gleichstellung von Männern und Frauen ist in allen Bereichen, einschließlich der Bereiche Arbeit, Beschäftigung und Entlohnung, sicherzustellen.

Der Grundsatz der Gleichstellung steht der Beibehaltung oder der Einführung spezifischer Vergünstigungen zugunsten des unterrepräsentierten Geschlechts nicht entgegen.

Begründung:

In den Verträgen, namentlich in Artikel 2 und Artikel 3 des EG-Vertrages, ist nicht, wie im jetzigen Präsidiumsentwurf, von "Chancengleichheit" und "Gleichbehandlung" die Rede. Stattdessen wird völlig zu Recht der inhaltlich wesentlich weitergehende Begriff der "Gleichstellung" von Männern und Frauen verwandt.

Des weiteren ist in den beiden Artikeln die Gleichstellung der Geschlechter sowohl als Grundprinzip, als auch als Aufgabe und Ziel der Gemeinschaft in allen ihren Tätigkeiten festgeschrieben. Wir sehen es als unabdingbar an, daß Artikel 22 in seiner Formulierung nicht hinter den *acquis communautaire* zurückfällt.

Dr. Sylvia-Yvonne Kaufmann, MEP
Member of the Convention for the elaboration of the Charter
of Fundamental Rights of the European Union

Sylvia-Yvonne Kaufmann, ASP 9 G 206, Tel. 45756

KAUFMANN + 14 WOMEN

To the Chair of the Convention

for the elaboration of the Charter of Fundamental Rights of the European Union

Prof. Dr. Roman Herzog

And to the Vice-Chairs

Prof. Dr. Guy Braibant, for the personal representatives of the Governments

Gunnar Jansson, for the representatives of the national parliaments

Mendez de Vigo, for the representatives of the European Parliament

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Brussels, 31 August 2000

Dear Sirs,

according to the procedure proposed by the Presidium (Convent 45, Charte 4422/00), we,
female members of the Convention:

Ms. Maria Eduarda AZEVEDO
Ms. Anna BENAKI-PSAROUDA
Ms. Pervenche BERÈS
Ms. Alima BOUMEDIENNE-THIERRY
Ms. Tuija BRAX
Ms. Jeke van den BURG
Ms. Charlotte CEDERSCHIÖLD
Ms. Marie-Madeleine DIEULANGARD
Ms. Pernille FRAHM
Ms. Marie-Thérèse HERMANGE
Ms. Ulpu IIVARI
Ms. Sylvia-Yvonne KAUFMANN
Ms. Catherine LALUMIERE
Ms. Hanja MAIJ-WEGGEN
Ms. Elena Ornella PACIOTTI

present the following amendments, which we consider indispensable for the final version of the
draft Charter.

1. In all linguistic versions, the Presidium's draft contains a sex-discriminating wording, which is unacceptable to us having regard to the major changes in the roles of the sexes and the relations between the sexes in our modern societies. The Charter will guarantee fundamental rights in the 21st century, and it must, therefore, address the female population also. For this reason, we appeal to you to change all articles, which are formulated solely in masculine wording such that they are replaced by gender-neutral formulations or by existing linguistic forms for both genders equally.
2. We propose to reformulate Article 22 as follows:

Article 22: Equality between men and women

- (1) Equality between men and women must be ensured in all fields, including employment, work and remuneration.
- (2) The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.

Explanation:

In the Treaties (particularly in Articles 2 and 3 of the EC-Treaty) the terms "equal opportunity" and "equal treatment", which appear in the current Presidium text, are not used. Instead, the treaties contain the correct and much broader term "equality between men and women". Furthermore, gender equality is fixed in both abovementioned articles as a basic principle as well as a task and an aim for all fields of Community activities. In our view, it must be ensured that Article 22 does not fall short of the existing "acquis communautaire".

Jean-Paul.Jaque@consilium.eu.int

For the attention of Mr BRAIBANT

KORTHALS ALTES

The Hague, 28 August 2000

Cher Collègue et Ami,

This letter sets out my general comments on the full draft text of the Charter of Fundamental Rights of the European Union as presented by the Praesidium on 28 July 2000.

May I start by saying that the July version seems an improvement on previous ones, but that the intense time pressure under which the Praesidium and the Convention have been working means the drafting is still not adequate for a legally binding document. This could be risky since the Charter will become part of legal practice even if it does not acquire legally binding status. References to the explanatory notes in CONVENT 46 below are based on the French-language version as other language versions are not yet available.

Article 50, paragraph 3

As regards classical fundamental rights, the Dutch government has always attached great importance to ensuring that the rights set out in the Charter of Fundamental Rights of the European Union correspond as closely as possible to the equivalent rights in the ECHR. The main reason is that European citizens (and any others to whom these rights apply) are best served by a single, unitary regime of classical fundamental rights in both the ECHR and the Charter. The Dutch government sees the Charter's added value as lying mainly in its inclusion of fundamental social and economic rights in addition to civil rights.

Lord Goldsmith's proposal for a Part B containing definitions could have achieved completely identical definitions, grounds for restrictions to fundamental rights, and the conditions with which such restrictions must comply. Another way of achieving this could have been for every article governing a classical fundamental right to contain a reference to the corresponding article in the ECHR. When it looked as if Lord Goldsmith's proposal was not going to attract enough support I proposed amendments to this effect. The Praesidium did not adopt them. A third option for ensuring that the meaning and scope of classical

fundamental rights in the ECHR and Charter were as nearly as possible identical could have taken the form of a horizontal article, as I proposed in amendment 582. The Praesidium adopted this amendment in principle in article 50 paragraph 3. An irritating mistake was made, however, when the original Dutch wording was translated into French and I regret to say I did not notice it until after sending my letter of 28 June (distributed along with CHARTE 4406/00 CONTRIB 262 of 6 July), in which I incorporated the French and English versions as per CHARTE 4332/00 CONVENT 35 dated 25 May .

The French translation should have read:

Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l'homme, leur signification et leur portée sont *les mêmes que* la signification et la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue.

Instead of "les mêmes que", the French version of CHARTE 4332/00 CONVENT 35 of 25 May reads "similaires à". The English translation, "the same as", is correct.

Article 50 paragraph 3 repeats the French wording "similaires à". The Praesidium or Secretariat obviously used French as its working language when drafting CHARTE 4422/00 CONVENT 45 and the mistake has been translated into the English version as "similar to". The Dutch translation reads "dezelfde als" ("the same as", "les mêmes que"), and I understand that the Danish, Finnish and Swedish versions match this. There is thus a discrepancy between the French and English versions on the one hand and the Dutch, Danish, Finnish and Swedish versions on the other, with the second group matching the original amendment 582.

My intention when tabling the amendment was for it to have the same meaning as the French *les mêmes que* or *identiques à* and the English *the same as* or *identical to*.

This horizontal provision is of great importance and I therefore strongly urge the Praesidium to ensure that the original intention is reflected correctly and unambiguously, i.e. that the classical fundamental rights in the Charter are identical to those in the ECHR even where wording differs. I also think it would make more sense to move the revised article 50 paragraph 3 to form article 50 paragraph 1.

I could accept Mr Olsen's suggestion to list the articles involved by number so as to make it clear to one and all what the horizontal provision refers to. It would also be possible to drop

the last clause if we agree that none of the relevant articles is intended to confer a higher degree of protection than derives from the ECHR, thus putting a stop to any attempt by lawyers to argue that the Charter seeks to provide more protection than the ECHR.

“Everyone” in articles 14 paragraph 1, 15 paragraph 1, 27 and 33, and “persons” in article 32 paragraph 3

The Dutch government maintains its insurmountable objections to the use of “everyone” in articles 14 paragraph 1, 15 paragraph 1, 27, and 33, and “persons” in article 32 paragraph 3, for the reasons I explained at the Convention meetings dealing with these articles. I repeat them below.

Article 14 paragraph 1: Foreign nationals over school leaving age (i.e. 17) and not legally resident in the Netherlands have no right to education and no access to vocational and continuing training. Our objection is insurmountable because a national court might rule on the basis of the Charter that foreigners living illegally in the Netherlands and above the age for compulsory schooling, who cannot be expelled for technical reasons (for example, because their country of origin is not known or they have no passport or valid identity document), have the right to education and to access to vocational and continuing training.

Article 15 paragraph 1: Only people legally resident in an EU member state who are legally entitled to work and in possession of the relevant qualifications have the right to engage in a freely chosen occupation. Persons illegally resident in the EU and asylum seekers whose asylum applications are still under consideration do not normally have the right to engage in a freely chosen occupation. Members of diplomatic representations from third countries are legally resident in a member state but are not allowed to engage in any profession other than the one for which they were granted diplomatic admission. Our objection is insurmountable because a national court might rule on the basis of the Charter that foreign nationals living illegally in the Netherlands who cannot be expelled for technical reasons (for example, because their country of origin is not known or they have no passport or valid identity document) have the right to engage in a freely chosen occupation. Article 50 paragraph 1 allows for limitations on the rights listed in the Charter and could be used to set qualifications and requirements for professions requiring specialised training (e.g. doctors and lawyers), but this does not entitle member states to limit rights that have been conferred on everyone for third-country nationals illegally resident on their territory. Dutch law does in fact provide for foreign nationals illegally resident in the Netherlands to be excluded from certain posts and services.

The Dutch government does not want to put such provisions at risk through loosely worded fundamental rights, even if they are only applicable to EU institutions and bodies and, for member states, within the field of application of EU law. Courts may turn out to be open to the argument that no domestic provisions can apply if they are deemed incompatible at EU level with fundamental rights applicable to everyone.

Article 27: The same reasons apply to our insurmountable objection to the use of “everyone” in article 27: only persons legally resident in a member state and entitled to work there have the right of access to a placement service.

Article 32 paragraph 3: Foreign nationals illegally resident in the Netherlands are not entitled to social assistance or housing benefit. The phrase “in accordance with the rules laid down by national laws and practices” is no solution. Dutch law does not impose any conditions on illegal aliens claiming social assistance or housing benefit; it debars them completely. Furthermore, asylum seekers whose applications are pending are provided with housing and social assistance differently from Dutch nationals and legal aliens, since they are accommodated in reception centres and receive some of their social assistance in kind.

Article 33: Foreign nationals illegally resident in the Netherlands are only entitled to emergency and preventive health care. Other than in emergencies they can only receive care if they pay for it themselves or through their existing insurance, and foreigners illegally resident in the Netherlands are generally not insured. I would also agree with Mr Patijn that the point is not to ensure access to curative and preventive health care but to prevent exclusion from health insurance.

In all the above cases the Dutch government is absolutely opposed to any risk of the courts forcing it to grant foreigners illegally resident in the Netherlands access to services from which legislation has explicitly debarred them. If the above provisions feature in the text put before the European Council, the Netherlands will be unable to cooperate in adopting the Charter without further modifications.

Further comments

I have a few more comments on individual articles, some of which are objections and some intended as suggested improvements.

Recital 7: The Charter contains some horizontal provisions and many references to national laws and practices and can therefore not be said to guarantee the rights and freedoms it lists. In any case, nothing could be guaranteed unless the European Council decided to give the Charter the force of law.

Article 3 paragraph 2: The use of “in particular” (“notamment”) suggests that there are other principles which must be respected but are not listed. That is unacceptable for the people who are expected to respect them. The same objection applies to the prohibition of eugenic practices: what other eugenic practices are prohibited in addition to those concerned with the selection of persons? The Dutch government would prefer to delete Article 3 paragraph 2 altogether. In any case it would like to delete the prohibition of eugenic practices on the grounds that its scope is too vague.

Article 11 paragraph 2: The words “with due respect for pluralism and transparency” (“dans le respect du pluralisme et de la transparence”) make the provision too imprecise. Does “dans le respect” narrow or broaden the scope? Is respecting pluralism and transparency a task for the government, or for the media whose freedom is being guaranteed? The explanatory notes in CONVENT 46 and the 25 July 1991 judgment on case C288/89 do not give any firm answer. How can the right to freedom of information be reconciled with article 40 which states that only citizens and residents of the EU and legal persons established in a member state may have access to European Parliament, Council and Commission documents?

Article 14 paragraph 1 second sentence: Primary education is free in the Netherlands, but fees must be paid for education, including compulsory education, over the age of 16. It is possible to claim reimbursement, however, whereby compulsory post-16 education can be partly or entirely free of charge. But CONVENT 46 refers to “le principe de gratuité de l’enseignement obligatoire”, and since it calls it a principle the question arises whether it is still permissible to charge school fees which are only refunded to those unable to pay. If this provision aims to make compulsory post-16 education free of charge and to prohibit fees for it, the Dutch government would be absolutely unable to accept it.

Article 15 paragraphs 1 and 2: It would be a good idea to switch these two paragraphs.

Article 15 paragraph 3: Not all nationals of third countries who are legally resident in the territory of a member state are entitled to conditions of employment equivalent to those of citizens of the Union. They also require a work permit for the relevant member state. The article should therefore read:

“Nationals of third countries who are authorised to work in the territories of a Member State are entitled to conditions of employment equivalent to those of citizens of the Union.”

Article 18: There is no right to asylum, only a right to request or seek asylum. The article should therefore begin:

“The right to *request asylum* shall be guaranteed ...”

Article 19 paragraph 2: The Dutch translation renders “pourrait être soumis ...” as a remote condition. This runs counter to case law from the European Court of Human Rights in Strasbourg, which maintains there must be a real risk of the person whose extradition has been requested being subjected to the death penalty, torture or other inhuman or degrading treatment. To be compatible with this case law the paragraph should therefore read:

“No one may be removed, expelled or extradited to a State where *there is a real risk that* he could be subjected to the death penalty, torture or other inhuman or degrading treatment.”

Article 22 paragraph 2: I suspect that some words have been omitted and that the paragraph should read:

“The principle of equal treatment shall not prevent the adoption, *in order to ensure full equality in practice for men and women in employment*, of measures for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.”

Article 30 paragraph 1: In the Netherlands the period of compulsory full-time education (up to age 16) is followed by a period of compulsory part-time education (up to age 17) during which employment is allowed as long as it does not interfere with lessons. The second sentence should therefore read:

“The minimum age for admission to employment must not be lower than the *minimum age for leaving compulsory full-time schooling ...*”

Article 39 paragraph 2: The use of “includes” (“notamment”) is unacceptable for the same reasons as I gave for article 3 paragraph 2 above: the use of “includes” (“notamment”) suggests that the right set out in paragraph 1 includes other rights in addition to the three listed in paragraph 2, which are not mentioned and cannot be identified but do exist. That is acceptable neither for the people who might wish to invoke them nor for the people who are expected to respect them. A choice must therefore be made between listing all rights and omitting the word “includes” (“notamment”).

Article 41: It would be better to confer this right on everyone.

Article 45 paragraph 1: This article is couched in excessively general terms. The explanatory notes make it clear that the article only refers to the “inscription de la jurisprudence de la Cour de Justice de Luxembourg dans la charte” and is not intended “de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité”. This should be made clearer in paragraph 1 in order to ensure that it does not give rise to endless disputes about competence.

Article 47 paragraph 2: I suspect the words “the general principles of” have been omitted.

The article should therefore read:

“This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to *the general principles of international law.*”

Article 49 paragraph 1: This raises the question of whether the “institutions and bodies of the Union” is meant to include Europol. The Dutch government is in favour of its doing so. If the current form of words excludes Europol from the scope of this article it should be redrafted to include it. For example:

“The provisions of this Charter are addressed to the institutions and bodies of the Union *in accordance with the powers conferred on them by means of or for the implementation of the Treaties, and also to institutions and bodies operating within the sphere of the Union as a result of Council measures, with due regard for the principle of subsidiarity and ...*”

Also, the phrase “and to the Member States only when they are implementing Union law” could be better rephrased as

“and to the Member States only within the field of application of Union law”.

Article 50

1. I have already explained that I would prefer paragraph 3 to become paragraph 1. May I invite the Praesidium once again to reconsider my amendment and incorporate a reference to the corresponding articles in the revised European Social Charter along the lines of the current paragraph 3:

“Insofar as this Charter contains rights which correspond to rights guaranteed by the revised European Social Charter, the meaning and scope of those rights shall be the same as those conferred on them by the revised European Social Charter.”

In my view, the above text should become paragraph 2, and the current paragraphs 1 and 2 would be renumbered 3 and 4.

2. A further way to ensure this charter remains parallel with the ECHR and the revised European Social Charter, and to provide legal certainty, would be for the current paragraph 1 (paragraph 2 or 3 if my suggestions are accepted) to include a reference to the ECHR and the revised European Social Charter, perhaps as follows:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter shall not extend further than permitted under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the revised European Social Charter. Limitations to other rights may be provided for solely by the competent legislative authority. Subject to ...”

Finally I would recommend numbering the separate paragraphs of articles 12, 22, 30 and 31.

I am most grateful for the consideration the Praesidium will give to these general remarks. For the record, may I point out that I have sent a second letter to Mr JAQUÉ. This second letter is intended for the translation service and deals with translation errors and mistakes in the use of the Dutch language.

Yours sincerely,

[signed]

Frits KORTHALS ALTES

Personal Representative of the

Government of the Kingdom of the Netherlands

(*)

Jean-Paul.Jaque@consilium.eu.int

A l'attention de M. Guy BRAIBANT

KORTHALS ALTES

La Haye, le 28 août 2000

Cher collègue et ami,

Vous trouverez ci-après mes observations générales concernant le texte complet du projet de Charte des droits fondamentaux de l'Union européenne qui a été proposé le 28 juillet dernier par le Présidium.

Je voudrais tout d'abord signaler que je trouve que les textes publiés le 28 juillet dernier ont été améliorés par rapport aux projets de textes précédents, mais qu'ils ne revêtent pas encore – notamment en raison du peu de temps imparti à la Convention et au Présidium – la qualité nécessaire à un document juridiquement contraignant. Cela n'est pas sans danger, car même sans force contraignante formelle, la Charte jouera un rôle dans la pratique judiciaire. Dans mes références aux commentaires contenus dans CONVENT 46, j'ai utilisé le texte français, les textes rédigés dans d'autres langues n'étant pas encore disponibles.

Article 50, paragraphe 3

En ce qui concerne les droits fondamentaux classiques, le gouvernement néerlandais a toujours attaché une grande valeur à une harmonisation aussi large que possible entre les droits fondamentaux à formuler dans la Charte et les droits correspondants formulés dans la Convention. La principale raison en est que le citoyen européen – et tous les autres auxquels ces droits s'appliquent – est le mieux servi par un seul et même régime de droits fondamentaux classiques inscrits dans la Convention et dans la Charte. Aux yeux du gouvernement néerlandais, la plus-value de la Charte par rapport à la Convention réside surtout dans la formulation des droits fondamentaux sociaux et économiques, en plus du règlement des droits civils.

On aurait pu parvenir à une identité totale des définitions, des motifs de limitation et des conditions dans lesquelles des limitations peuvent être apportées aux droits fondamentaux et des conditions auxquelles ces limitations doivent répondre en ajoutant une « partie B » contenant des définitions, comme l'avait proposé Lord Goldsmith, ou en renvoyant dans chaque article de la Charte concernant un droit fondamental classique à l'article correspondant dans la Convention. Lorsqu'il apparut que la proposition de Lord Goldsmith n'obtiendrait pas un soutien suffisant, j'ai soumis des amendements dans ce sens. Le Présidium n'a pas repris ces amendements. Je voyais une troisième possibilité de parvenir à une identité aussi grande possible de teneur et de portée entre les droits fondamentaux de la Convention et ceux de la Charte dans un article horizontal, comme je l'ai proposé dans l'amendement 582. Le Présidium a repris en principe cet amendement dans l'article 50, paragraphe 3. Toutefois, une faute gênante s'est glissée dans la traduction française du texte original néerlandais, faute que je n'ai malheureusement découverte qu'après avoir soumis ma lettre du 28 juin dernier, diffusée avec le document CHARTE 4406/00 CONTRIB 262 du 6 juillet dernier, dans

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laquelle j'avais repris la version française et la version anglaise telles qu'elles figuraient dans le document CHARTE 4332/00 CONVENT 35 du 25 mai dernier.

La traduction française correcte aurait dû être :

« Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l'homme, leur signification et leur portée sont *les mêmes que* la signification et la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue. »

Au lieu de « les mêmes que », figurait dans la version française de CHARTE 4332/00 CONVENT 35 du 25 mai « similaires à ». Dans le texte anglais figurait à juste titre « the same as ».

Dans l'article 50, paragraphe 3, on retrouve à nouveau « similaires à ». À partir du français, qui était de toute évidence la langue de travail du Présidium ou du secrétariat pour la rédaction de CHARTE 4422/00 CONVENT 45, le texte anglais a été traduit par : « similar to ». Le texte néerlandais a été traduit par « dezelfde als » (les mêmes que). J'ai constaté que les textes danois, finlandais et suédois correspondent au texte néerlandais, comme si le texte français avait comporté « les mêmes que ». Des différences sont donc apparues entre le texte français et le texte anglais, d'une part, et les textes néerlandais, danois, finlandais et suédois, de l'autre, ces derniers textes correspondant à l'amendement original (582).

J'ai eu l'intention formelle de donner aux mots de mon amendement la signification rendue en français par « les mêmes que » ou « identiques à » et en anglais « the same as » ou « identical to ». Compte tenu de la grande importance de cette disposition horizontale, je prie instamment le Présidium de veiller à ce que dans toutes les langues, l'intention originelle – en dépit de la formulation divergente, les droits fondamentaux énoncés dans la Charte sont identiques à ceux contenus dans la CEDH – soit rendue de manière correcte et sans équivoque.

De plus, il me semble préférable, du point de vue de la systématique, que le texte (corrigé) de l'article 50, paragraphe 3, soit repris en tant qu'article 50, paragraphe 1. Je serais d'accord pour que, conformément à la proposition de M. Olsen, les articles dont il s'agit soient cités avec leur numéro, afin que tout le monde sache exactement à quels articles cette disposition horizontale se rapporte. Si nous convenions, par ailleurs, qu'aucune disposition de ces articles ne vise à conférer une protection plus élevée ou plus étendue que la CEDH, le dernier membre de phrase pourrait être supprimé. Cela peut tuer dans l'œuf les tentatives d'avocats de plaider que la Charte vise un degré de protection plus élevé que la CEDH.

« Toute personne » dans les articles 14, paragraphe 1, 15, paragraphe 1, 27, 32, paragraphe 3 et 33

Le gouvernement néerlandais maintient expressément ses objections insurmontables contre l'usage de la notion de « toute personne » dans les articles 14, paragraphe 1, 15, paragraphe 1, 27, 32, paragraphe 2, et 33 pour les raisons que j'ai exposées au cours des conférences de la Convention lors de l'examen de ces articles. Ces raisons sont les suivantes :

Article 14, paragraphe 1 : Les étrangers ayant dépassé l'âge de la scolarité obligatoire (17 ans), séjournant illégalement aux Pays-Bas, n'ont pas droit à

l'enseignement et n'ont pas accès à la formation professionnelle et continue. Le caractère insurmontable de l'objection des Pays-Bas réside dans le risque que, sur la base de la Charte, le juge national juge que les étrangers ayant dépassé l'âge de la scolarité obligatoire, séjournant illégalement aux Pays-Bas, qui ne peuvent pas être expulsés pour des raisons techniques (pays d'origine inconnu, l'intéressé n'a pas de passeport, ni un autre document d'identité valable, etc.) ont droit à l'enseignement et accès à la formation professionnelle et continue.

Article 15, paragraphe 1 : Seules les personnes qui séjournent légalement dans un État membre de l'Union et qui, de surcroît, ont le droit de travailler et possèdent les qualifications requises à cet effet, ont le droit d'exercer une profession librement choisie. Les personnes séjournant illégalement dans un État membre de l'Union et les demandeurs d'asile dont la demande est encore à l'examen, n'ont en général pas le droit d'exercer une profession librement choisie. Les membres des représentations diplomatiques de pays tiers séjournent légalement sur le territoire d'un État membre, mais ne sont pas autorisés à exercer un autre métier que celui pour lequel ils ont été admis en tant que diplomate. Le caractère insurmontable de l'objection du gouvernement néerlandais réside dans le risque de voir le juge national juger, sur la base de la Charte, que les étrangers séjournant légalement aux Pays-Bas qui ne peuvent pas être expulsés pour des raisons techniques (pays d'origine inconnu, l'intéressé n'a pas de passeport, ni un autre document d'identité valable, etc.) ont le droit d'exercer une profession librement choisie.

La possibilité offerte par l'article 50, paragraphe 1, d'apporter des limitations aux droits énoncés dans la Charte peut être utilisée pour imposer des critères de compétence et de qualité à des métiers exigeant une certaine formation (médecins, avocats), mais cette compétence ne confère pas aux États membres la liberté de limiter les droits fondamentaux qui ont été reconnus à toute personne uniquement pour des ressortissants de pays tiers séjournant illégalement dans un État membre. Il existe aux Pays-Bas une législation qui exclut les étrangers y séjournant illégalement de certaines compétences et facilités. Le gouvernement n'entend pas voir cette législation menacée par une formulation trop large des droits fondamentaux, même s'ils ne devaient valoir que pour les organes et institutions de l'Union et, en ce qui concerne les États membres, dans le champ d'application du droit communautaire. Le juge pourrait être sensible à l'argument selon lequel aucune réglementation ne peut être applicable dans un pays si elle est considérée, au niveau de l'Union, comme contraire aux droits fondamentaux reconnus à toute personne.

Article 27 : Il existe une objection insurmontable, pour les mêmes raisons, à l'utilisation de la notion de « toute personne » dans l'article 27. Seules les personnes qui séjournent légalement dans un État membre et ont le droit d'y travailler, peuvent faire valoir le droit d'accéder à un service de placement.

Article 32, paragraphe 3 : Les étrangers séjournant illégalement aux Pays-Bas n'ont pas droit à une aide sociale ou à une aide au logement. L'ajout du membre de phrase « selon les modalités établies par les législations et pratiques nationales » n'offre aucune issue. La législation néerlandaise ne pose pas aux étrangers séjournant illégalement aux Pays-Bas de conditions pour bénéficier d'une aide sociale ou d'une aide au logement. Le législateur les en a exclus. En outre, les demandeurs d'asile dont la demande est encore à l'examen bénéficient de conditions d'hébergement et d'aide sociale différentes de celles dont bénéficient les Néerlandais et les étrangers admis aux Pays-Bas, à savoir, ils sont

hébergés collectivement dans des centres d'accueil et reçoivent une aide partiellement en nature.

Article 33 : Les étrangers séjournant illégalement aux Pays-Bas ne bénéficient de soins médicaux et de la prévention sanitaire que dans des cas d'urgence. Ne peuvent bénéficier d'autres dispositifs que les services d'urgence les personnes qui peuvent en payer les coûts soit eux-mêmes, soit en vertu d'une assurance. Le problème des étrangers séjournant illégalement aux Pays-Bas est qu'ils ne sont en général pas assurés. Je souscris d'ailleurs à la remarque de monsieur Patijn qu'il ne s'agit pas, au fond, de l'accès aux soins de santé préventifs et curatifs, mais d'une interdiction d'exclusion de l'assurance frais de maladie.

Dans tous ces cas, les Pays-Bas ne veulent en aucun cas courir le risque de se voir condamnés à admettre des étrangers séjournant illégalement aux Pays-Bas à des dispositifs dont le législateur les a expressément exclus. Si ces dispositions figurent dans la version à soumettre au Conseil européen, les Pays-Bas ne pourront pas coopérer à l'élaboration de la Charte si elle reste inchangée.

Autres remarques :

Les remarques ci-dessous sont faites soit à titre d'objection, soit dans le but d'apporter une amélioration qualitative.

Préambule sous 7 : Compte tenu de l'importance de certaines dispositions horizontales et des nombreux renvois aux législations et pratiques nationales, il n'est pas question de garantie des droits et libertés énoncés dans la Charte. De plus, il ne pourrait être question de garantie que si le Conseil européen décidait d'arrêter une charte juridiquement contraignante.

Article 3, paragraphe 2 : L'utilisation du terme « notamment » signifie qu'il y a plus de principes à respecter, mais ceux-ci ne sont pas cités. Cela n'est pas acceptable pour ceux qui doivent respecter ces principes. La même objection s'applique à l'interdiction des pratiques eugéniques. Quelles sont les pratiques eugéniques interdites autres que celles qui visent la sélection des personnes ? Le gouvernement néerlandais préférerait que tout le paragraphe 2 de l'article 3 soit supprimé. Il souhaiterait, en tout cas, voir supprimée l'interdiction des pratiques eugéniques, celles-ci étant insuffisamment définies.

Article 11, paragraphe 2 : Les mots « dans le respect du pluralisme et de la transparence » rendent la disposition imprécise. Doit-on interpréter « dans le respect de » comme une limitation ou comme une extension ? Est-ce la tâche du gouvernement de respecter le pluralisme et la transparence ou de ceux à qui est garantie la liberté des médias ? Le commentaire dans CONVENT 46 et l'arrêt du 25 juillet 1999 dans l'affaire C288/89 ne sont pas concluants à ce sujet. Quel est le rapport entre la liberté d'information et le droit d'accès aux documents du Parlement européen, du Conseil et de la Commission qui n'est accordé dans l'article 40 qu'aux citoyens et aux résidents de l'Union et aux personnes morales ayant un siège statutaire dans un État membre ?

Article 14, paragraphe 1, deuxième phrase : Aux Pays-Bas, l'enseignement primaire est gratuit, mais le paiement d'un droit de scolarité est obligatoire pour l'enseignement post-primaire pour les jeunes à partir de 16 ans, même si cet enseignement est obligatoire. Il y a toutefois une possibilité de bénéficier d'une compensation, donc de suivre gratuitement l'enseignement post-primaire obligatoire, à plein temps ou à temps partiel. Le commentaire dans CONVENT 46 fait toutefois état du « principe de gratuité de l'enseignement obligatoire. » Comme on fait ici état d'un principe, la question se pose de savoir si la disposition laisse la liberté de prélever un droit de scolarité et de ne donner une allocation que dans les cas d'incapacité financière. Si la disposition vise

également la gratuité de l'enseignement post-primaire obligatoire et l'exclusion de la possibilité de demander une contribution, cette disposition suscite de la part du gouvernement néerlandais une objection insurmontable.

Article 15, paragraphes 1 et 2 : Il est recommandé d'intervertir les paragraphes 1 et 2.

Article 15, paragraphe 3 : Les ressortissants de pays tiers séjournant illégalement sur le territoire d'un État membre n'ont pas tous droit à des conditions de travail équivalentes. Ils doivent aussi être autorisés à travailler dans cet État membre. L'article devrait donc s'énoncer comme suit :

« Les ressortissants de pays tiers qui sont autorisés à travailler sur le territoire d'un État membre, ont droit à des conditions de travail équivalentes à celles dont bénéficient les citoyens de l'Union ».

Article 18 : Il n'existe pas de droit d'asile. Il existe toutefois un droit de demander asile ou de chercher asile. Le libellé correct devrait donc être :

« Le droit de *demander* asile est garanti... »

Article 19, paragraphe 2 : La traduction néerlandaise de « pourrait être soumis » marque le mode irréel, alors que la jurisprudence de la Cour européenne des droits de l'homme à Strasbourg part justement du principe qu'il doit y avoir un danger réel que la personne dont l'extradition est demandée soit condamnée à mort, ou soumise à la torture ou à d'autres peines ou traitements inhumains ou dégradants. Conformément à cette jurisprudence, l'article devrait être libellé comme suit :

« Nul ne peut être éloigné, expulsé ou extradé vers un État où il court un risque réel d'être soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants. »

Article 22, paragraphe 2 : Je suppose qu'un certain nombre de mots ont été omis et que ce paragraphe doit être libellé comme suit :

« Le principe de l'égalité de traitement n'empêche pas que, *pour assurer dans la pratique l'égalité totale de traitement entre les hommes et les femmes en matière d'emploi*, des mesures soient maintenues ou adoptées prévoyant des avantages spécifiques destinés à faciliter l'exercice d'une activité professionnelle par le sexe sous-représenté ou à prévenir ou compenser des désavantages dans la carrière professionnelle. »

Article 30, paragraphe 1 : Après une période de scolarité obligatoire à plein temps jusqu'à la 16^e année, les Pays-Bas connaissent une période de scolarité obligatoire partielle pendant la 16^e et la 17^e année. Un jeune est autorisé à travailler à cet âge, en tenant compte des heures d'enseignement obligatoire. La deuxième phrase devrait donc s'énoncer comme suit :

« L'âge minimal d'admission au travail ne doit pas être inférieur à l'âge auquel cesse la période de scolarité obligatoire à *plein temps*, »

Article 39, paragraphe 2 : L'utilisation du terme « notamment » soulève la même objection que celle que j'ai faite à l'article 3, paragraphe 2. L'utilisation du terme « notamment » suggère que le droit formulé au paragraphe 1 comprend plus de droits que les trois droits énumérés au paragraphe 2, qui ne sont toutefois pas cités et ne sont donc pas reconnaissables, mais qui existent bel et bien. Cela est inacceptable pour ceux qui peuvent invoquer ces droits et pour ceux qui doivent les respecter. Il convient donc de faire un choix entre énumérer tous les droits ou omettre le terme « notamment ».

Article 41 : Il est préférable de reconnaître ce droit à toute personne.

Article 45, paragraphe 1 : La formulation de cet article est beaucoup trop large. Il ressort du commentaire que l'article n'a pour but que « l'inscription de la jurisprudence de la Cour de Justice de Luxembourg dans la Charte » et non « de modifier le système de

recours prévu par les traités et notamment les règles relatives à la recevabilité ». Ceci devrait être exprimé plus clairement dans le texte du paragraphe 1 afin d'éviter l'apparition d'innombrables litiges de compétence sur la base de cet article dont la formulation est trop large.

Article 47, paragraphe 2 : Les mots « principes généraux du » ont probablement été omis, à tort. L'article s'énonçait et devrait encore s'énoncer comme suit :

« Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après *les principes généraux* du droit international. »

Article 49, paragraphe 1 : La question se pose de savoir s'il faut compter Europol parmi les « institutions et organes de l'Union ». Le gouvernement néerlandais est partisan d'inclure Europol dans le champ d'application de l'article. Si sa rédaction l'exclut, il convient de donner la préférence à une rédaction qui place Europol dans le champ d'application de cet article, et donc de la Charte. Par exemple :

« Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union *dans le cadre des compétences qui leur sont attribuées par des conventions ou pour leur mise en œuvre, ainsi qu'aux institutions ou organes qui sont actifs dans le domaine de l'Union, en vertu de mesures du Conseil*, dans le respect du principe de subsidiarité, ainsi... »

De plus, le passage « et uniquement lorsqu'ils mettent en œuvre le droit de l'Union » devrait plutôt s'énoncer comme suit :

« ainsi qu'aux États membres uniquement dans le champ d'application du droit de l'Union. »

Article 50 :

1. J'ai déjà indiqué que je préférerais que le paragraphe 3 prenne la place du paragraphe 1. Je prie à nouveau le Présidium de considérer mon amendement visant à renvoyer de la même manière que dans l'actuel paragraphe 3 aux articles correspondants de la Charte sociale européenne révisée :

« Dans la mesure où la présente Charte contient des droits et des principes sociaux correspondant à des droits et des principes énoncés dans la Charte sociale européenne révisée, leur sens et leur portée sont les mêmes que ceux que leur confère la Charte sociale européenne révisée. »

De mon point de vue, ce paragraphe devrait devenir le paragraphe 2, les paragraphes 1 et 2 étant à renuméroter 3 et 4.

2. Inclure dans le paragraphe 1 originel (de mon point de vue le paragraphe 2 ou 3) des références à la CEDH et à la Charte sociale européenne révisée, renforcerait encore davantage le parallélisme entre la Charte et la CEDH (et la Charte sociale européenne révisée) et, par conséquent, la sécurité juridique. Par exemple comme suit :

« Les limitations à l'exercice des droits et des libertés reconnus par la présente Charte ne doivent pas aller au-delà de celles qui sont autorisées par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et par la Charte sociale européenne révisée. Des limitations à d'autres droits fondamentaux ne peuvent être imposées que par l'autorité législative compétente. Dans le respect du principe de...etc. »

Enfin, j'attire l'attention sur le fait qu'il est recommandé de numéroter les paragraphes des articles 12, 22, 30 et 31.

J'apprécierai hautement l'attention que le Présidium voudra bien accorder à ces remarques générales. Je signale, à toutes fins utiles, que j'envoie une deuxième lettre à

monsieur JAQUÉ, à l'intention du service de traduction. Cette lettre concerne les erreurs de traduction et l'usage incorrect du néerlandais.

Veillez agréer, cher collègue et ami, les assurances de ma considération distinguée.

Frits Korthals Altes
Représentant personnel du gouvernement
du Royaume des Pays-Bas

Jean-Paul.Jaque@consilium.eu.int

A l'attention de M. Guy BRAIBANT

KORTHALS ALTES

La Haye, le 7 septembre 2000

Cher Collègue et Ami,

Hieronder volgen mijn algemene opmerkingen naar aanleiding van de volledige ontwerptekst van het handvest van de grondrechten van de Europese Unie die op 28 juli jl. door het Presidium is voorgesteld.

Vooraf maak ik de opmerking dat ik de op 28 juli jl. beschikbaar gekomen teksten in het algemeen verbeterd acht ten opzichte van voorgaande ontwerpteksten, maar dat – mede door de korte tijd die de conventie en het Presidium zijn gegund – de teksten nog niet de kwaliteit hebben die nodig is om tot een juridisch bindend document te geraken. Dat is niet zonder gevaar, want ook zonder formele bindende kracht zal het handvest een rol gaan spelen in de rechtspraak. Voor zover ik in het navolgende naar de toelichtingen in CONVENT 46 verwijst, heb ik gebruik gemaakt van de Franse tekst, daar teksten in andere talen nog niet beschikbaar zijn.

Artikel 50 lid 3:

De Nederlandse regering heeft wat de klassieke grondrechten betreft altijd grote waarde gehecht aan een zo groot mogelijke overeenstemming tussen de in het handvest van de grondrechten van de Europese Unie te formuleren grondrechten en de daarmee corresponderende grondrechten in het EVRM. De belangrijkste reden hiervoor is dat de Europese burger – en alle anderen voor wie deze grondrechten gelden – het meest is gediend met één en hetzelfde regiem van klassieke grondrechten onder EVRM en handvest. De meerwaarde van het handvest ten opzichte van het EVRM ziet de Nederlandse regering vooral in de formulering van de sociale en economische grondrechten, naast de vastlegging van de burgerrechten.

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Volledige gelijkheid van definitie, beperkingsgronden en voorwaarden waaronder beperkingen op grondrechten mogen worden aangebracht en voorwaarden waaraan deze beperkingen moeten voldoen, had bereikt kunnen worden door een definiërend “Part B”, zoals voorgesteld door Lord Goldsmith. Deze volledige gelijkheid had ook bereikt kunnen worden door in elk artikel betreffende een klassiek grondrecht te verwijzen naar het corresponderende artikel in het EVRM. Toen het er maar uitzag dat het voorstel van Lord Goldsmith onvoldoende ondersteuning zou krijgen, heb ik amendementen van deze strekking ingediend. Het Presidium heeft deze amendementen niet overgenomen. Als derde mogelijkheid van een zo groot mogelijke gelijkheid van inhoud en reikwijdte van de klassieke grondrechten tussen EVRM en handvest zag ik een horizontaal artikel, zoals door mij voorgesteld in amendement 582. Het Presidium heeft dit amendement in beginsel overgenomen in artikel 50 lid 3. Er is echter bij de vertaling van de oorspronkelijk in het Nederlands geformuleerde tekst in het Frans een storende fout opgetreden, die ik helaas pas heb ontdekt na indiening van mijn brief van 28 juni jl., verspreid met CHARTE 4406/00 CONTRIB 262 van 6 juli jl., waarin ik de Franstalige en de Engelstalige versie, zoals deze waren opgenomen in CHARTE 4332/00 CONVENT 35 van 25 mei jl., had overgenomen.

De juiste vertaling in het Frans had moeten luiden:

Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l’homme, leur signification et leur portée sont *les mêmes que* la signification et la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue.

In plaats van “les mêmes que” stond in de Franse versie van CHARTE 4332/00 CONVENT 35 van 25 mei jl. ”similaires à”. In de Engelse tekst stond ten rechte “the same as”.

In artikel 50 lid 3 staat in de Franse tekst wederom “similaires à”. Uit het Frans, dat bij de opstelling van Charte 4422/00 CONVENT 45 duidelijk de werktal van het Presidium of het secretariaat is geweest, is nu in de Engelse tekst vermeld “similar to”. In de Nederlandse tekst is dit vertaald als “dezelfde als” (les mêmes que). Mij is gebleken dat in het Deens, het Fins en het Zweeds de tekst overeenkomt met de Nederlandse, alsof in de Franse tekst gestaan zou hebben “les mêmes que”. Er zijn dus verschillen ontstaan tussen de Franse en Engelse tekst enerzijds en de Nederlandse, Deense, Finse en Zweedse tekst anderzijds, waarbij laatstgenoemde teksten overeenstemmen met het oorspronkelijke amendement (582).

Het is mijn uitdrukkelijke bedoeling geweest aan de woorden in mijn amendement de betekenis te geven die in het Frans wordt weergegeven met “les mêmes que” of “identique à” en in het Engels met “the same as” of “identical”.

Vanwege het grote belang van deze horizontale bepaling verzoek ik het Presidium met grote klem erop toe te zien dat in alle talen de oorspronkelijke bedoeling – de klassieke grondrechten zijn in het handvest, ongeacht afwijkende formulering, identiek aan die in het EVRM –juist en ondubbelzinnig wordt weergegeven.

Voorts acht ik het uit oogpunt van systematiek beter, wanneer de (verbeterde) tekst van artikel 50 lid 3 wordt opgenomen als artikel 50 lid 1. Ik zou mij ermee kunnen verenigen wanneer, overeenkomstig het voorstel van de heer Olsen, de artikelen waarom het gaat met hun nummer worden vermeld, zodat het voor een ieder duidelijk is op welke artikelen deze horizontale bepaling betrekking heeft. Wanneer wij het bovendien erover eens zouden zijn dat in geen van deze artikelen beoogd is een hogere of een ruimere mate van bescherming te verlenen dan het EVRM verleent, zou de laatste bijzin kunnen vervallen. Dat kan pogingen van advocaten om te pleiten dat het handvest een hogere beschermingsgraad beoogt dan het EVRM in de kiem smoren.

“Eenieder” in de artikelen 14 lid 1, 15 lid 1, 27, 32 lid 3 en 33:

De Nederlandse regering handhaaft uitdrukkelijk haar onoverkomelijke bezwaren tegen het gebruik van het begrip “eenieder” in de artikelen 14 lid 1, 15 lid 1, 27, 32 lid 3 en 33 op de gronden die ik tijdens de vergaderingen van de Conventie bij de behandeling van deze artikelen heb uiteengezet. Deze gronden zijn voor:

Artikel 14 lid 1: Vreemdelingen boven de leerplichtige leeftijd (tot en met 17 jaar) die niet rechtmatig in Nederland verblijven, hebben geen recht op onderwijs en geen toegang tot beroepsopleiding en bijscholing. Het onoverkomelijke karakter van het bezwaar van de Nederlandse regering is gelegen in het risico dat de nationale rechter op grond van het handvest zal oordelen dat onrechtmatig in Nederland verblijvende vreemdelingen boven de leerplichtige leeftijd die op technische gronden niet kunnen worden uitgezet (betrokkene heeft geen paspoort of ander geldig identiteitsbewijs, land van herkomst onbekend), het recht hebben op onderwijs en toegang tot een beroepsopleiding of bijscholing.

Artikel 15 lid 1: Alleen zij die rechtmatig in een lidstaat van de Unie verblijven en dan bovendien nog het recht hebben te werken en de daartoe vereiste kwalificaties hebben, hebben het recht een vrijelijk gekozen beroep uit te oefenen. Onrechtmatig in de Unie verblijvenden en asielzoekers wier asielverzoek nog in behandeling is, hebben in het algemeen niet het recht een vrijelijk gekozen beroep uit te oefenen. Leden van diplomatieke vertegenwoordigingen van derde landen verblijven rechtmatig op het grondgebied van een lidstaat, maar mogen geen ander beroep uitoefenen dan dat waarvoor zij als diplomaat zijn toegelaten. Het onoverkomelijke karakter van het bezwaar van de Nederlandse regering is gelegen in het risico dat de nationale rechter op grond van het handvest zal oordelen dat onrechtmatig in Nederland verblijvende vreemdelingen die

op technische gronden niet kunnen worden uitgezet (land van herkomst onbekend, betrokkene heeft geen paspoort of ander geldig identiteitsbewijs enz.), het recht hebben een vrijelijk gekozen beroep uit te oefenen.

De mogelijkheid die artikel 50 lid 1 biedt om beperkingen aan te brengen op de in het handvest genoemde rechten, kan wel worden aangewend om bevoegdheids- en kwaliteitseisen te stellen voor beroepen waarvoor een bepaalde opleiding vereist is (artsen, advocaten), maar deze bevoegdheid geeft lidstaten niet de vrijheid grondrechten die aan eenieder zijn toegekend alleen voor onderdanen van derde landen die onrechtmatig in die lidstaat verblijven, te beperken. In Nederland bestaat wel wetgeving die onrechtmatig in Nederland verblijvende vreemdelingen uitsluit van bepaalde bevoegdheden en faciliteiten. Die wetgeving wil de regering niet in gevaar brengen door te ruim geformuleerde grondrechten, ook al zouden die slechts gelden voor de organen en instellingen van de Unie en, wat de lidstaten betreft binnen de werkingssfeer van het Unierecht. De rechter zou gevoelig kunnen blijken voor het argument dat binnenslands geen regelingen kunnen gelden die op Unieniveau in strijd worden geacht met voor eenieder geldende grondrechten.

Artikel 27: Op dezelfde gronden bestaat onoverkomelijk bezwaar tegen het gebruik van het begrip “eenieder” in artikel 27. Alleen zij die rechtmatig in een lidstaat verblijven en het recht hebben aldaar werkzaamheden te verrichten, kunnen aanspraak maken op arbeidsbemiddeling.

Artikel 32 lid 3: Onrechtmatig in Nederland verblijvende vreemdelingen hebben geen aanspraak op bijstand of op huursubsidie. De toevoeging “onder de door de nationale wetgevingen en praktijken gestelde voorwaarden” biedt geen uitkomst. De Nederlandse wetgeving stelt aan onrechtmatig in Nederland verblijvende vreemdelingen geen voorwaarden voor bijstand of huursubsidie. De wetgever heeft hen daarvan uitgesloten. Bovendien geldt voor asielzoekers wier asielverzoek nog in behandeling is, dat zij op andere wijze huisvesting en bijstand ontvangen dan Nederlanders en toegelaten vreemdelingen, te weten gezamenlijke huisvesting in opvangcentra en ondersteuning deels in natura.

Artikel 33: Voor onrechtmatig in Nederland verblijvende vreemdelingen staan alleen de dringend vereiste medische en preventieve voorzieningen open. Andere dan dringend vereiste voorzieningen staan slechts open voor hen die de kosten daarvan zelf of krachtens een bestaande verzekering kunnen betalen. Het probleem van de onrechtmatig in Nederland verblijvende vreemdelingen is dat zij in het algemeen niet verzekerd zijn. Ik sluit mij bovendien aan bij de opmerking van de heer Patijn dat het in wezen niet gaat om de toegankelijkheid van de curatieve en preventieve gezondheidszorg, maar om een verbod tot uitsluiting van ziektekostenverzekering.

In al deze gevallen geldt dat de Nederlandse regering onder geen beding het risico wil lopen te worden veroordeeld onrechtmatig in Nederland verblijvende vreemdelingen toe te laten tot

voorzieningen waarvan de wetgever hen uitdrukkelijk heeft uitgesloten. Indien de bepalingen mochten voorkomen in de aan de Europese Raad voor te leggen versie, zal Nederland aan ongewijzigde totstandkoming van het handvest niet kunnen meewerken.

Overige opmerkingen:

Hieronder volgen artikelsgewijs nog enkele opmerkingen, hetzij als bezwaar, hetzij met het doel een kwalitatieve verbetering aan te bevelen.

Preambule § 7: Gelet op de betekenis van enkele horizontale bepalingen en de vele verwijzingen naar nationale wetgeving en praktijken, is er geen sprake van waarborging van de in het handvest vermelde rechten en vrijheden. Bovendien zou pas sprake kunnen zijn van waarborging als de Europese Raad zou besluiten tot vaststelling van een rechtens afdwingbaar handvest.

Artikel 3 lid 2: Het gebruik van het begrip “met name” (“notamment”) duidt erop dat er meer beginselen zijn die nageleefd moeten worden, die echter niet worden genoemd. Dat is voor degenen die deze beginselen moeten naleven niet aanvaardbaar. Hetzelfde bezwaar geldt het verbod van eugenetische praktijken. Welke eugenetische praktijken zijn er nog meer verboden dan die welke de selectie van personen ten doel hebben? De Nederlandse regering zou de voorkeur eraan geven het gehele tweede lid van artikel 3 te laten vervallen. In ieder geval zou zij het verbod van eugenetische praktijken, als zijnde te weinig omlijnd, geschrapt willen zien.

Artikel 11 lid 2: De woorden “met inachtneming van pluralisme en doorzichtigheid” (“dans le respect du pluralisme et de la transparence”) maken de bepaling onduidelijk. Moet “dans le respect de” worden uitgelegd als een beperking of als een uitbreiding? Is het een taak van de overheid om de pluriformiteit en de doorzichtigheid te eerbiedigen of van degenen aan wie de mediavrijheid wordt gegarandeerd. De toelichting in CONVENT 46 en het arrest van 25 juli 1991 in zaak C288/89 geven hierover geen uitsluitsel. Hoe verhoudt zich de vrijheid van informatie zich tot het recht op toegang tot documenten van het Europese Parlement, de Raad en de Commissie, dat in artikel 40 slechts aan burgers en ingezetenen van de Unie en rechtspersonen met statutaire zetel in een lidstaat is verleend?

Artikel 14 lid 1 tweede volzin: In Nederland is het basisonderwijs kosteloos, maar de betaling van schoolgeld voor vervolgonderwijs voor leerlingen vanaf 16 jaar verplicht, ook voor zover dit vervolgonderwijs verplicht is. Er is echter een mogelijkheid tot compensatie, dus een mogelijkheid het verplichte vervolgonderwijs (geheel of gedeeltelijk) kosteloos te volgen. In de toelichting in CONVENT 46 is echter vermeld dat het gaat om “le principe de gratuité de l’enseignement obligatoire”. Omdat het hier een principe wordt genoemd rijst de vraag of de bepaling wel de vrijheid laat schoolgeld te heffen en alleen in geval van onvermogen een tegemoetkoming te verlenen. Als de bepaling beoogt ook het verplichte vervolgonderwijs kosteloos te doen zijn en de mogelijkheid van het vragen van een bijdrage uit te sluiten, levert deze bepaling voor de Nederlandse regering een onoverkomelijk bezwaar op.

Artikel 15 leden 1 en 2: Het verdient aanbeveling de leden 1 en 2 om te wisselen.

Artikel 15 lid 3: Niet alle onderdanen van derde landen die rechtmatig op het grondgebied van lidstaten verblijven, hebben recht op gelijkwaardige arbeidsvoorwaarden. Zij moeten ook toestemming hebben om in die lidstaat te werken. Het artikel zou dus moeten luiden:

“Onderdanen van derde landen wie het is toegestaan te werken op het gebied van een lidstaat, hebben het recht op arbeidsvoorwaarden die gelijkwaardig zijn aan die welke de burgers van de Unie genieten.”

Artikel 18: Een recht op asiel bestaat niet. Wel het recht om asiel te vragen of om asiel te zoeken. De juiste redactie zou dus moeten luiden:

“Het recht *op het vragen van asiel* is gegarandeerd ...”

Artikel 19 lid 2: In de Nederlandse vertaling is “pourrait être soumis” een irrealis, terwijl de jurisprudentie van het Europese Hof voor de Rechten van de Mens te Straatsburg juist ervan uitgaat dat er een reëel risico moet bestaan dat de persoon van wie uitlevering is verzocht, ter dood wordt veroordeeld of aan marteling of aan andere onmenselijke of vernederende behandelingen of bestraffingen wordt onderworpen. De redactie in overeenstemming met deze jurisprudentie zou dus moeten luiden:

“Niemand mag worden verwijderd of uitgezet naar of uitgeleverd aan een staat *waarin hij een reëel risico loopt* aan de doodstraf, aan marteling of aan andere onmenselijke of vernederende behandelingen of bestraffingen *te worden onderworpen*.”

Artikel 22 lid 2: Ik vermoed dat een aantal woorden is weggefallen en dat dit artikellid als volgt dient te luiden:

“Het beginsel van gelijke behandeling belet niet dat, *om volledige gelijkheid van mannen en vrouwen in het beroepsleven in de praktijk te verzekeren*, maatregelen gehandhaafd of genomen worden waarbij specifieke voordelen worden ingesteld om de uitoefening van een beroepsactiviteit door het ondervertegenwoordigde geslacht te vergemakkelijken of om nadelen in de beroepsloopbaan te voorkomen of te compenseren.”

Artikel 30 lid 1: Nederland kent na de periode van volledige leerplicht tot het 16^{de} jaar nog een periode van partiële leerplicht gedurende het 16^{de} en 17^{de} jaar. Op die leeftijd mag wel gewerkt worden, met inachtneming van de te volgen lessen. Daarom zou de tweede volzin moeten luiden:

“De minimumleeftijd voor toelating tot het arbeidsproces mag niet lager zijn dan de leeftijd waarop de *volledige* leerplicht ophoudt, ...”

Artikel 39 lid 2: Hierbij geldt hetzelfde bezwaar tegen het gebruik van het begrip “met name” (“notamment”) als ik bij artikel 3 lid 2 heb gemaakt. Het gebruik van het begrip “met name” (“notamment”) duidt erop dat het in lid 1 geformuleerde recht meer rechten omvat dan de drie die in lid 2 zijn opgesomd, die echter niet worden genoemd en dus niet kenbaar zijn, maar wel bestaan. Dat is niet aanvaardbaar voor degenen die zich op deze mogen beroepen noch voor hen die deze rechten moeten eerbiedigen. Er moet dus een keuze worden gemaakt tussen het opsommen van alle rechten of het weglaten van “met name” (“notamment”).

Artikel 41: Het verdient de voorkeur dit recht toe te kennen aan eenieder.

Artikel 45 lid 1: Dit artikel is veel te ruim geformuleerd. Uit de toelichting blijkt dat het artikel slechts “inscription de la jurisprudence de la Cour de Justice de Luxembourg dans la charte” ten doel heeft en niet “de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité.” Dat zou in de tekst van lid 1 duidelijker tot uitdrukking gebracht moeten worden om talrijke competentiegeschillen op basis van dit te ruim geformuleerde artikel te voorkomen.

Artikel 47 lid 2: Vermoedelijk zijn ten onrechte de woorden “algemene beginselen van” weggefallen. Het artikel luidde en zou moeten blijven luiden:

“Dit artikel staat niet in de weg aan berechting en bestraffing van iemand die schuldig is aan een handelen of nalaten dat ten tijde van dat handelen of nalaten een misdrijf was overeenkomstig *de algemene beginselen van* internationaal recht.

Artikel 49 lid 1: De vraag rijst of onder “instellingen en organen van de Unie” ook Europol begrepen dient te worden. De Nederlandse regering is er voorstander van dat Europol wel onder de werkingssfeer valt. Mocht de huidige redactie dat uitsluiten, dan gaat de voorkeur ernaar uit dat een redactie wordt gekozen die Europol onder de werking van dit artikel en dus van het handvest brengt. Bijvoorbeeld:

De bepalingen van dit handvest zijn gericht tot de instellingen en organen van de Unie *in het kader van de bevoegdheden die hun bij verdrag of ter uitvoering daarvan zijn verleend, alsmede tot de instellingen of organen die op grond van maatregelen van de Raad werkzaam zijn op het terrein van de Unie*, met inachtneming van het subsidiariteitsbeginsel, en, ...”

Voorts zou de passage “en, uitsluitend wanneer zij het recht van de Unie ten uitvoer brengen, tot de lidstaten” beter kunnen luiden:

“en, uitsluitend binnen de werkingssfeer van het Unierecht, tot de lidstaten.”

Artikel 50:

1. Ik gaf al aan een voorkeur te hebben voor de plaatsing van lid 3 als lid 1. Ik verzoek het Presidium nogmaals mijn amendement te overwegen dat op soortgelijke wijze als in het huidige lid 3 gebeurt, te verwijzen naar de corresponderende artikelen in het Herziene Europees Sociaal Handvest:

“Voor zover de dit handvest sociale rechten en beginselen bevat die corresponderen met rechten en beginseleen die zijn opgenomen in het Herziene Europees Sociaal Handvest, zijn de inhoud en reikwijdte ervan dezelfde als die welke daaraan ingevolge het Herziene Europees Sociaal Handvest worden gegeven.”

Dit lid zou in mijn optiek dan lid 2 moeten worden, met vernummering van de huidige leden 1 en 2 tot 3 en 4.

2. De parallelliteit tussen handvest en EVRM (en Herziene Europees Sociaal Handvest) en daarmee de rechtszekerheid kan verder worden gediend door in het oorspronkelijke lid 1

(in mijn optiek lid 2 of lid 3) verwijzingen naar EVRM en Herzien Europees Sociaal Handvest op de nemen, bijvoorbeeld als volgt:

“Beperkingen op de uitoefening van de in dit handvest erkende rechten en vrijheden mogen niet verder strekken dan die welke door het Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden en het Herziene Europees Sociaal Handvest zijn toegestaan. Overige beperkingen kunnen slechts door de bevoegde wetgevende autoriteit worden gesteld. Met inachtneming van ...enz”

Tenslotte vestig ik nog de aandacht erop dat het aanbeveling verdient de leden van de artikelen 12, 22, 30 en 31 alsnog te nummeren.

Ik stel de aandacht die het Presidium aan deze algemene opmerkingen zal willen geven, op hoge prijs. Volledigheidshalve deel ik mede dat ik een tweede brief aan de heer JAQUÉ richt bestemd voor de vertaaldienst. Die brief heeft betrekking op vastgestelde vertaalfouten en onjuist gebruik van het Nederlands.

Met gevoelens van de meeste hoogachting, onder teken ik
Frits KORTHALS ALTES
Persoonlijk vertegenwoordiger van de
Regering van het Koninkrijk der Nederlanden

LEINEN

An

Das Präsidium des Konventes zur Erarbeitung der EU Grundrechtscharta

(Jean-Paul.Jacque@consilium.eu.int)

Zu Händen

Herrn Inigo Mendez de Vigo,

Vorsitzender der Delegation des Europa-Parlamentes im Chartakonvent

Brüssel, den 20.08.2000

Sehr geehrter Herr Mendez de Vigo

Ergänzend zu der gemeinsamen Stellungnahme zum neuen Gesamtentwurf der Grundrechtscharta vom 28.07.00, die der Kollege Prof. Meyer im Namen der Konventsmitglieder van den Burg, Boumediene-Thiery, Duff, Einem, Fayot, Holoubeck, Ilvari, Kaufmann, Leinen, Martin, Paciotti und Voggenhuber eingereicht hat, und deren Inhalt ich noch einmal der Aufmerksamkeit des Präsidiums empfehle, möchte ich noch einige persönliche Bemerkungen machen. Ebenso verweise ich auf den von mir mitgetragenen Kommentar der PSE Angehörigen in der Delegation des Europaparlamentes im Chartakonvent vom 31.08.2000.

Zur Formulierung allgemein:

Generell sollte in der gesamten Charta noch erheblich konsequenter in der Form „Jede Person hat das Recht...“ bzw. „Niemand darf...“ formuliert werden, denn es gibt nur wenige Artikel bei denen eine solche Formulierung aus juristischen oder formalen Gründen tatsächlich nicht sinnvoll ist. In diesem Sinne wären die Artikel 9, 16, 18, 20, 21, 23, 25, 30, 32, 34, 35, 36 zu überprüfen und gegebenenfalls zu ändern. (siehe unten)

Eine konsequente Anwendung dieser Formulierung würde die Lesbarkeit und auch den Identifikationswert der Charta für die Bürger Europas erheblich erhöhen.

Zu den Artikeln im Einzelnen:**Die Präambel**

Der Präambel kommt in diesem Zusammenhang besondere Bedeutung zu. Um dieser Bedeutung gerecht zu werden, sollte an dieser Stelle besonders auf eine konsequente und kohärente Formulierung geachtet werden.

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Abs. 1) Die Formulierung „*die Völker Europas*“ ist umstritten. Besser wäre daher die Formulierung „*Die Menschen Europas*“. Zusammen mit einer Kürzung des Absatzes schlage ich deshalb folgende Neuformulierung vor:

„Die Menschen Europas haben eine Union begründet, um auf der Grundlage gemeinsamer Werte eine friedliche Zukunft zu teilen.“

Abs. 7) Im Sinne der insgesamt verfolgten Systematik wäre es hier als Überleitung zu den konkreten Artikeln sinnvoll, nicht von einer „*Garantie*“ der Rechte zu sprechen, sondern ganz einfach zu formulieren:

„Daher hat jede Person die nachstehenden Rechte und Freiheiten.“

Art. 7 Achtung des Privat und Familienlebens

Im Sinne einer größeren Klarheit schlage ich die Ergänzung dieses Artikels um die folgenden zwei Begriffe vor:

„Jede Person hat das Recht auf die Achtung ihres Privat- und Familienlebens, die Unverletzlichkeit ihrer Wohnung sowie die Vertraulichkeit ihrer Kommunikation.“

Art. 8 Schutz personenbezogener Daten

Da es zum gegenwärtigen Zeitpunkt nicht klar ist, welche Ebene öffentlicher Kontrolle die Einhaltung dieser Rechte überwachen soll, ist die gewählte Formulierung irreführend, da nicht deutlich wird, ob die erwähnte „*unabhängige Stelle*“ schon existiert oder nicht. Deshalb wäre es besser, die unabhängige Kontrolle klar als Teil des Rechtes selbst zu identifizieren:

„Die Überwachung der Einhaltung dieser Rechte durch unabhängige Organe muss gewährleistet sein“

Art. 10 Gedanken-, Gewissens- und Religionsfreiheit

Diesem Artikel sollte im Sinne des von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Vorschlages ein zweiter Absatz hinzugefügt werden, in dem das *Recht auf Kriegsdienstverweigerung* verankert wird.

Art. 11 Freiheit der Meinungsäußerung und Informationsfreiheit

Der Artikel sollte im Sinne des von Prof Meyer im Namen der o.g Konventsmitglieder eingereichten Vorschlages geändert werden.

Art. 12 Versammlungs- und Vereinigungsfreiheit

Es ist generell zu begrüßen, dass die *europäischen Parteien* in Abs. 2) dieses Artikels Aufnahme gefunden haben. Allerdings ist die gewählte Formulierung missverständlich und könnte leicht als ein nicht-grundrechtsrelevanter Kommentar zur Rolle der Parteien kritisiert werden. Daher rege ich an, statt dessen als zweiten Absatz folgende Formulierung aufzunehmen:

„Jede Person hat das Recht, Zusammenschlüsse auf trans-nationaler oder europäischer Ebene zu gründen oder ihnen beizutreten.“

Art. 16 Unternehmerische Freiheit

Die für diesen Artikel gewählte Formulierung ist wenig aussagekräftig und durchbricht unnötigerweise die „Jede Person hat das Recht...“ Systematik. Besser wäre eine Formulierung wie:

„Jede Person hat das Recht, sich in Freiheit unternehmerisch zu betätigen“

Art. 18 Asylrecht

Dieses Recht muss unbedingt als ein „Jede Person hat das Recht“ Artikel formuliert werden. Außerdem ist zu überlegen, ob die Stellung des Asylrechtes *nach* beruflicher und unternehmerischer Freiheit seiner Bedeutung angemessen ist. Die Formulierung sollte also lauten:

„Jede Person hat das Recht auf Asyl nach Maßgabe des Genfer Abkommens vom 28. Juli 1951...“

Art. 20 Gleichheit vor dem Gesetz

Insbesondere, da Gleichbehandlung und Chancengleichheit in den beiden folgenden Artikeln (21 und 22) noch genauer spezifiziert werden, sollte der Artikel 20 unter allen Umständen lauten:

„Alle Menschen sind vor dem Gesetz gleich“

- damit hier nicht der Eindruck einer Einschränkung auf die Geschlechterproblematik entsteht.

Art. 21 Gleichheit und Nichtdiskriminierung:

Im Sinne der im vorhergehenden Artikel angesprochenen Logik erscheint es sinnvoll, diesen Artikel gegen den folgenden auszutauschen, so dass er zu Artikel 22 wird. Gleichzeitig sollte konsequent der Schutz einer jeden Person vor Diskriminierungen formuliert werden:

„Niemand darf auf Grund von... diskriminiert werden“

Art. 22 Gleichheit von Männern und Frauen

Wie im Kommentar zum vorhergehenden Artikel erwähnt, sollte diese Bestimmung unmittelbar auf Artikel 20 folgen. Bei der Formulierung sollte man sich im Deutschen an die alphabetische Reihenfolge der Geschlechter halten, also:

„Gleichheit von Frauen und Männern“

Art. 23 Schutz der Kinder

Abs. 1) Der zweiten Satz *„Sie können ihre Meinung frei äußern“* ist zu streichen, da er eine Sonderstellung für Kinder beim allgemeinen Recht auf Meinungsfreiheit suggeriert.

Abs. 2) wäre besser zu formulieren als:

„Bei allen Kinder betreffenden Maßnahmen öffentlicher oder privater Einrichtungen muß das übergeordnete Interesse des Kindes die (statt „eine“) vorrangige Erwägung sein.“

Art. 24 Integration von behinderten Menschen

Wie in dem gemeinsamen Kommentar zur deutschen Version bereits angemerkt, wäre auf jeden Fall die Formulierung *„Menschen mit Behinderungen“* zu verwenden.

Außerdem plädiere ich dafür, den Vorschlägen des European Disability Forums zu folgen und diesem Artikel einen Satz hinzuzufügen, der *die Maßnahmen zur Eingliederung in die Gemeinschaft* im Bezug auf diese Charta präzisiert, da ohne eine solche Bestimmung die Rechte der Charta für viele Menschen mit Behinderungen nicht zugänglich sind. Es sollte also ergänzt werden:

„Dies gilt insbesondere für Maßnahmen, die den Zugang zu den in dieser Charta aufgeführten Rechten ermöglichen“

Art. 25 Recht auf Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen

Auch in diesem Artikel sollte im Sinne der internen Systematik der Charta konsequent ein individuelles Recht für Angehörige einer bestimmten Gruppe formuliert und diese Individuen zum Subjekt der Rechtsformulierung gemacht werden:

„Arbeitnehmer und ihre Vertretungen haben ein Recht auf...“

Art. 26: Recht auf Kollektivverhandlungen und Kollektivmaßnahmen:

Dieser Artikel sollte im Sinne des von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Kommentars geändert werden. Das *Streikrecht* ist ein unverzichtbarer Bestandteil des bestehenden internationalen Rechtes und der gemeinsamen Traditionen aller Mitgliedstaaten.

Art. 30 Schutz der Jugendlichen am Arbeitsplatz

Wie in den Anmerkungen zu Artikel 25 vorgeschlagen, sollte auch hier im Sinne der Einheitlichkeit besser formuliert werden:

„Jugendliche, die zur Arbeit zugelassen sind, haben ein Recht auf... und Schutz vor...“

Art. 31 Einklang von Familien und Berufsleben

Der im Titel und im Abs. 2 dieser Artikels verwendete Begriff *„Einklang“* ist sprachlich problematisch, da er eine Harmonie suggeriert, die nicht per Recht garantiert werden kann. Daher erscheint es sinnvoll, diesen Begriff im Deutschen durch den neutraleren der *„Vereinbarkeit“* zu ersetzen. Außerdem sollte auch hier ein Recht für jede Person formuliert und der Artikel insgesamt gestrafft werden. Ich schlage deshalb folgende Neuformulierung vor:

„Jede Person hat das Recht auf die Vereinbarkeit ihres Berufslebens mit ihrem Familienleben. Dieses Recht umfasst insbesondere den Anspruch auf Schutz vor Entlassung bei Mutterschaft sowie den Anspruch auf bezahlten Mutterschaftsurlaub und Elternurlaub nach der Geburt oder Adoption eines Kindes

Art. 32 Soziale Sicherheit und soziale Unterstützung:

Auch dieser Artikel sollte im Sinne der von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Stellungnahme geändert werden. Insbesondere sollte ein klares *Recht auf Wohnen* in den 3. Absatz dieses Artikels aufgenommen werden.

Sprachlich rege ich auch hier an, diesen Artikel als Recht einer jeden Person zu formulieren.

Der Absatz 1) könnte dementsprechend lauten:

„Jede Person hat das Recht auf Zugang zu den Leistungen der sozialen Sicherheit und zu den sozialen Diensten...Die Union anerkennt und achtet dieses Recht“

Art. 35 Umweltschutz

und

Art. 36 Verbraucherschutz

Beide Artikel durchbrechen unnötigerweise die individuelle Rechtssystematik und laufen in den gegenwärtigen Formulierungen Gefahr, als reine Politikziele außerhalb des Kölner Mandates zu fallen. Daher sollte in beiden Fällen konsequent formuliert werden:

„Jede Person hat das Recht auf ...“ mit dem Zusatz, dass *„die Union ...diese Rechte anerkennt und achtet“*.

Art. 37 Aktives und Passives Wahlrecht bei den Wahlen zum Europäischen Parlament.“

und

Art. 38 Aktives und Passives Wahlrecht bei Kommunalwahlen

Beide Artikel sollten im Deutschen *geschlechtsneutral* formuliert werden.

„Jeder Unionsbürger und jede Unionsbürgerin hat das Recht...“

Art. 39 Recht auf eine gute Verwaltung

Dieser Artikel ist von zentraler Bedeutung für die Akzeptanz und den politischen „Mehrwert“ der Grundrechtscharta. Deshalb schlage ich folgende Ergänzungen vor:

Abs. 2 (1. Spiegelstrich) sollte wie folgt geändert werden:

„ – das Recht einer jeden Person, gehört zu werden, bevor eine sie betreffende (ein Wort gestrichen) individuelle Maßnahme getroffen wird“ – diese Formulierung ist kürzer und umfassender als die vom Präsidium vorgeschlagene, denn es ist nicht immer im voraus klar, ob eine geplante Maßnahme für den Einzelnen tatsächlich *nachteilig* ist oder nicht.

Abs. 3 sollte sprachlich gestrafft werden:

„Jede Person hat Anspruch darauf, dass die Gemeinschaft Schäden, die ihre Organe oder Bediensteten in Ausübung ihrer Amtstätigkeiten verursachen, nach den allgemeinen Rechtsgrundsätzen ersetzt, die den Rechtsordnungen der Mitgliedstaaten gemeinsam sind.“

Abs. 4 sollte deutlicher als *Recht* formuliert werden:

„Jede Person hat das Recht, sich in einer der Amtssprachen der Union an die Organe der EU zu wenden, und eine Antwort in der derselben Sprache zu erhalten.“

Art. 40 Recht auf Zugang zu Dokumenten

Es erscheint als eine unberechtigte Einschränkung dieses Rechtes, wenn der Artikel eine *exklusive Liste der drei Hauptorgane* der Union enthält, denn damit wäre eine Anwendung auf *andere von der Union geschaffene oder abhängige Institutionen oder Organe*

ausgeschlossen. Ich rege deshalb an, eine offeneren Formulierung zu suchen und eventuell nötige Einschränkungen im Hinblick auf notwendige Geheimhaltung präziser zu formulieren.

Art. 43 Freizügigkeit und Aufenthaltsfreiheit

Dieser Artikel sollte im Sinne der von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Stellungnahme konsequent als *Recht einer jeden Person auf Freizügigkeit* formuliert werden.

Art. 45 Recht auf einen wirksamen Rechtsbehelf und ein unparteiisches Gericht

Im zweiten Absatz sollte der 2. Satz klarer als *Recht* formuliert werden:

„Jede Person hat das Recht, sich beraten, verteidigen und vertreten zu lassen.“

Der dritte Absatz sollte, der Systematik folgend, als ein Recht einer jeden Person, die einer bestimmten Gruppe angehört (nämlich der Gruppe derjenigen, die „nicht über ausreichende Mittel verfügen“) formuliert werden:

„Jeder Person, die nicht über ausreichende Mittel verfügt, wird...“

Art. 47 Grundsätze der Gesetzmäßigkeit und der Verhältnismäßigkeit im Zusammenhang mit Straftaten und Strafen

Der Titel erscheint zu lang und zu kompliziert. Man könnte statt dessen etwa formulieren:

„Recht auf Gesetz- und Verhältnismäßigkeit in Strafsachen“

Der Absatz 2) ist in der gegenwärtigen Form für Nicht- Juristen mißverständlich:

Hier sollte versucht werden, eine verständlichere Formulierung zu finden, etwa:

„Dieser Artikel schließt nicht aus, dass jemand wegen einer Handlung oder Unterlassung verurteilt oder bestraft wird, die zur Zeit ihrer Begehung nur nach internationalem Recht strafbar war.“

Art. 49 Anwendungsbereich

Das Wort „*ausschließlich*“ im ersten Absatz erscheint als überflüssige Einschränkung. Es sollte daher gestrichen werden. Ebenso erscheint der zweite Satz dieses Absatzes als selbstverständlich und könnte ebenfalls gestrichen werden. Damit würde der Artikel lauten:

(1) Diese Charta gilt für die Organe und Einrichtungen der Union unter Einhaltung des Subsidiaritätsprinzips und für die Mitgliedstaaten bei der Durchführung des Rechtes der Union.

(2) Diese Charta begründet weder neue Zuständigkeiten noch neue Aufgaben für die Gemeinschaft und für die Union, noch ändert sie die in den Verträgen festgelegten Zuständigkeiten und Aufgaben.

Art. 50 Tragweite der garantierten Rechte

Der Artikel zu den Einschränkungen der Rechte in der EU Grundrechtscharta muss klarstellen, dass der Artikel 1, das heisst die *Achtung und der Schutz der Menschenwürde*, unter keinen Umständen eingeschränkt werden darf. Ein entsprechender Vorbehalt sollte in den Absatz 1 des Artikels 50 aufgenommen werden.

Auf die Schwierigkeiten mit dem 2. Absatz des Artikel 50 ist bereits in der Gemeinschaftsstellungnahme der Konventsmitglieder van den Burg, Boumediene-Thiery, Duff, Einem, Fayot, Holoubek, Ilvari, Kaufmann, Leinen, Martin, Meyer, Paciotti und Voggenhuber eingegangen worden. Dieser Absatz erweckt den falschen Eindruck, als seien die Rechte der Charta durch die „Bedingungen und Grenzen“ der EU Verträge eingeschränkt, und er sollte daher unbedingt gestrichen werden. Auch der Verweis auf Einschränkungen, die zulässig sind, wenn sie "...den von der Union verfolgten Zielsetzungen von allgemeinem Interesse... entsprechen", ist zu weit gehend und muss überprüft werden.

Darüberhinaus sollte die Formulierung des 3. Absatzes unbedingt vereinfacht werden. Die in der Formulierung enthaltene doppelte Bedingung („soweit...sofern“) ist kaum verständlich.

Eine alternative Formulierung könnte lauten:

„Jene Rechte, die die EU Grundrechtscharta aus der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten übernimmt, haben in der Charta die gleiche Bedeutung und Tragweite wie in der o.g. Konvention, es sei denn, die Charta gewährleistet einen höheren oder umfassenderen Schutz.“

LONCLE

D811YMD/CB

Paris, le 6 septembre 2000

**Observations sur la dernière version du Préambule
et de la Charte des droits fondamentaux
de l'Union européenne**

Le document *convent 45* constitue à la date du 28 juillet le dernier état du texte complet de la Charte proposé par le Présidium suite aux travaux de la convention les 17 et 18 juillet. Les membres de la convention peuvent adresser leurs observations sur ce projet au secrétariat de la Charte avant le 1^{er} septembre. La présente note a pour objet de soulever les difficultés que peuvent contenir certaines de ces propositions.

Préambule

Celui-ci aurait été bien accueilli lors des réunions du 17 et 18 juillet.

En affirmant dans son alinéa 3 que l'Union assure par la libre-circulation des personnes un développement équilibré et durable, la Charte anticipe sur la réalité, la libre-circulation des personnes n'étant en l'état reconnue que pour les seuls citoyens de l'Union européenne (art. 18 TCE). La clause de l'article 43, alinéa 2 de la Charte reconnaissant une liberté de circulation aux ressortissants d'Etats tiers résidant légalement sur le territoire d'un Etat membre n'y change rien, puisqu'elle anticipe également sur les compétences dévolues au

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Conseil par les articles 62 et 63-4 du TCE⁽¹⁾. Donc, dans ce domaine, cette disposition du Préambule anticipe sur l'avenir et empiète sur les compétences du Conseil.

Le cinquième alinéa du Préambule réaffirme les droits qui résultent notamment des jurisprudences de la Cour européenne des droits de l'homme et de la Cour de justice des Communautés européennes. Il y a quelque danger à « sacraliser » ainsi dans un texte normatif des jurisprudences par essence évolutives et parfois difficiles à interpréter. Au surplus, ceci constituerait une première dans un texte de droit international. La référence à la C.E.D.H., au traité sur l'Union, aux traités communautaires ainsi qu'au deux chartes sociales est suffisante et inclut de soi la jurisprudence.

Les droits de la Charte

Celle-ci est désormais divisée en sept chapitres. Plusieurs (sept) de ces droits sont nouveaux par rapport à la C.E.D.H. et à ses protocoles additionnels⁽²⁾.

La dignité de la personne : introduite à la demande du Président Herzog, cette disposition placée en tête des droits s'inspire de la Loi fondamentale allemande, qui l'a proclamée pour des raisons historiques évidentes et est reprise dans la jurisprudence constitutionnelle allemande. En France, elle a été invoquée par le Conseil d'Etat pour prohiber le lancer de nains, en 1995, et par le Conseil constitutionnel, à propos de la loi d'orientation relative à la lutte contre les exclusions, en 1998. S'il faut saluer l'introduction de ce principe, il faut savoir qu'il risque d'être abondamment invoqué devant le juge compétent, tant son contenu est flou. Au demeurant, cette notion de dignité recouvre les articles 1 à 5 de la Charte (*chapitre I*).

L'article 2 (« *droit à la vie* ») correspond aux articles pertinents de la C.E.D.H.

Le droit à l'intégrité de la personne (article 3) est repris de la convention d'Oviedo pour la protection des droits de l'homme et la biomédecine du 4 avril 1997.

L'article 4 (*interdiction de la torture et des traitements inhumains ou dégradants*) est calqué sur l'article 3 de la C.E.D.H.. Il y a également une parenté entre l'article 5 sur *l'interdiction de l'esclavage et du travail forcé* et l'article 4 de la C.E.D.H.

⁽¹⁾ Art. 62 : Le Conseil arrête dans les cinq ans suivant l'entrée en vigueur du traité d'Amsterdam... des mesures fixant les conditions dans lesquelles les ressortissants de pays tiers peuvent circuler librement ; art. 63,4 : le Conseil arrête dans les cinq ans suivant l'entrée en vigueur du traité d'Amsterdam des mesures définissant les droits de ressortissants des pays tiers en situation régulière de séjour dans un Etat membre de séjourner dans les autres Etats membres.

⁽²⁾ Dignité de la personne humaine ; intégrité de la personne ; protection des données à caractère personnel ; liberté de la recherche ; droit d'asile ; protection des étrangers en cas d'éloignement et protection des enfants.

Le chapitre II consacré aux libertés reprend largement les stipulations de la C.E.D.H., sous réserve de quelques novations. Celles-ci portent sur :

– *La protection des données personnelles* : les principes définis dans la Charte sont issus de la convention du 28 janvier 1981 sur la protection des personnes à l'égard du traitement automatisé des données à caractère personnel et de la directive européenne du 24 octobre 1995 ;

– *Le droit au mariage et à la fondation de la famille* est assoupli par rapport à la C.E.D.H., dans la mesure où sa définition est renvoyée désormais au droit national ;

– *La référence aux partis politiques au niveau européen* ; le libellé de l'article 12, alinéa 2 qui est choisi (« *les partis politiques au niveau européen contribuent à l'expression de la volonté politique des citoyens de l'Union* ») permettra de satisfaire aussi bien les promoteurs de l'Union européenne que ses détracteurs ;

– *La liberté de la recherche* proclamée à l'article 13 est reprise de la convention d'Oviedo. Sa mention signifie que la recherche ne s'oppose pas à l'innovation scientifique. Il conviendrait toutefois de bien préciser, ce qui n'est pas le cas en l'état de la lecture du document *convent 46*, qui contient les explications attachées à chaque article de la Charte, que cette liberté de la recherche exige le consentement de l'homme, lorsque celui-ci est sujet de celle-ci et est capable de donner son consentement. Il serait donc souhaitable de l'indiquer dans les explications de cet article, en faisant référence, tant à l'article 3 de la Charte (droit à l'intégrité de la personne) qu'aux articles 16, 17 et 18 de la convention d'Oviedo.

Les articles 14 (*droit à l'éducation*) et 15 (*liberté professionnelle*) n'appellent pas d'observation. A l'article 16, il serait sans doute préférable de parler de *liberté d'entreprendre*, plutôt que de *liberté d'entreprise*.

S'agissant du *droit de propriété* (article 17), il n'est prévu une expropriation que moyennant une juste indemnité. Cette disposition n'est pas incompatible avec l'article 1 du protocole additionnel à la C.E.D.H. qui protège le droit de propriété. Toutefois, le mandat de Cologne a demandé aux rédacteurs de la Charte de tenir compte des traditions constitutionnelles communes. Or, l'article XVII de la Déclaration des droits de l'homme et du citoyen de 1789 prévoit que cette indemnisation doit être « *juste et préalable* », ce qui n'est pas le cas ici et risque de poser un problème de contrariété de texte.

S'agissant du *droit d'asile* (article 18), il faut se réjouir que la référence à la convention de Genève de 1951, texte fondateur en la matière, ait eu finalement la préséance sur le TCE.

L'article 19 relatif à la protection en cas d'éloignement, d'expulsion et d'extradition n'apporte pas de nouveauté fondamentale par rapport à la jurisprudence de la Cour européenne des droits de l'homme ;

Axé sur l'égalité, le *chapitre III* appelle sans doute plus d'observations que le précédent. Si la rédaction de l'article 20, en garantissant l'égalité en droit de toutes les personnes, hommes et femmes, suscite l'approbation, il convient de bien mesurer la portée de l'article 21 sur l'égalité et la non-discrimination. Son premier alinéa pose le principe de l'interdiction de toute discrimination. Un double pas est ainsi franchi ; d'une part, par rapport à l'article 14 de la C.E.D.H. qui ne prohibe les discriminations qu'au regard des seules stipulations de la convention ; d'autre part, par rapport à l'article 13 du TCE qui autorise le Conseil à prendre des mesures pour combattre des discriminations. Par conséquent, le champ d'application de l'article 21, alinéa 1, est plus large que ces deux dispositions dans la mesure où il proscriit toute discrimination, *ex abrupto*. Par là même, on ne peut exclure un problème d'articulation entre cet article 21 et ces dispositions de la C.E.D.H. et du TCE, d'autant que l'alinéa 2 de l'article 21 prohibe les discriminations sur le fondement de la nationalité dans le seul domaine d'application du TCE.

Les articles 22 et 23 (*égalité entre hommes et femmes, protection des enfants*) n'appellent pas de remarque, dans la mesure où ils s'inspirent respectivement de l'article 20 de la charte sociale européenne et de la convention de New York (articles 3, 12 et 13).

L'accent mis sur l'intégration des personnes handicapées (article 24) est positif.

Le chapitre social intitulé « *solidarité* » ne manquera pas de décevoir ceux qui voyaient dans la consécration de droits sociaux la réelle valeur ajoutée de la Charte. Cette déception peut s'expliquer par trois raisons : un renvoi fréquent aux législations et pratiques nationales (art. 25, 26, 32, 33 et 34) ; une distinction entre les droits programmatiques (sécurité sociale et aide sociale ; accès aux services d'intérêt économique général) non opposables et les droits subjectifs opposables ; la timidité des droits subjectifs, puisque par exemple la liberté syndicale n'est pas affirmée et que le droit de grève n'est visé qu'implicitement à l'article 26, en étant mis sur le même plan que le *lock-out*.

L'allocation des prestations sociales prévue par l'article 32 est envisagée à minima, en étant réservée aux travailleurs ressortissants d'un Etat membre et résidant dans un

autre Etat membre, ainsi qu'aux membres de leurs familles. Ces droits se situent donc en deçà des principes affirmés par la jurisprudence de la Cour européenne des droits de l'homme, qui dans un arrêt *Gaygusuz c. Autriche* du 16 septembre 1996 a considéré que les droits sociaux ne pouvaient être attribués exclusivement aux ressortissants d'un Etat partie à la C.E.D.H. Mais en faisant jouer les dispositions plus favorables de la C.E.D.H., la clause horizontale de l'article 50 de la Charte palliera le degré de protection inférieure de cet article 32.

Les dispositions des articles 35 et 36 relatives respectivement à la protection de l'environnement et des consommateurs ne constituent pas des avancées considérables au regard des articles 174 et 153 du TCE.

Au *chapitre V (citoyenneté)*, plusieurs articles sont issus du TCE ou de directives. Cela est vrai des articles 37 (*droit de vote et d'éligibilité aux élections au Parlement européen*), 38 (*droit de vote et d'éligibilité aux élections municipales*), 41 (*médiateur*) et 44 (*protection diplomatique et consulaire*). La nouveauté de ce chapitre est triple. Elle réside d'abord dans la garantie d'un droit à une bonne administration de la part des institutions et organes de l'Union avec notamment la mise en jeu de leur responsabilité (article 39) ; elle est marquée ensuite par la consécration d'un droit d'accès aux documents dont la mise en œuvre était renvoyée jusqu'à maintenant au Conseil par l'article 255 du TCE. Enfin, on relève l'élargissement du champ des personnes autorisées à circuler et séjourner librement sur le territoire des Etats membres, déjà évoqué dans le Préambule avec les problèmes que l'on a relevés plus haut.

Au *chapitre VI* qui traite de la *justice*, comme au chapitre II (*libertés*), les dispositions soit sont proches de la C.E.D.H., soit s'en démarquent pour faire œuvre de nouveauté. Parmi les règles du premier type, on peut ranger la présomption d'innocence et les droits de la défense (art. 46), la légalité et la proportionnalité des délits et des peines (art. 47) et le respect du principe *non bis in idem* (art. 48). La Charte va plus loin en revanche que la C.E.D.H. dans le droit à un recours effectif et à un tribunal impartial (art. 45). Le champ des droits et libertés faisant l'objet d'un recours est en effet plus large que dans la C.E.D.H., puisque celle-ci renvoyait aux droits et libertés reconnus par la seule convention (art. 13). En outre, tous les contentieux pourront désormais faire l'objet d'un recours, alors que ce champ ne recouvrait à l'origine dans la C.E.D.H. que les contestations sur les droits et obligations de caractère civil et sur le bien-fondé de toute accusation en matière pénale (art. 6).

Le dernier chapitre (*chapitre VII. Dispositions générales*) ne manque pas de soulever plusieurs interrogations.

S'agissant de l'article 49 (*champ d'application*), on en retiendra deux. Elles portent sur le champ d'application de ce texte et sur sa justiciabilité.

La question du champ d'application de la Charte n'est pas incluse dans le mandat de Cologne. Cependant, la convention a décidé que la Charte s'adresserait « *aux institutions et organes de l'Union dans le respect du principe de subsidiarité ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union* ». Il reviendra au Conseil de Nice de se prononcer sur la pertinence de ce champ d'application. Au-delà, on relève qu'en visant la « *mise en œuvre du droit de l'Union* », cette disposition embrasse les trois piliers de l'Union européenne. Cela mérite d'être noté car si le respect de la Charte ne s'imposait qu'à la mise en œuvre du droit communautaire, la portée de l'exercice aurait été d'un intérêt limité. Toucher en revanche au troisième pilier avec des matières (coopération judiciaire et policière) qui intéressent directement les droits et libertés énoncés par la Charte est beaucoup plus novateur, même si dans ces matières les principes posés par la C.E.D.H. sont d'ores et déjà applicables.

Reste la question de la justiciabilité. Car si le premier alinéa de l'article 49 définit un large champ d'application, le second alinéa précise que la Charte « *ne crée aucune compétence ni aucune tâche nouvelle pour la Communauté et pour l'Union et ne modifie pas les compétences et les tâches définies par les traités* ».

Cette disposition pourrait être perçue comme contradictoire avec le premier alinéa, dans la mesure où, précisément, jusqu'à maintenant, comme on l'a vu, la mise en œuvre des mesures du troisième pilier était soumise à la C.E.D.H. alors que désormais, ce sera la Charte qui leur sera applicable. En s'appliquant au troisième pilier, la Charte crée bien une nouvelle compétence pour l'Union. Mais ce qui est surtout intéressant de noter, c'est que les compétences de la Cour de justice des Communautés européennes devraient rester inchangées. L'article 46 du TUE combiné avec son article 35 limite en effet la compétence de la Cour de justice des Communautés européennes pour le troisième pilier, au contrôle à titre préjudiciel, de la validité et de l'interprétation des décisions-cadres et des décisions ainsi que de l'interprétation des conventions. La Charte pourra servir de norme de contrôle pour apprécier la légalité de ces textes mais les actes des Etats exclus aujourd'hui de ce contrôle continueront à l'être, compte tenu de la rédaction de cet article 49, alinéa 2.

La définition des droits garantis par la Charte, qui figure à l'article 50, a constitué sans doute l'un des exercices les plus difficiles de la convention. La rédaction choisie au premier alinéa n'est pas totalement satisfaisante. La première phrase dispose que « *toute limitation à l'exercice des droits et libertés reconnus par la présente Charte doit être prévue*

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par l'autorité législative compétente ». On ne voit toujours pas à quel organe communautaire ou national renvoie cette notion. Comme cela a déjà été dit à plusieurs reprises, l'expression de « loi » serait d'autant meilleure qu'elle est utilisée par la C.E.D.H.. Dans la deuxième phrase du premier alinéa, il serait également préférable de faire référence aux objectifs d'intérêt général et à « *des* » intérêts légitimes, les objectifs d'intérêt général n'étant pas forcément légitimes et inversement.

Le troisième alinéa de cet article 50 est sans doute l'une des dispositions les plus importantes de la Charte. Elle prévoit que si la Charte contient des droits correspondant à des droits garantis par la C.E.D.H., leur sens et leur portée sont similaires à ceux que leur confère ladite convention, sauf si la Charte assure une protection plus élevée ou plus étendue. Cette règle est destinée à éviter des conflits d'interprétation entre ces deux textes et à conférer le cas échéant une autorité juridique plus importante à la Charte qu'à la C.E.D.H. Elle est apparue absolument indispensable dès le début des travaux de la convention, dans la mesure où la Charte s'est parfois démarquée de la C.E.D.H (droit au mariage, droit au recours effectif, égalité et non-discrimination, par exemple). Cependant, si comme l'indique le document convent 46, le mot « portée » renvoie aux limitations apportées aux droits, il serait préférable – et plus juridique, comme à l'alinéa 2 de l'article 50 –, de substituer aux mots « *leur sens et leur portée* » les mots « *les conditions et les limites de leur exercice* ». Sous ces réserves rédactionnelles, cet article n'appelle pas d'observations, pas plus que les dispositions finales des articles 51 et 52.

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* *

Cette version constitue une très nette amélioration par rapport aux textes précédents, qui mérite d'être relevée.

Il serait souhaitable toutefois, dans le Préambule, de revenir sur le droit à la libre-circulation, pour toutes les personnes, ce qui n'est pas la réalité juridique, et de gommer toute référence à la jurisprudence des Cours de Luxembourg et de Strasbourg ;

Dans le texte de la Charte, il conviendrait :

- d'être très attentif à la définition qui sera donnée des limites de la liberté de la recherche (art. 13) dans la partie explicative de ce document (*cf.* p. 3 de la présente note) ;

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- de modifier le libellé de la liberté d'entreprise pour lui substituer celui de liberté d'entreprendre (art. 16), qui a un contenu plus large ;
- d'ajouter le caractère préalable à l'indemnisation de l'expropriation (art. 17) ;
- de faire mention expresse du droit syndical et du droit de grève (art. 26) ;
- de faire référence à la loi et non à l'autorité législative compétente (art. 50, 1) et de supprimer dans le même article « *d'autres* » avant « *intérêts légitimes* » ;
- de substituer dans le troisième alinéa de cet article à « *leur sens et leur portée* » les mots « *les conditions et les limites de leur exercice* ».

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Göran Magnusson

2000-09-01

To the Praesidium of the Convention
(for the special attention of Mr Jansson)**Comments on the draft Charter of Fundamental Rights of the European Union**
(CONVENT 45)**General remarks**

This is the first time a complete draft of a Charter is at hand and the present draft of the Charter will need further consideration when the comments are available in all official languages. The Swedish version of the draft has a number of imperfections. Furthermore, it is not stated under the general provisions if the Charter is drawn up in the official languages of the Union and if all texts are equally authentic. Thus much work remains, and we need to use the time left before the European Council's meeting in Nice in December as fully as possible. According to the European Council's decision in Cologne, the Convention should "*present a draft document in advance of the European Council in December 2000*".

The Charter is an important contribution to the efforts to present and increase the visibility of the existing European protection for human rights and freedoms in a comprehensive document, with adherent explanations. According to the Cologne decision, the question of integrating the Charter into the Treaties should be decided after the Charter has been adopted. However, at this stage the text needs on my opinion further revisions if the Treaties should be supplemented with a catalogue of rights and freedoms. This is particularly true concerning present limitations of rights in Member States' Constitutions or in Treaties and Conventions, which according to the general provisions also should apply concerning the rights and freedoms that the Charter formulates. To safeguard a just application of law, I consider it necessary that such limitations of rights and freedoms in a legal binding text are formulated in a much more detailed manner.

In the drafts of a Charter and in the comments there is an on-going discussion on the relation between the Charter and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). There are fundamentally three reasons for this: first, the ECHR has been incorporated into many of the Member States' Constitutions; second, the possibility of the European Union entering the ECHR has been discussed as an alternative to a European Charter; third, the ECHR has in many parts served as a basis and source of inspiration in the drafting of the Charter.

Today, the European Union's relation to the ECHR is that the Union as a general principle should respect the fundamental rights as guaranteed in the Convention of the Council of Europe and as follows from the common constitutional traditions of the Member States (article 6.2. of the Treaty on European Union). The provision is a

codification of the practice of the Court of the European Communities, which can be summarised in that the Court applies the ECHR as interpreted by the practice of the Strasbourg Court, but only to the extent that the cases in question fall inside the boundaries of the Treaties. Thus, the protection of human rights within the EU has been developed by the practice of the Court of the European Communities, of which at least three problems follow. First, the citizens are not ensured a complete protection, since the practice is limited by the cases that are accepted by the Court. This also complicates the general picture of the protection. Second, it cannot be excluded that the Court of the European Communities may come to conclusions different from those of the Strasbourg Court. Should the Court of the European Communities give a weaker protection than what follows from the practice of the Strasbourg Court, the result would be unsatisfactory from a human rights point of view. Third, it is not desirable that the Treaties' protection for the fundamental rights goes beyond the ECHR, since that would result in a confusing and unpredictable situation for the private citizen. Not least for the reasons above should the possibility of the EU adhering to the ECHR be worth considering.

Therefore, I would recommend that necessary preparations for adherence of the Union to the ECHR be made in parallel with working out the Charter. It is true that a number of juridical problems need to be sorted out before such an adherence is possible. However, those problems are not insoluble. Given the development the Union has seen during the last few years, there should be a solid enough basis for an adherence to the ECHR. The Swedish Government has worked for such an adherence. Naturally, that would require Treaty changes and also modifications of the ECHR itself. Such a system would, however, fully ensure a protection for human rights and fundamental freedoms in Europe and also bring about uniformity in the application of the protection.

Even though the present draft of a EU Charter is inspired by, above all, the ECHR, the desire to let the Charter be influenced by different UN Conventions has been expressed within the Convention. The areas that from a Swedish perspective are of most importance are children's and women's rights, and also social rights. Below follows a separate discussion of children's and women's rights in the Charter.

The structure

The Charter is in my opinion structured in a pedagogic way in a preamble and different chapters. From various points of view the grouping of certain rights can be discussed and it could also be questioned if it would not be preferable to move certain articles to the preamble, thus indicating that they more concern principles from which fundamental rights could derive rather than the rights themselves. There is also a lack of balance between the different articles as to how they are formulated; some are very brief whilst some are unnecessary detailed. The latter is especially evident when it comes to the articles, which are based on Community directives. The content in these legal acts are thus raised to a constitutional level which might in the future cause problems because of the fact that Member States have been free to implement them in various ways into their own national legal order.

Some articles refer to national legislation and jurisprudence. In my opinion it is very important that those references are not deleted. They provide important sources of information on the fact that some areas lie within the competence of the Member States

and may be regulated by them in various ways.

The preamble

The wording in *paragraph 1* should be brought in line with the wording of article 1 of the Treaty on European union, which indicates that the *process of creating an ever closer union* is a continuous task. The same goes for *paragraph 2*, which should be brought in line with the preamble of the Treaty on European union in which the Member states confirm “*their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law*”.

The reference in *paragraph 3* to the “*national identities of the Member states*” should because of regional differences - be restricted to the “*identities of the Member states*”. Furthermore, to mention only the four freedoms is in my view not enough. It is important to cover the ongoing development of the single market - this also covers what is mentioned as the fifth freedom - which aims to abolish the remaining restrictions for the employees and their organisations to work freely within the Union. Therefore the last indent should be replaced by the following: “*it ensures through progress of freedoms on the single market a balanced and sustainable development*”.

Paragraph 4 ought to be adapted to the Cologne decision. According to the decision the institutions shall “*solemnly proclaim*” not “*adopt*” the Charter.

Better adaptation to the Cologne decision is also important when it comes to *paragraph 5*. The first part of the first sentence should be replaced by the following: “*This Charter consolidates and makes more evident, with due regard for the powers and tasks of the Union and the Community and the principle of subsidiarity, the fundamental rights applicable at Union level, as they result.....*”. *Paragraph 5* should also contain references to international Conventions appearing in connection with the articles, e.g. relevant UN Conventions.

Since the general articles are placed in the last part of the Charter it is absolutely necessary to insert in the preamble a new wording of *paragraph 7*, which makes the scope of application of the Charter totally clear. I can therefore fully support the proposal of a new *paragraph 7* put forward by Mr. Tarschys.

The rights of the child and of women

Sweden has over the years acted actively in international fora in matters concerning the rights of the child and of women. It is thus natural to comment upon how these rights are mirrored in the draft of the Charter.

The rights of the child

Rights having to do with children are not brought together in one part of the draft but spread out over a number of articles. *Articles 14, 23, 30, and 31* are of special interest in this context, but also a number of other articles (e.g. *7 and 18*) are relevant. Most of these articles have another focus than the child (e.g. the family, the woman, or the migrant), which, compared to the alternative to let the child as such become the bearer

of the rights, may weaken the position of the child.

It has been pointed out that there exists potential conflicts between the formal bearer of the rights on the one hand and the child on the other even in those cases where the child forms a part of the collective bearer of the rights mentioned. An illustration to this is, as is the case both in Council of Europe Conventions and the draft of the Charter (*article 7*), when the bearer of the rights is the “family”. No problem exists in case the family functions properly and protects the child. But, as is well known, the opposite situation is quite common, and the draft does not indicate how the rights of the child should be protected in case a conflict of interests arises between the parents and the child or between the parents vis-à-vis the child.

A similar problem is connected with *article 14*, according to which everyone has the right to receive free compulsory education, and which ensures the parents the right to have their children educated and taught in conformity with their (i.e. the parents’) religious, philosophical and pedagogical convictions. The article is based on the constitutional tradition common to the Member States as well as article 2 of Protocol 2 to ECHR. It should be noted, however, that Sweden has ratified the Protocol with a reservation concerning the rights of the parents.

Article 23 concerning the rights of the child is based on the New York Convention on the Rights of the Child. There is however a considerable risk that this vaguely formulated article may be applied in a way giving the child less protection than what is given by existing Conventions.

Among other things the degree of influence given to the child according to *article 23* is problematic, especially since the scope of this influence is dependent on how the maturity of the child is judged. This means that the rights given become very relative. The core of the problem seems to be that it is difficult to grant such a complex and comprehensive phenomenon as the rights of the child in one short article. One way of solving this problem would be to list the rights in way more similar to what is done in the Convention on the Rights of the Child. It is true that a more detailed article would not totally solve the problem, but being more precise would give a better idea of which are the rights of the child.

In some places in the draft, notably in the *preamble* and in *article 20*, rights are given to “men and women”. This could be interpreted either as “adults of both sexes” or as “everybody, children included”. According to my view the text ought to be adjusted to avoid the possibility of different interpretations.

The rights of women

The draft does not contain any comprehensive listing of rights in the way that is done in the relevant UN Conventions. Indirectly women are given the same rights as men in the articles on civic and political rights, while rights specifically related to women could be found in the articles dealing with social and economic rights.

Gender-related rights are especially mentioned in *article 21* which i.a. prohibits any discrimination based on sex. This right corresponds at large with article 14 in ECHR but also with article 13 in the Treaty on European Union. The present draft includes the principle of equal treatment between the sexes when it comes to vocational activities

&c., but nothing is said about equality within the public sector, e.g. in politics.

The comments above on the rights of the child when being a part of a collective bearer of rights could *mutatis mutandis* be applied to women. Of special interest in this context is *articles 7 and 9*, concerning respect for family life and the right to marry respectively.

Specific articles

Article 1 – This article could be moved to the preamble

Article 2 – The article should be fully brought in line with the ECHR. Another alternative would be to delete the final line of article 50 paragraph 3 (see below). Otherwise there is a risk that the article would be interpreted as a prohibition of abortion. Such an interpretation is not in line with the ECHR.

Article 4 – The word “*cruel*” ought to be inserted before the word “*inhuman*” in order to correspond to existing international human rights instruments.

Article 8 – The reference to an independent authority ought to be deleted in order to harmonise it with other articles in which such references not are made, even though similar authorities do exist.

Article 11 – The article should be fully brought in line with the ECHR. It is important not to leave out the possibility of restrictions concerning licensing of television and radio stations put forward in Article 10 of the ECHR. Mr. Tarschys has also emphasised the importance of not leaving out the possibility of restrictions in ECHR. If the final line of Article 50 paragraph 3 is not deleted (see below) it is absolutely necessary to fully adapt the paragraph to the ECHR. If not there would, as is also pointed out by Mr. Tarschys, be a violation of Community law and Swedish constitutional law.

Article 12 – Paragraph 2 of this article ought to be deleted since the Charter is addressed to the institutions and bodies of the Union and to the Member States when they are implementing Union and Community law and this paragraph is beside the point.

Article 13 – This article is redundant since the freedom of research follows already from *article 11* concerning freedom of expression and information.

Article 17 – The article should be fully brought in line with the ECHR. The second paragraph of Article 1 of the Additional Protocol to the ECHR should be reflected in this article for reasons of clarity.

Article 18 – It should be made clear that there exist a right to *seek* asylum not a right to asylum as such.

Article 20 – This article concerns a principle and could be moved to the preamble. It must however also include children and the words “*women and men*” should therefore be deleted (see above).

Article 23 – A reference to the New York Convention on the Rights of the Child ought to be included in this article (see above). In paragraph 1 the second sentence ought to be

deleted, since this right is already included in article 11 and it could otherwise be misunderstood as if children are not included in that article.

Articles 25 and 26 – It is important that these rights also are applicable to workers organisations. The words “*or their organisations*” should therefore be inserted after “*workers*” in both articles. As for *article 26* the words “*including the right to strike*” ought to be incorporated after the words “*collective action*” in order not to devalue existing legislation.

Article 28 – The last part of the article ought to be reformulated as follows: “*...right to protection where their employment contract is terminated*”. Thereby the protection for workers will be more complete and will also cover situations where there is an unjustified dismissal.

Article 34 – The article is based on article 16 of the EC Treaty and could hardly, even if it is important as such, be regarded as a fundamental right. The article could therefore be deleted.

Article 37 – Paragraph 2 should be reformulated as a right for the citizens to elect members of the European Parliament in direct universal, free and secret ballots.

Article 39 – The second sentence in the second paragraph, about access to files, is already included in article 8, which concerns protection of personal data. Furthermore this right has been restricted here with reference to interests of confidentiality and of business secrecy. This sentence could be deleted.

Article 49 – In addition to the expression “*Union law*”, the expression “*Community law*” should also be included.

Article 50 – I fully support Mr. Tarschys and other members as regards the relation between the Charter and ECHR. It should thus be made clear that the Charter and the ECHR have *the same not a similar* sense and substance.

Furthermore the last sentence in paragraph 3 should be deleted since it is not in accordance with the decision in Cologne that fundamental rights applicable at Union level should be consolidated and made more evident. In particular it should be noted that it is stated in paragraph 5 of the preamble, that this Charter reaffirms the rights as they result from the ECHR, while article 50 paragraph 3 makes it possible to have a greater or more extensive protection. In case the Charter affords greater or more extensive protection this is obvious a problem. Here, I would also like to refer to the explanations given by Mr. Tarschys, whose remarks in connection with this article I fully support.

Article 51 – A reference to the jurisprudence of the courts in Strasbourg and Luxembourg ought to be included (see paragraph 5 in the preamble).

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Roma, 29 agosto 2000

M. Manzella

Ill.mo sig.

On. Gunnar JANSSON

Vice Presidente della Convenzione incaricata

di elaborare la Carta dei diritti fondamentali dell'Unione Europea

Nel complimentarmi con il Presidium per l'elaborazione del Progetto completo della Carta, rassegno qui di seguito le mie osservazioni, segnalando che analoghi rilievi vengono formulati, nelle rispettive sedi, dall'On. Elena Paciotti, rappresentante del Parlamento Europeo, e dal Prof. Stefano Rodotà, delegato del Presidente del Consiglio dei Ministri italiano.

Sul Preambolo:

Si propone la seguente modifica:

Al punto 3, dopo le parole: "attraverso la libera circolazione delle persone, dei beni, dei capitali e dei servizi", inserire le parole: "e promuovendo la coesione sociale".

La formula proposta dal Presidium al punto 3, in base alla quale l'Unione assicura uno sviluppo equilibrato e sostenibile "attraverso" la libera circolazione delle persone, dei beni, dei capitali e dei servizi, non appare, infatti, pienamente adeguata. Storicamente, l'Unione Europea ha cercato di promuovere uno sviluppo equilibrato e sostenibile favorendo la coesione sociale e il rispetto dell'ambiente. E' opportuno non ignorare nel Preambolo questo dato di fatto, componente essenziale del "Modello europeo".

Esprimo, inoltre, la mia perplessità sull'indicazione, al punto 5, tra le fonti da cui derivano i diritti fondamentali riconosciuti nella Carta, della giurisprudenza delle Corti europee, che non può essere collocata allo stesso livello dei Trattati, delle Convenzioni e delle Carte formalmente adottate dagli Stati.

Ulteriori perplessità crea la menzione, in questa sede, della Corte europea dei diritti dell'uomo, che appartiene ad un ordinamento diverso da quello dell'Unione: essa infatti non è indicata, a differenza della Corte di giustizia, nel mandato di Colonia. Rimarrebbe, invece, la esatta collocazione della Corte di Strasburgo nell'articolo 50.

Sulla struttura

E' pienamente condivisibile e apprezzabile, per la sua efficacia e novità, la suddivisione del testo sotto i titoli "dignità", "libertà", "uguaglianza", "solidarietà", "cittadinanza", "giustizia", anche se comporta inevitabilmente qualche forzatura nella collocazione di alcuni articoli, ispirati a principi molteplici.

Sarebbe tuttavia di gran lunga preferibile che l'articolo dedicato al diritto alla salute (attuale articolo 33) venisse collocato nel capo intitolato alla dignità. In questo modo si darebbe immediata e giusta evidenza ad uno fra i più significativi nuovi diritti considerato elemento essenziale per la tutela della dignità delle persone.

La libertà di circolazione (attuale articolo 43) andrebbe invece meglio inserita nel Capo relativo alle libertà.

Sull'articolato

Articolo 1.

Si propone di aggiungere, in fine, le seguenti parole:

"nella sua inviolabilità".

La garanzia e la tutela della dignità umana devono essere riferite ad un bene concettualmente intangibile da parte di pubblici poteri. Ci si preoccupa, infatti, del modo in cui i cittadini europei reagiranno alla lettura della Carta: poiché nei testi in cui è nominata (ad esempio, l'art. 1 del *Grundgesetz*) la dignità è appunto dichiarata "inviolabile" o "intangibile", ogni diversa formulazione può essere percepita come un indebolimento della tutela. E, trattandosi del primo articolo della Carta, questo potrebbe determinare una lettura complessiva della stessa come testo debole.

Articolo 11.

Si propongono le seguenti modifiche:

Al comma 1, dopo le parole: "libertà di ricevere", aggiungere le parole: "di ricercare".

Al comma 2, aggiungere le parole: "anche nei confronti delle concentrazioni dei mezzi di comunicazione di massa".

Si insiste perché, al comma 1, si indichi espressamente la libertà di "cercare" informazioni, non solo di riceverle. Tale diritto, già compreso nell'art. 19 della Dichiarazione dell'Onu del 1948, è oggi primario nella nuova dimensione di Internet (non a caso, i regimi dittatoriali cercano di negarlo).

Al comma 2, appare opportuno che la garanzia del pluralismo dell'informazione vada assicurata anche nei confronti delle gigantesche concentrazioni proprietarie in atto nel mondo.

Articolo 12

Si propone la seguente modifica:

**Al comma 2, dopo le parole: "ad esprimere",
aggiungere le parole: "con metodo democratico".**

E' essenziale infatti che l'Unione Europea, che si fonda sul principio di democrazia, come è anche detto nel Preambolo, riconosca la qualifica di partito politico soltanto alle formazioni che agiscono "con metodo democratico", nel rispetto, cioè, di quel valore.

Articolo 13

Si propone l'aggiunta del seguente comma:

**"Tutti hanno il diritto di beneficiare, a condizioni eque,
dei risultati delle ricerche scientifiche, in particolare nel
campo bio-medico".**

L'attenzione dell'opinione pubblica si è concentrata massimamente e con interesse crescente sui problemi della ricerca, soprattutto nel campo della bio-medicina, e sui problemi della brevettabilità e della commercializzazione esclusiva dei risultati della ricerca. Il comma di cui si propone l'introduzione stabilisce un principio di contemperamento tra il diritto di ognuno di beneficiare dei risultati della ricerca, in specie nel campo bio-medico, ed il giusto riconoscimento economico dei costi della ricerca stessa.

Articolo 15

Si propone di sostituire il primo comma con il seguente:

**"1. Ogni individuo ha il diritto di realizzare le sue
capacità personali con un lavoro liberamente scelto o
accettato".**

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La diversa formulazione del comma fa, infatti, riferimento alla realizzazione personale dell'individuo e non al solo elemento economico del guadagno per vivere, ma anche al lavoro nel suo significato più generale, comprendente ogni tipo di attività, economica, culturale e artistica, svolta in condizione di indipendenza o autonomia.

Articolo 16

Si propone di aggiungere, in fine, le seguenti parole:

"nel rispetto del principio di uno sviluppo economico e sociale equilibrato e sostenibile".

L'affermazione della libera imprenditorialità deve essere qui temperata con il concetto di sviluppo equilibrato e sostenibile, secondo l'indirizzo fondamentale del modello sociale europeo. Si ricorda a tal riguardo che in nessuna delle Costituzioni europee il diritto di impresa è affermato in maniera assoluta e incondizionata. Esso è sempre temperato con principi di sostenibilità sociale ed ecologica e di equilibrio economico.

Un elemento caratteristico di tutto il costituzionalismo del novecento, è stato, infatti, proprio quello di legare il riconoscimento dei diritti di libertà economica a finalità di ordine sociale. Se fosse mantenuta l'attuale formulazione dell'articolo 16 (come quella del successivo articolo 17), la norma in questione sarebbe percepita, pertanto, come un arretramento rispetto a tradizioni costituzionali comuni.

Articolo 17

Si propone di sostituire il terzo periodo del primo comma con il seguente:

"L'esercizio del diritto di proprietà può essere limitato dalla legge nell'interesse generale e per assicurarne la funzione sociale".

L'espressione "limitato dalla legge", in luogo di quella "regolamentato", offre una migliore garanzia del diritto di proprietà, perché esclude limitazioni che provengano da atti non aventi forza di legge.

Inoltre, il riferimento alla "funzione sociale" rafforza il riferimento all'"interesse generale", che sarebbe altrimenti troppo debole, ed è in linea con la tradizione del costituzionalismo del novecento, che tende a legare il riconoscimento dei diritti di libertà economica e di proprietà a fini sociali. Non basterebbe, a tal fine, la clausola orizzontale dell'art. 50, perché essa postula appunto l'ordinaria assolutezza dei diritti garantiti, mentre nel caso qui discusso (ed in quello di cui al precedente articolo 16) si tratta proprio di stabilire che il

riconoscimento di questi particolari diritti è ormai collegato strutturalmente con finalità di interesse generale.

Articolo 21

Si suggerisce l'aggiunta del seguente comma:

"3. L'unione adotta le politiche opportune per eliminare le disparità di fatto e per promuovere le condizioni che rendono effettiva l'uguaglianza".

L'enunciazione meramente formale e negativa del principio di uguaglianza appare, infatti, insufficiente. E', dunque, necessario rafforzarla vincolando l'Unione europea ad adottare politiche attive per rimuovere le condizioni che impediscono di fatto la parità delle opportunità e il riconoscimento di effettiva pari dignità a tutti gli individui.

Articolo 23

Appare opportuno aggiungere - all'inizio dell'articolo ovvero dopo il primo comma - il seguente comma:

"Le bambine e i bambini devono essere protetti contro ogni minaccia alla loro maturazione intellettuale e alla loro integrità psicologica e sessuale".

Il nuovo comma si fa carico delle minacce che incombono sui bambini (anche attraverso tecnologie di informazione) e vincola il potere pubblico ad un obbligo di protezione nei loro confronti. Si tratta di un'esigenza assai sentita dall'opinione pubblica europea.

Articolo 23-bis.

Si insiste sull'opportunità dell'inserimento di un nuovo articolo 23-bis, relativo ai diritti degli anziani, formulato come segue:

**"Articolo 23-bis. Diritti degli anziani.
Ogni individuo anziano ha diritto ad un'esistenza autonoma e dignitosa e a partecipare pienamente alla vita politica, sociale e culturale".**

L'andamento demografico nei paesi dell'Unione europea impone, infatti, di considerare specificamente la sfera dei diritti delle persone anziane. La norma proposta richiama, d'altronde, l'articolo 23 della Carta sociale europea.

Articolo 26.

Si suggerisce la seguente modifica:

**dopo le parole: "concludere contratti collettivi",
inserire le parole: "anche a livello dell'Unione", e dopo
le parole: "azioni collettive", aggiungere le parole:
"compreso lo sciopero".**

Il riconoscimento nella Carta del diritto di negoziazione collettiva acquista significato, infatti, solo se accompagnato dalla specificazione del possibile ambito europeo della contrattazione. La mancata menzione del diritto di sciopero, riconosciuto dalla Carta sociale europea e da un gran numero di Convenzioni dell'OIL, oltre che dalle tradizioni costituzionali comuni dei Paesi membri, rischia, invece, di essere intesa come una restrizione dei diritti vigenti.

Articolo 29

Si propongono le seguenti modifiche:

**Al primo comma, aggiungere, in fine, le parole: "e ad
una giusta retribuzione proporzionata alla qualità e
quantità del lavoro prestato".
Al secondo comma, aggiungere, in fine, le parole: "e
non può rinunziarvi".**

Tra le condizioni di lavoro "giuste ed eque" deve necessariamente inserirsi il diritto ad una retribuzione giusta e proporzionata alla prestazione. L'irrinunciabilità alle ferie risponde, invece, ad una tipica necessità di protezione della parte più debole del rapporto di lavoro.

Articolo 34

Si propone di sostituire il testo dell'articolo con il seguente:

**"Al fine di promuovere la coesione sociale e territoriale
l'Unione riconosce e rispetta il diritto di ogni individuo
all'accesso a servizi di interesse generale che assicurino
le prestazioni necessarie a garantire la qualità della vita
e le possibilità di lavoro. Le prestazioni di servizi di
interesse generale si basano sui principi di uguaglianza**

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di accesso, di universalità, di continuità, di trasparenza".

E' opportuno che il diritto ad usufruire di servizi di interesse generale sia inquadrato in principi-guida che, salve le differenziazioni nazionali, ne garantiscano l'effettività, anche in funzione della promozione della coesione sociale e territoriale dell'Unione, prevista dall'articolo 16 del Trattato CE (se venisse menzionata la finalità di garantire le possibilità di lavoro potrebbe, inoltre, essere qui assorbito l'articolo 27 relativo ai servizi di collocamento).

Articolo 36

Si propone l'aggiunta del seguente comma:

"I consumatori hanno diritto ad una informazione completa sulla qualità dei beni e dei servizi e ad una pubblicità non ingannevole che risponda ai criteri di trasparenza e veridicità".

La sensibilità popolare europea si è fatta particolarmente acuta riguardo ai criteri di fabbricazione e manipolazione di prodotti alimentari e di beni di consumo personale. E' necessario che una Unione sempre più vicina ai bisogni della gente si faccia carico nelle sue politiche di queste diffuse preoccupazioni.

Articolo 36-bis

All'articolo 37, che apre l'enunciazione dei diritti riservati ai cittadini europei, andrebbe utilmente premesso un articolo del seguente tenore:

**"Articolo 36-bis. Diritto alla cittadinanza.
Ogni individuo ha diritto ad una cittadinanza. Nessuno può essere arbitrariamente privato della sua cittadinanza, né del diritto di mutare cittadinanza".**

Si tratta di un diritto universale, sancito all'articolo 15 della Dichiarazione universale di diritti dell'uomo, e appare importante come premessa di ogni altra specificazione dei diritti di cittadinanza.

Articolo 37

Si propone di premettere il seguente nuovo comma, che assorbirebbe il secondo comma previsto nel progetto del Presidium:

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"1. I cittadini dell'Unione hanno il diritto di partecipare all'esercizio del potere pubblico a livello dell'Unione per il tramite di un'assemblea rappresentativa eletta a suffragio universale diretto, libero e segreto".

Il principio di democrazia su cui, com'è detto nel Preambolo, si basa l'Unione europea, deve trovare nell'affermazione del "diritto al Parlamento", contenuto in questo nuovo comma, la concretizzazione di democrazia partecipativa e parlamentare. La formulazione è tratta dalla giurisprudenza della Corte di giustizia (e, in particolare, dalla sentenza Roquette e Maizena).

Il secondo comma nella formulazione del Presidium, è la specificazione di questo "diritto al Parlamento", che ne costituisce pertanto la premessa da esplicitare necessariamente.

Articolo 47

Si propone di aggiungere, alla fine del terzo comma, le seguenti parole:

"e devono tendere alla rieducazione del condannato".

E' infatti un principio di civiltà giuridica, recepito in varie Costituzioni e ordinamenti europei, che l'espiazione della pena debba accompagnarsi a misure dirette a recuperare e rieducare la personalità del condannato.

Articolo 49

Si propone di riformulare il primo comma come segue:

"1. Le istituzioni e gli organi dell'Unione, come pure gli Stati membri quando attuano il diritto dell'Unione, rispettano i diritti fondamentali e osservano i principi enunciati nella presente Carta e ne promuovono l'applicazione nel rispetto del principio di sussidiarietà".

Molti dei diritti fondamentali enunciati nella Carta trovano, infatti, attuazione principalmente nell'ambito nazionale, costituendo, per il diritto dell'Unione, un quadro di riferimento, di orientamento e di limitazione della regolamentazione comunitaria. Affermare che le disposizioni della Carta si applicano agli Stati membri "esclusivamente" nell'attuazione del diritto dell'Unione può creare incomprensioni, dato che al comma 2 dell'articolo 49 già si ribadisce che la Carta non modifica alcuna competenza istituzionale.

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Articolo 50

Si suggerisce di riformulare il terzo comma come segue:

"3. I diritti e le libertà riconosciuti dalla presente Carta, che siano già disciplinati dalla Convenzione Europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, possono subire le medesime restrizioni previste dalla Convenzione: non possono subire restrizioni maggiori di quelle, ma possono godere della protezione maggiore e più estesa prevista dalla presente Carta".

Nel terzo comma del testo proposto dal Presidium, l'uso del termine "simili", riferito al significato ed alla portata dei diritti fondamentali, può essere fonte di confusione. Con il nuovo testo del comma, si intende proporre una formulazione più chiara e semplice di quella del Presidium, che metta in luce due dati essenziali: e cioè che, con riferimento ai diritti della Convenzione, non vi possono essere restrizioni maggiori di quelle previste dalla Convenzione stessa; ma che, al contempo, la Carta può garantire ad essi una protezione maggiore o più estesa.

Nella speranza che le predette osservazioni trovino consenso nel Presidium, all'unico scopo di migliorare l'eccellente lavoro già svolto, esprimo i sensi della mia più alta considerazione.

Andrea Manzella
Rappresentante del Senato della Repubblica Italiana

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All'attenzione del sig. Jansson**On. Piero Melograni - Osservazioni sul progetto di Carta dei diritti fondamentali dell'Unione europea (Convent 45)**

1. In via generale appare opportuna e anzi indispensabile, come lo stesso Presidium ha rilevato, **una attenta revisione stilistica e linguistica del testo.**

A volte si tratta di problemi di traduzione, ma a volte si tratta di questioni più impegnative, con rilevante incidenza sulla portata sostanziale delle norme. Si segnalano di seguito alcune osservazioni di carattere sostanziale (indicate in neretto), nonché, a titolo di esempio, una serie di rilievi di carattere linguistico.

⇒ al **punto 1 del preambolo** non appare logico dire che i popoli europei "hanno deciso di condividere un futuro di pace". Il futuro non può essere deciso da nessun abitante della terra, e sarebbe una bella pretesa ostentare tanta divina sicurezza fin dalle prime righe. Sarebbe anche più emozionante e drammatico far capire che l'impegno alla pace deve essere quotidianamente rinnovato. Una migliore formulazione potrebbe essere "hanno deciso di costruire insieme – o di impegnarsi insieme per costruire – un futuro di pace fondato su valori comuni".

⇒ **in molti articoli** (articoli 2 e 3, 6, 7, 8, 10, 11, 12, 14, 15, 17, 27, 31, 33, 39, 45) **mentre i testi in altre lingue usano quasi sempre il termine "persona" (o "everyone"), il testo italiano reca "individuo".**

Sembra preferibile anche per l'italiano il termine "persona", in particolare per i primi articoli citati, come già indicato in alcuni miei emendamenti. Ciò anche in considerazione del fatto che, se nei Trattati internazionali elaborati in ambito ONU ricorre tendenzialmente il termine "individuo", in quelli elaborati in ambito europeo (CEDU, Carta comunitaria dei diritti sociali fondamentali) prevale il riferimento al termine "persona" (o "chiunque", come nella Dichiarazione dei diritti e delle libertà fondamentali adottata dal Parlamento europeo il 12 aprile del 1989). Anche in dottrina, secondo gli orientamenti più diffusi, si attribuisce al

termine "persona" la funzione di tradurre in una qualificazione rilevante per il diritto la condizione naturale dell'individuo.

- ⇒ sarebbe meglio al posto della formula burocratica "la presente Carta" scrivere "questa Carta" (ad esempio ai punti 4 e 5 del Preambolo, all'articolo 49 punti 1 e 2, all'articolo 50 punti 1,2,3, all'articolo 51 e all'articolo 52).
- ⇒ articolo 11. Il termine "media". Benché si tratti di parola latina, noi italiani preferiremmo forse "mezzi di comunicazione di massa".
- ⇒ articolo 12. Meglio dire "in campo politico, sindacale e civico" (anziché nei "settori").
- ⇒ **All'articolo 13 - o all'articolo 14 - potrebbe valutarsi l'opportunità di prevedere, accanto al diritto alla libera ricerca, anche il diritto al libero insegnamento, il cui contenuto appare distinto da quello del diritto di "creare istituti di insegnamento", riconosciuto all'articolo 14, comma 2.**
- ⇒ **articolo 15. Proporrei di togliere "Per guadagnarsi di che vivere", sia perché la frase è un po' rozza, sia perché il diritto deve ovviamente riguardare anche le persone che fortunatamente già hanno i mezzi per vivere. Lasciare quindi: "Ogni persona ha il diritto di esercitare una professione liberamente scelta." Punto e basta.**
- ⇒ **All'articolo 17 andrebbe forse specificato che la proprietà intellettuale è tutelata a norma della legislazione dell'Unione e delle convenzioni internazionali vigenti in materia.**
- ⇒ **All'articolo 18, in relazione al diritto di asilo, si potrebbe - come indicava il mio emendamento all'articolo 21 del Convent 28 - integrare, o sostituire, il riferimento alla Convenzione di Ginevra con quello alle norme internazionali vigenti in materia. Sembra infatti inopportuno, in questa sede, il riferimento solo alle norme di una specifica convenzione, in quanto ciò potrebbe limitare la**

tutela esclusivamente a quanto da questa prescritto, senza tenere conto di eventuali futuri accordi in materia. Per altro l'articolo 63 del Trattato CE incorpora nel diritto comunitario la Convenzione, per cui il riferimento al Trattato dell'ultima parte dell'articolo 18 potrebbe anche rendere superfluo il richiamo specifico a tale Convenzione.

- ⇒ All'articolo 23, comma 2, nella frase "l'interesse superiore del minore deve essere considerato preminente", dovrebbe essere soppressa la parola "superiore", del tutto ultronea.
- ⇒ L'attuale formulazione del **nuovo articolo 34** ("Accesso ai servizi di interesse economico generale") **lascia alquanto interdetti**. Esso non chiarisce in alcun modo di quali servizi si tratti. Si intendono favorire i consumatori o anche i produttori di elettricità che vogliono accedere per esempio alle reti distributive? È un diritto fondamentale? Ma allora perché ci si limita a dichiarare che l'Unione "rispetta" questo accesso?
- ⇒ All'articolo 35 ("In tutte le politiche dell'Unione sono garantiti la tutela e la salvaguardia di un ambiente di vita di buona qualità ed il miglioramento della qualità dell'ambiente nel rispetto del principio dello sviluppo sostenibile.") la ripetizione della parola ambiente non funziona affatto bene, tanto è vero che in altre lingue il Convent 45 usa termini diversi (in francese: "cadre de vie" e "environnement").
- ⇒ L'articolo 37 ("Diritto di voto e di eleggibilità") era linguisticamente migliore nella versione precedente (vedi articolo 25 del Convent 28). La formula "eleggibilità alle elezioni" non suona affatto bene. Meglio dire: "elettorato attivo e passivo". Lo stesso valga per l'articolo 38.
- ⇒ **L'articolo 46, comma 1**, fa riferimento alla presunzione di innocenza fino alla "prova legale" dell'eventuale colpevolezza. Al riguardo si sottolinea che, in base all'articolo 27, comma 2, della Costituzione italiana "L'imputato non è considerato colpevole **sino alla condanna definitiva**". Dovrebbe, anche in sede di lavori preparatori, essere chiarito che il riferimento alla prova legale della colpevolezza non dovrà comportare una tutela di grado

diverso e minore rispetto a quanto previsto nel nostro ordinamento.

- ⇒ **Un punto importante riguarda l'articolo 48** ("Diritto di non essere giudicato o punito due volte per lo stesso reato"). Credo che, allo stato attuale della costruzione di uno spazio europeo di libertà, sicurezza e giustizia, questo articolo 48 - per le ragioni già da me addotte nell'emendamento relativo all'allora articolo 11 del Convent 28 (con particolare riferimento, per esempio, ai casi di reati per falsificazione di moneta, commercio di droghe, tratta di esseri umani) - potrebbe incontrare **difficoltà di accettazione presso il Parlamento italiano**.
- ⇒ **L'articolo 50** ("Portata dei diritti garantiti") merita anch'esso una revisione linguistica. Meglio scrivere: "Tutte le eventuali limitazioni all'esercizio dei diritti e delle libertà riconosciuti in questa Carta **possono** essere previste **soltanto** dalla competente autorità legislativa". Da notare che nelle versioni tedesca, spagnola e francese non si dice "eventuali", ma "jede", "cualquier", "toute". In italiano, insomma, andrebbe bene **"tutte le eventuali"**.
- ⇒ Sempre **all'articolo 50**, comma 3, **l'aggettivo "simili" non sembra opportuno**. Nella versione tedesca, viene usato molto più correttamente il termine "entsprechende" che in italiano significa "corrispondente". Quindi proporrei che, per non ripetere il termine "corrispondenti" che già si trova all'inizio dell'articolo, potremmo scrivere: "il significato e la portata degli stessi equivalgono a quelli previsti dalla suddetta Convenzione, a meno che questa Carta non garantisca una protezione maggiore o più estesa."

2. L'impressione generale che desta la lettura dell'intero Convent 45 è quella di trovarsi di fronte ad un testo forse un po' troppo ampio. I diritti "veramente fondamentali" possono essere anche meno dei 52 diritti elencati nel Convent 45. Forse la Convenzione non si è abbastanza soffermata sui criteri che distinguono i diritti "veramente fondamentali" da tutti gli altri diritti. Insomma, se i Vertici di Biarritz e di Nizza dovessero esigere una maggiore stringatezza, in linea di massima non mi opporrei. È probabile che tutti avremmo da guadagnare se la Carta risultasse un po' più asciutta ed essenziale.

A l'attention de M. Jansson

M. Piero Melograni. Observations sur le projet de Charte des droits fondamentaux de l'Union européenne (CONVENT 45)

1. En principe **une révision stylistique et linguistique minutieuse**, comme le Présidium même l'a remarqué, paraît opportune, voire indispensable. Il s'agit parfois de problèmes de traduction, mais à d'autres endroits sont en jeu des questions de plus grande envergure, qui influent sur la portée substantielle des normes. On présente ci-après quelques observations de substance (en gras), ainsi qu'une série de remarques linguistiques à titre d'exemple.
 - + Au **point 1 du préambule** il ne semble pas logique de dire que les peuples européens «ont décidé de partager un avenir pacifique». Aucun habitant de la planète ne peut décider de l'avenir, et il serait prétentieux d'exhiber une telle divine assurance dès les premières lignes. Ce serait bien plus émouvant et dramatique si l'on faisait comprendre que l'engagement pour la paix doit être chaque jour renouvelé. Une meilleure formulation pourrait être la suivante: «ont décidé de bâtir ensemble – ou de s'engager ensemble pour bâtir – un avenir pacifique fondé sur des valeurs communes».
 - + **Dans de nombreux articles (2, 3, 6, 7, 8, 10, 11, 12, 14, 15, 17, 27, 31, 33, 39, 45), alors que les autres versions linguistiques utilisent presque toujours le terme «personne» (ou «everyone») la version italienne choisit «individuo».** En italien aussi, le mot «personne» semble préférable, particulièrement dans les premiers articles que je viens de mentionner, et comme je l'ai déjà fait valoir dans certains amendements que j'ai présentés. Ceci en considérant aussi le fait suivant: s'il est vrai que dans les Traités internationaux élaborés dans le contexte des Nations Unies le terme «individu» a tendance à apparaître plus fréquemment, dans les Traités élaborés dans le cadre européen (CEDU, Charte européenne des droits sociaux fondamentaux) la référence à la «personne» (ou alors à «chacun», comme dans la Déclaration des droits et des libertés fondamentales adoptée par le Parlement européen le 12 avril 1989) est celle qui prévaut. Dans la doctrine également, d'après les orientations les plus répandues, on attribue au mot «personne» la fonction d'exprimer la condition naturelle de l'individu à travers une qualification qui relève du droit.
 - + Il vaudrait mieux écrire, au lieu de la formule bureaucratique «la présente Charte», «cette Charte» (par exemple aux points 4 et 5 du Préambule, à l'article 49, points 1 et 2, à l'article 50, points 1,2 et 3, à l'article 51 et à l'article 52).
 - + Article 11; le terme «média»: bien qu'il s'agisse d'un mot latin, nous les Italiens aimerions davantage, peut-être, «moyens de communication de masse».
 - + Article 12. Il est mieux de dire «*in campo*» («dans le domaine») plutôt que «*nei settori*» («dans les secteurs»).
 - + A l'**article 13 – ou 14** – on pourrait réfléchir à l'opportunité de prévoir également, à côté du droit à la liberté de la recherche, **le droit à la liberté de l'enseignement**, dont le contenu apparaît distinct de celui du droit à la «création d'établissements d'enseignement», reconnu à l'article 14, alinéa 2.

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- + **Article 15.** Je propose de biffer «*afin de gagner sa vie* », parce que d'un côté c'est une façon de s'exprimer un peu rude, mais aussi parce qu'il va de soi que ce droit doit concerner aussi les personnes qui ont déjà, heureusement, de quoi vivre. Bornons-nous donc à dire : « Toute personne a le droit d'exercer une profession librement choisie ». Un point c'est tout.
- + A l'article 17 il faudrait peut-être spécifier que la propriété intellectuelle est protégée conformément aux normes de la législation de l'Union et aux conventions internationales en vigueur en la matière.
- + A l'article 18, relativement au droit d'asile, on pourrait – comme l'indiquait mon amendement à l'article 21 du CONVENT 28 – compléter ou remplacer la référence à la Convention de Genève par celle aux normes internationales en vigueur en la matière. Il paraît inopportun, dans ce contexte, ne se référer qu'aux normes d'une convention spécifique, car cela pourrait restreindre la protection à ce que ladite convention prescrit, sans tenir compte d'éventuels accords à venir en la matière. Par ailleurs l'article 63 du Traité CE transpose la Convention dans le droit communautaire, c'est pourquoi la référence au Traité à la fin de l'article 18 pourrait même rendre superflu le renvoi spécifique à cette Convention.
- + A l'article 23, al. 2 ; dans la phrase «*d'intérêt supérieur de l'enfant* » le mot '*supérieur*' est redondant, et il serait mieux de le supprimer.
- + La rédaction actuelle du nouvel article 34 «*accès aux services d'intérêt économique général* » me laisse rêveur. Il n'est absolument pas clair de quels services il s'agit. Est-ce que l'on vise à favoriser les consommateurs ou également les producteurs d'électricité qui veulent avoir accès, par exemple, aux réseaux de distribution ? Est-ce qu'il s'agit d'un droit fondamental ? Dans ce cas, pourquoi on se borne à déclarer que l'Union «*respecte* » cet accès ?
- + A l'article 35 («*protection de l'environnement*»), dans la traduction italienne le mot '*ambiente*' est répété deux fois, ce qui n'est pas bien, tant il est vrai que dans d'autres langues CONVENT 45 a recours à deux mots différents (en français : «*cadre de vie* » et «*environnement* »).
- + L'article 37 («*Droit de vote et d'éligibilité*») avait été mieux rédigé, du point de vue linguistique, dans la version précédente (voir l'article 25 du CONVENT 28). La formule «*éligibilité aux élections* » ne sonne pas bien. Il serait mieux de dire : «*électorat actif et passif* ». La même chose vaut pour l'article 38.
- + L'article 46, al.1 concerne la présomption d'innocence jusqu'à ce que la culpabilité soit «*légalement établie* ». A cet égard il faut dire qu'aux termes de l'art. 27, al. 2 de la Constitution italienne «*de prévenu n'est pas considéré coupable jusqu'à ce que sa condamnation définitive n'ait été prononcée* ». Il devrait être clair, et cela aussi bien dans les travaux préparatoires, que la référence à l'établissement légal de la culpabilité ne pourra entraîner une protection différente et inférieure à ce qu'il est prévu dans notre législation.
- + L'article 48 («*Droit à ne pas être jugé ou puni pénalement deux fois pour un même délit* ») concerne une question très importante. A l'état actuel de la construction d'un espace européen de liberté, sécurité et justice cet article 48 pourrait rencontrer, à mon avis, des difficultés à être accepté par le Parlement italien, pour les motifs que j'ai déjà expliqués dans mon amendement à l'ancien article 11 du CONVENT 28 (notamment en ce qui concerne, par exemple, les délits de contrefaçon de monnaie, trafic de stupéfiants, traite des personnes).

+ **L'article 50** («Portée des droits garantis») exigerait aussi une révision linguistique. Il serait mieux d'écrire, dans la version italienne : « *Tutte le eventuali limitazioni all'esercizio dei diritti e delle libertà etc.* » afin de mieux correspondre aux versions allemande, espagnole et française, qui portent 'jede', 'cualquier' et 'toute'. Dans la même phrase, au lieu des mots « *devono essere previste* » il vaudrait mieux écrire « *possono essere previste soltanto* » (en français : « ne peut être prévue que »)

+ Dans le même article 50, à l'al. 3, l'adjectif « **simili** » («similaires» en français) **ne semble pas opportun**. Pour ne pas répéter le mot « *corrispondenti* » («correspondants» en français, mais «*entsprechende*» en allemand) qui se trouve déjà dans la même phrase, je propose la rédaction suivante : « *il significato e la portata degli stessi equivalgono a quelli previsti dalla suddetta Convenzione, a meno che questa Carta etc.* » (en français ce serait: « leur sens et leur portée équivalent à ceux que leur confère la dite Convention, à moins que la présente Charte etc. »).

2. L'impression générale que l'on tire de la lecture de CONVENT 45 dans son entièreté est celle de se trouver devant un texte qui est peut être trop vaste.

Le nombre des droits «vraiment fondamentaux» peut aussi être inférieur aux 52 recensés dans CONVENT 45. Il se peut que la Convention ne se soit pas penchée suffisamment sur les critères distinguant les droits «vraiment fondamentaux» de tous les autres droits. Si les sommets de Biarritz et de Nice demandent plus de concision, en ligne générale je ne m'y opposerai pas. Il est probable que nous tous aurons quelque chose à gagner si la Charte résulte un peu plus succincte et essentielle.

For the attention of Mr Jansson

Hon. Piero Melograni - Comments of the draft Charter of Fundamental Rights of the European Union (CONVENT 45)

1. On a general plane, it appears advisable, indeed essential, to undertake a **careful stylistic and linguistic revision** of the text, as the Praesidium itself has noted.

In certain cases the problems are related to difficulties of translation, but in other instances they are more far-reaching, with a significant impact on the substantive scope of the measures. A number of substantial comments (shown in bold) are given below, together with examples of some of the linguistic issues mentioned above.

⇒ In **point 1 of the Preamble**, it does not seem logical to say that the peoples of Europe “hanno deciso di condividere un futuro di pace” (in English: “are resolved to share a peaceful future”). The future cannot be decided by anyone, and it would seem excessively bold to assert such divine certainty from the very first lines of the text. It would be more emotionally and dramatically effective to convey the fact that the commitment to peace must be renewed every day.

It might be better to say something along the lines of “hanno deciso di costruire insieme - o di impegnarsi insieme per costruire - un futuro di pace fondato su valori comuni” (in English: “... have decided to build together - or commit themselves to building together - a peaceful future based on common values”).

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⇒ **in many articles** (articles 2, 3, 6, 7, 8, 10, 11, 12, 14, 15, 17, 27, 31, 33, 39, 45), **the text in other languages nearly always contains the term “person” or “everyone”, while the Italian version uses “individuo” [individual]. It would be preferable to use “persona” [person] in the Italian text as well**, especially in the first articles cited, as previously indicated in some of my amendments. The case for this choice is even more compelling if we consider the fact that while international treaties drafted under the aegis of the UN tend to use “individual”, those drafted at the European level (European Convention on Human Rights, Community Charter of Fundamental Social Rights) opt for “person” (or “anyone”, as in the Declaration of Fundamental Rights and Freedoms by the European Parliament on 12 April 1989). The most widely accepted scholarly opinions also use the term “person” to represent the natural condition of the individual in law.

⇒ It would be better to use the expression “questa Carta” [this Charter] in place of the more bureaucratic formulation “la presente Carta” [the present Charter] in the Italian version of the text (see, for example, points 4 and 5 of the Preamble, paragraphs 1 and 2 of Article 49, paragraphs 1, 2 and 3 of Article 50, Article 51 and Article 52).

⇒ Article 11. Although “media” it is a Latin term, we Italians might prefer “mezzi di comunicazione di massa” [means of mass communication].

⇒ Article 12. It would be preferable to use “in campo politico, sindacale e civico” rather than “settori” (in English, “field” rather than “sectors”).

⇒ **In Article 13 (or Article 14)**, it might be worth considering including a “**freedom to teach**” alongside the freedom of research. It seems to

represent a different content from the “freedom to found educational establishments”, which is recognised in paragraph 2 of Article 14.

⇒ **In Article 15, I would suggest eliminating “to earn a living”,** both because the phrase is a bit too colloquial in tone and **because such a right must obviously include people who are already fortunate enough to have sufficient means.** I would therefore trim the text to “Everyone has the right to engage in a freely chosen occupation” and leave it at that.

⇒ **Article 17** should perhaps specify that intellectual property shall be protected **in accordance with European Union legislation and international agreements in force in this field.**

⇒ **Article 18,** in relation to the right of asylum, as indicated in my amendment to Article 21 of CONVENT 28, the reference to the Geneva Convention could be supplemented or replaced with a more general reference to **international regulations in this field.** Reference to a specific convention in this instance does not seem appropriate, as this could limit protection to the areas covered by this convention, without taking account of any future agreements in this area. Moreover, Article 63 of the EC Treaty incorporates the Convention into Community law, meaning that the reference to the Treaty at the end of Article 18 could well make any specific reference to the Convention superfluous.

⇒ **Article 23, paragraph 2,** the word “best” in the phrase “the child’s best interest must be a primary consideration” should be eliminated, as it is unnecessary.

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- ⇒ The current phrasing of the **new Article 34** (“Access to services of general economic interest”) is **somewhat perplexing**. It does not clarify in any way just which services are intended. Is the intention to protect consumers or does its scope also include, say, electricity producers that wish to gain access to distribution networks? Is it a fundamental right? If so, why are we declaring only that the Union “respects” such access?
- ⇒ In Article 35 (“All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development”) the repetition of the word “ambiente” [“environment” in English] doesn’t work very well. In fact, in other languages different terms have been used (e.g. in French: “cadre de vie” and “environnement”).
- ⇒ Article 37 (“Right to vote and to stand as a candidate”) was phrased better (in Italian) in the previous version (see Article 25 of CONVENT 28). The expression “eleggibilità alle elezioni” has a poor sound to it. A better solution would be “elettorato attivo e passivo”. The same comment holds for Article 38.
- ⇒ Article 46, paragraph 1, refers to the presumption of innocence until “proved guilty” according to law. Under Article 27, paragraph 1, of the Italian Constitution, “The accused is not considered guilty **until final judgement** has been issued”. It should be clarified, also during the preparatory stages, that “proved guilty” should not involve a lesser degree of protection than that afforded in the Italian system.

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- ⇒ **An important point concerns Article 48** (“Right not to be tried or punished twice for the same criminal offence”). I believe that at the current stage in the construction of a European space of freedom, security and justice, it could be **difficult to obtain the Italian Parliament’s approval** for this article - for the reasons I cited in the amendment to Article 11 of CONVENT 28 (with special regard to crimes such as, for example, counterfeiting, drug trafficking, trafficking in human beings).
- ⇒ **Article 50** (“Scope of guaranteed rights”) could also benefit from linguistic revision of the Italian version. It would be better to write **“Tutte le eventuali limitazioni all’esercizio dei diritti e delle libertà riconosciuti in questa Carta possono essere previste soltanto dalla competente autorità legislativa”**. The German, Spanish and French versions do not use “eventuali”, but rather “jede”, “cualquier” and “toute”. The Italian could use **“tutte le eventuali”**.
- ⇒ **The adjective “similar” (“simili” in Italian) in Article 50, paragraph 3, does not seem appropriate**. The German version uses “entsprechende”, which means “corrispondente” in Italian (“corresponding” in English). In order avoid repeating the term “corresponding”, which appears at the start of the paragraph, we could use “the meaning and scope of those rights shall be equivalent to those conferred on them by the said convention unless this Charter affords greater or more extensive protection” (In Italian, “il significato e la portata degli stessi equivalgono a quelli previsti dalla suddetta Convenzione, a meno che questa Carta ...”).

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2. The general impression one gets from reading the whole of CONVENT 45 is that it is perhaps overly broad. The number of “truly fundamental” rights could well be less than the 52 listed in CONVENT 45. Perhaps the Convention has not given enough attention to the criteria that distinguish “truly fundamental” rights from other rights. I would not object if the summits of Biarritz and Nice should call for greater brevity. It is likely that we will all gain if the Charter that emerges from our work is a more succinct, essential document.

MENDEZ DE VIGO

PREÁMBULO PÁRRAFO SEGUNDO

La Unión está fundada sobre los principios indivisibles y universales de dignidad de hombres y mujeres, **derivada de su destino trascendente**; libertad, igualdad y solidaridad; reposa en el principio de democracia y el Estado de Derecho.

ARTICLE 11

La liberté d'information et la liberté des médias est garantie dans le respect du pluralisme et de la transparence.

ARTÍCULO 12 LIBERTAD DE REUNIÓN Y DE ASOCIACIÓN

1.- Toda persona tiene derecho a la libertad de reunión pacífica y a la libertad de asociación, especialmente en los ámbitos político, sindical, cívico y **religioso**.

ARTICLE 21.1 INTRODUCTION

The Union shall respect the cultural, religious, ethnic and linguistic diversity in Europe.
Est interdite...(reste inchangé)

ARTICLE 22.1 INTRODUCTION Á L'ARTICLE 22

L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes. Debe garantizarse... (reste inchangé)

ARTÍCULO 32 INCORPORAR AL PRINCIPIO DEL PUNTO 3

3.- **Con objeto de combatir la exclusión y la pobreza**, la Unión reconoce y respeta el derecho a una ayuda social a la vivienda para garantizar una existencia digna a toda persona que no disponga de recursos suficientes, según las modalidades establecidas por el Derecho comunitario y las legislaciones y prácticas nacionales.

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ARTICLE 49 (NOUVELLE RÉDACTION)

La présente Charte respecte les compétences de la Communauté et les taches de l'Union telles que définies par les Traités.

ARTICLE 50 (CHANGEMENT DU TITRE)

Exercice des droits garantis. Corresponde à l'actuel 50.1

ARTICLE 50 BIS (NOUVEAU TITRE)

Fondement et portée des droits

- 1.- Les droits reconnus par la présent Charte **qui** trouvent leur fondement dans les Traités communautaires où dans le Traité sur l'Union européenne s'exercent dans les conditions et limites définies par ceux-ci.
- 2.- Dans le mesure où la présente Charte contient des droits correspondants à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont similaires à ceux que leur confère ladite Convention.



Prof. Dr. Jürgen Meyer, MdB
 Stv. Vorsitzender des Ausschusses für die Angelegenheiten
 der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin · Unter den Linden 50 · 2122 / 2124

Berlin

Prof. Dr. Jürgen Meyer
 Deutscher Bundestag
 Büro: Unter den Linden 50 · 2122 / 2124
 ☒ Platz der Republik 1, 11011 Berlin
 Tel: (030) 227 - 79 12 0
 Fax: (030) 227 - 76 31 6
 Email: juergen.meyer@bundestag.de

Wahlkreis

Prof. Dr. Jürgen Meyer
 Münsterplatz 45
 Postfach 36 28
 89026 Ulm
 Tel: (0731) 6 02 13 61
 Fax: (0731) 6 13 21
 Email: juergen.meyer@wk.bundestag.de

31. August 2000

MEYER ET 11 ANDERE

An den Vorsitzenden des Konvents
 zur Erarbeitung der Europäischen Charta der Grundrechte
 Prof. Dr. Roman Herzog

An die stellvertretenden Vorsitzenden
 Prof. Dr. Guy Braibant
 Gunnar Jansson
 Mendez de Vigo

Sehr geehrte Herren,

gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren, reichen die Unterzeichner folgende allgemeine Bemerkungen zum Gesamtentwurf der Charta ein:

I. Grundsätzliches

- a) Die Unterzeichner begrüßen den Chartaentwurf ausdrücklich und danken dem Präsidium für die vorgelegte Arbeit. Viele Anregungen aus schriftlichen Änderungsanträgen und mündlichen Beiträgen einzelner Delegierter sind eingearbeitet worden, so dass der Entwurf eine gute Grundlage für eine zustimmungsfähige Charta ist.
- b) Aus systematischen Gründen sollte aber davon abgesehen werden, in einzelnen Artikeln einen Verweis auf „einzelstaatliche Rechtsvorschriften“ und „nach Maßgabe des

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Gemeinschaftsrechts“ aufzunehmen. Insofern sprechen sich die Unterzeichner dafür aus, diese Verweise aus den Artikeln 9, 18, 25, 26, 32, 33 und 34 zu streichen.

Es sei darauf hingewiesen, dass durch die horizontale Bestimmung in Art. 49 Abs. 1 und 2 ein solcher Verweis überflüssig ist. Aus systematischen Gründen hat sich der Konvent darauf geeinigt, horizontale Fragen separat zu formulieren, nicht zuletzt, um die Lesbarkeit der Charta und damit die Identifikationsmöglichkeit des Bürgers mit der EU zu fördern.

Durch die in Convent 45 vorgelegte Systematik wird dagegen beim Bürger der Eindruck erweckt, dass hier spezifische Artikel gegenüber anderen abgeschwächt werden sollen. Dies entspricht weder der Intention des Konvents noch dem Kölner Auftrag.

Darüber hinaus kann der Eindruck entstehen, dass Grundrechte, die nach allgemeinem Verständnis höchstrangiges Recht darstellen, unter den Vorbehalt einzelstaatlicher Regelungen oder zukünftiger Vertragsrevisionen gestellt werden. Dieser Eindruck wäre fatal und widerspräche dem Geist des Art. 6 Abs. 1 EUV, in dem deutlich zum Ausdruck gebracht wird, dass die Union der Achtung der Menschenrechte und Grundfreiheiten höchste Priorität beimisst. Aus diesem Grund appellieren die Unterzeichner dringend, den Art. 50 Abs. 2 ersatzlos zu streichen.

- c) Die Unterzeichner begrüßen es, dass in Punkt 5 der Präambel die Hauptquellen, die zur Erarbeitung der Charta herangezogen wurden, genannt werden. Dies sind gemäß dem Kölner Mandat die Europäische Menschenrechtskonvention, die gemeinsamen Verfassungstraditionen der Mitgliedstaaten, die Europäische Sozialcharta und die Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer.

Die Kohärenz des Entwurfs wird aber dann gefährdet, wenn diese Quellen nicht auch in Art. 51 genannt werden. Die Präambel und der Art. 51 bilden die Klammer der Charta. Insofern plädieren die Unterzeichner dafür, auch in Artikel 51 die von der Gemeinschaft und dem Europarat beschlossenen Sozialchartas als Mindestschutzniveau aufzunehmen.

- d) Der Art. 15 „Berufsfreiheit“ sollte aus systematischen Gründen in das Kapitel IV „Solidarität“ aufgenommen werden und dabei die frühere, vom Präsidium vorgeschlagene Überschrift („Berufsfreiheit und Recht auf Arbeit“) und Allgemeinnorm („Jede Person hat das Recht zu arbeiten“) enthalten (vgl. Convent 41, alter Art. 31).

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Es ist kaum ersichtlich, warum der alte Präsidiumsvorschlag (Convent 41), der auf dem Braibant-Meyer-Vorschlag basierte, in der aktuellen Fassung in Stellung und Wortlaut verändert worden ist, obschon sich die überwiegende Mehrheit der Delegierten in der mündlichen Aussprache für den Kompromissvorschlag ausgesprochen hatte (u.a. Nikula, Voggenhuber, Friedrich, Einem, Paciotti, Leinen, Hirsch Ballin, Olsen, Barros Moura, van den Burg, Kaufmann). Auch hat - neben den bereits genannten - eine große Anzahl Delegierter in ihren schriftlichen Änderungsanträgen für eine Norm „Recht zu arbeiten“ plädiert (Convent 39: Änderungsanträge Nr. 35 Sole Tura, Nr. 39 Dieulangard, Nr. 46 Fayot, Nr. 47 Braibant, Nr. 51 Rodota/Paciotti/Manzella, Nr. 53 Beres u.a.)

- e) Generell sollte nochmals sorgfältig geprüft werden, ob die Charta in allen EU-Sprachen die jeweils adäquaten Begrifflichkeiten enthält. So wird z.B. in der deutschen Übersetzung in Art. 24 von „behinderten Menschen“ gesprochen, während anerkanntermaßen der korrekte Begriff „Menschen mit Behinderung“ ist. Auch ist fraglich, ob die in Punkt 2 der Präambel gewählte Formulierung „Würde der Männer und Frauen“ glücklich gewählt ist, da durch diese Begrifflichkeit z.B. Kinder nicht berücksichtigt werden.
- Die Unterzeichner gehen davon aus, dass vor der Übergabe an die Staats- und Regierungschefs die Charta in allen EU-Sprachen dem Konvent vorliegt.

II. Spezielles

a) Art. 10 Gedanken-, Gewissens- und Religionsfreiheit

Dem Artikel ist ein Abs. 2 hinzuzufügen, in dem das *Recht auf Kriegsdienstverweigerung* aufgenommen wird. Die Aufnahme eines solchen zweiten Absatzes entspricht einer Reihe von Änderungsanträgen (Convent 35: Änderungsanträge Nr. 256 Voggenhuber/Buitenweg, Nr. 257 Meyer/Leinen/Martin, Nr. 261 Gnauck und Nr. 262 Kaufmann, u.a.) und der Mehrheitsmeinung während der Konventsdiskussion.

b) Art. 11 Abs. 2 Freiheit der Meinungsäußerung und Informationsfreiheit

Während grundsätzlich die Zielrichtung des Art. 11 Abs. 2 begrüßt wird, und insbesondere durch den Begriff der „Medien“ weitere begriffliche Klarheit im Vergleich zu der vorherigen Version erreicht werden konnte (wobei die Begriffe „Presse- und

Rundfunkfreiheit bzw. „an die Allgemeinheit gerichtete Kommunikation“ präziser wäre), fehlen drei Aspekte in der vom Präsidium vorgeschlagenen Formulierung:

- i. Die Organe der Europäischen Union sollen zur *Auskunftspflicht gegenüber den Medien* verpflichtet werden. Dies ist im Hinblick auf die Herausbildung einer europäischen Öffentlichkeit ebenso von Belang, wie es ein Gebot der Transparenz innerhalb eines demokratischen Gemeinwesens ist. Zwar enthält der Präsidiumsentswurf mit Art. 40 ein allgemeines Recht auf Zugang zu Dokumenten; trotzdem sollte den Medien, mit ihrer speziellen Aufgabe als „Transmissionsriemen“ bzw. Bindeglied zwischen öffentlicher Gewalt und Bevölkerung, diesbezüglich ein explizites Recht gewährt werden.
- ii. Der Begriff der „*Transparenz*“ in Abs. 2 ist von einer Reihe von Medienanstalten scharf kritisiert worden. Hintergrund dabei ist die Befürchtung, dass freiheitsbeschränkende Maßnahmen durch die öffentliche Verwaltung unter Anwendung des Transparenzgebotes gerechtfertigt werden könnten.
Sollte mit der Regelung intendiert sein, die Medien zu demokratischer Berichterstattung zu verpflichten, wird dieses Ziel bereits über den horizontalen Art. 52 und über praktische Konkordanz erreicht. Wenn hingegen durch den Begriff erreicht werden soll, eine *finanzielle* Transparenz der Medien zu ermöglichen (Convent 35, Änderungsantrag Nr. 284 Braibant), bedarf dies keiner ausdrücklichen Absicherung in einer Grundrechtscharta. Aus diesem Grund wird empfohlen, den Begriff aus dem Artikel zu streichen, dies auch vor dem Hintergrund, dass die Aufnahme des Begriffs nur in einem Änderungsantrag gefordert worden ist.
- iii. Während der Diskussion innerhalb des Konvent wurde von einer Reihe von Delegierten die Unschärfe des Begriffs „*Pluralismus*“ kritisiert (Goldsmith, Hirsch Ballin, Rodota, Partijn). Diesen Begriff kann man schärfer fassen: Insofern sollte - auch unter Bezugnahme auf das Protokoll Nr. 23 zum Amsterdamer Vertrag - eine Bestandsgarantie für den öffentlich-rechtlichen Rundfunk in die Charta aufgenommen werden, da hiermit ein Nebeneinander von privaten und öffentlich-rechtlichen Medien gewährleistet und damit eine pluralistischen Berichterstattung sichergestellt werden kann.

c) Art. 13 Freiheit der Forschung

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Der Artikel ist um die *Freiheit der Wissenschaft, Lehre und Kunst* zu ergänzen. Dies entspricht einem älteren Präsidiumsvorschlag (Convent 13 Art. 15 Abs. 2, mit Ausnahme von „Lehre“), der in dieser Hinsicht vom Konvent nicht kritisiert worden war. Vielmehr hatte eine Reihe von Delegierten in der mündlichen Debatte die Wichtigkeit dieses Absatzes betont (Meyer, Friedrich, Rack, Leinen, Einem, Rodota, Braibant, Mombaur, Papadimitriou) und dies auch in einer großen Anzahl von Änderungsanträgen begründet. Weiterhin entsprechen die genannten Freiheiten sowohl den gemeinsamen Verfassungsüberlieferung der Mitgliedstaaten als auch internationalen Konventionen. Aus diesem Grund wird die Ergänzung des Artikels dringend empfohlen.

d) Art. 26 Recht auf Kollektivverhandlungen und Kollektivmaßnahmen

Die Unterzeichner sprechen sich dafür aus, dass in den Artikel die Worte „[kollektive Maßnahmen] *einschließlich des Streikrechts*“ eingefügt werden. Die Formulierung ist unmittelbar aus der Europäischen Sozialcharta entnommen (Art. 6 Abs. 4), die gemäß dem Kölner Mandat eine Grundlage der Konventsarbeit ist.

Diejenigen Delegierten, die das Streikrecht mit dem Hinweis aus der Charta herauslassen wollen, dass dann auch die „Aussperrung“ Eingang finden müsse, irren in diesem Punkt über bestehende gemeinsame Verfassungstraditionen und über von allen Mitgliedstaaten anerkanntes internationales Recht (Europäische Sozialcharta, Art. 8 Abs. 1 d Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, vielfache ILO-Konventionen).

Eine Nichterwähnung des Streikrechts würde dem Versuch gleichkommen, bestehendes Recht zurückzudrängen. Aus diesem Grund hat sich die Mehrheit der Delegierten in ihren Änderungsanträgen für dessen explizite Aufnahme in den Artikel ausgesprochen (Convent 39: Änderungsanträge Nr. 93 Voggenhuber, Nr. 94 Dehousse, Nr. 95 Rodota/Paciotti/Manzella, Nr. 97 Braibant, Nr. 99 Dieulangard, Nr. 102 Fayot, Nr. 103 Beres, Nr. 104 van den Burg).

e) Art. 32 Soziale Sicherheit und soziale Unterstützung

- i. Die Unterzeichner begrüßen den in Abs. 1 formulierten Artikel und regen dabei an, die Auflistung der sozialen Sicherheit und sozialen Dienste durch den Begriff „*insbesondere*“ einzuleiten, damit die Offenheit der Aufzählung hervorgehoben

wird. Da Grundrechte ihrem Wesen nach von möglichst langem Bestand sein sollen, sind abschließende Beispielformulierungen zu vermeiden, da kaum abzusehen ist, wie in diesem Bereichen die zukünftigen Entwicklungen aussehen werden.

- ii. In Abs. 3 hat das Präsidium leider erneut nur an einem einzigen Aspekt des „Rechts auf Wohnen“ – der Wohnungsbeihilfe – festgehalten, obschon mit dem Braibant-Meyer-Vorschlag ein von der Mehrheitsmeinung des Konvents getragener Kompromiss vorliegt, der eine ausschließliche Respektierungspflicht der Union enthält.

Es sei in diesem Zusammenhang erneut daran erinnert, dass das „*Recht auf Wohnen*“ völkerrechtlich von allen Mitgliedstaaten anerkannt (u.a. Art. 25 Abs. 1 Allgemeine Erklärung der Menschenrechte, Art. 11 Internationaler UN-Pakt über wirtschaftliche, soziale und kulturelle Rechte, Art. 27 Abs. 3 UN-Kinderrechtskonvention, Art. 31 revidierte Europäische Sozialcharta) und in vielen Verfassungen der Mitgliedstaaten enthalten ist (Art. 23 Belgien, § 15 a Finnland, Art. 21 Abs. 4 Griechenland, Art. 22 Abs. 2, Art. 65 Portugal, Kapitel 1 § 2 Schweden, Art. 47 Spanien; implizit in Art. 1, 13, 14 und 20 Deutschland).

f) Art. 43 Freizügigkeit und Aufenthaltsfreiheit

Der Abs. 2 des Artikels enthält kein Grundrecht, sondern nur einen Hinweis auf eine mögliche zukünftige Vertragsrevision, mit der ein Recht auf Freizügigkeit für Staatsangehörige dritter Länder eingeräumt werden könnte. Damit entspricht die neue Formulierung nicht der Mehrheitsmeinung, wie sie in der mündlichen Debatte innerhalb des Konvents vertreten wurde (u.a. Voggenhuber, Meyer, van den Burg, Brax, Einem, Beres, Kaufmann, Paciotti, Leinen, Martin).

Eine Gleichstellung von Drittstaatlern beim Recht auf Freizügigkeit ist nach Art. 63 Nr. 4 EGV möglich. Gemäß dem Art. 13 Allgemeine Erklärung der Menschenrechte, Art. 12 Internationaler Pakt über bürgerliche und politische Rechte und Art. 2 Protokoll Nr. 4 Europäische Menschenrechtskonvention ist die Freizügigkeit ein Menschen- und kein Bürgerrecht.

Entweder müsste – was die Unterzeichner befürworten – eine Ausweitung der Freizügigkeit auch auf Drittstaatler in die Grundrechtscharta aufgenommen werden, in

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dem in Abs. 1 der Begriff „Bürger“ durch „Jeder“ ersetzt wird, oder der Abs. 2 kann generell gestrichen werden.

Mit freundlichen Grüßen

Jürgen Meyer, Alima Bourmediene-Thiery, Andrew Duff, Caspar Einem, Ben Fayot, Michael Holoubek, Ulpu Ilvari, Sylvia-Yvonne Kaufmann, Jo Leinen, Hans-Peter Martin, Elena Paciotti¹, Ike van den Burg², Johannes Voggenhuber

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¹ Unter Vorbehalt zu den Kommentaren zu Art. 11 (II. b).

² Unter Vorbehalt zu den Kommentaren zu Art. 15 (I. d, Teilsatz 1).



Prof. Dr. Jürgen Meyer, MdB
Stv. Vorsitzender des Ausschusses für die Angelegenheiten
der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin · Unter den Linden 50 · 2122 / 2124

Berlin

Prof. Dr. Jürgen Meyer
Deutscher Bundestag
Büro: Unter den Linden 50 · 2122 / 2124
☒ Platz der Republik 1, 11011 Berlin
Tel: (030) 227 - 79 12 0
Fax: (030) 227 - 76 31 6
Email: juergen.meyer@bundestag.de

Wahlkreis

Prof. Dr. Jürgen Meyer
Münsterplatz 45
Postfach 36 28
89026 Ulm
Tel: (0731) 6 02 13 61
Fax: (0731) 6 13 21
Email: juergen.meyer@wk.bundestag.de

le 31 août 2000

MEYER ET 11 AUTRES

Monsieur
le professeur dr. Roman Herzog
Président de la Convention
chargée d'élaborer la Charte européenne
des droits fondamentaux

Messieurs
le professeur dr. Guy Braibant,
Gunnar Jansson,
Mendez de Vigo,
Vice-Présidents

Messieurs,

Conformément à la procédure proposée par le Présidium concernant la Convention 45 (Charte 4422/00), les soussignés présentent sur le projet complet de la Charte les observations générales ci-après :

I. Généralités

- a) Les soussignés approuvent expressément le texte proposé et remercient le Présidium pour le travail accompli. Un grand nombre de propositions de modification écrites et

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d'interventions orales de divers délégués a été pris en compte, de sorte que ce projet constitue une bonne base pour une Charte susceptible de recueillir une large approbation.

- b) Cependant, pour des considérations liées à la systématique, il conviendrait de ne pas se référer, comme il est fait dans divers articles, aux "législations nationales" et "au droit communautaire". Les soussignés demandent en conséquence la suppression de cette référence aux articles 9, 18, 25, 26, 32, 33 et 34.

Compte tenu de la disposition horizontale de l'article 49, al. 1 et 2, cette référence est superflue. Pour des considérations liées à la systématique, la Convention a convenu de formuler les questions horizontales séparément dans le but notamment de faciliter la lisibilité de la Charte et l'identification du citoyen avec l'UE.

La systématique de la Convention 45 fait croire au citoyen que l'on tend à diluer des articles spécifiques par rapport à d'autres, ce qui n'est pas l'intention de la Convention et ne correspond pas au mandat de Cologne.

Par ailleurs, elle peut faire croire que des droits fondamentaux relevant, dans leur acception générale, du droit premier sont valables sous réserve de réglementations nationales ou de futures révisions du traité. Cette impression serait regrettable et contraire à l'esprit de l'article 6, al. 1 du traité de l'UE dans lequel il est dit expressément que l'Union accorde une priorité absolue au respect des droits de l'Homme et des libertés fondamentales. C'est pourquoi les soussignés proposent la suppression pure et simple de l'article 50, al. 2.

- c) Les soussignés approuvent l'énumération au point 5 du préambule des principales sources dont s'inspire la Charte qui sont, conformément au mandat de Cologne, la Convention européenne des droits de l'Homme, les traditions constitutionnelles communes des Etats membres, la Charte sociale européenne et la Charte communautaire des droits fondamentaux sociaux des travailleurs.

Cependant, la cohérence du projet risque d'être compromise si l'on omet de mentionner ces sources également à l'article 51. Le préambule et l'article 51 relient entre eux les diverses parties du projet. C'est pourquoi les soussignés plaident en faveur de

l'insertion également à l'article 51, en tant que niveau de protection minimal, les Chartes sociales adoptées par la Communauté et le Conseil de l'Europe.

- d) Pour des considérations liées à la systématique, l'article 15 "Liberté professionnelle" devrait figurer au chapitre IV "Solidarité" avec le titre et la règle générale précédemment proposés par le Présidium ("Liberté professionnelle et droit de travailler" et "Toute personne a le droit de travailler") (cf. Convention 41, ancien art. 31).

On voit mal pour quelles raisons la place et le texte de l'ancienne proposition du Présidium (Convention 41), qui reposait sur la proposition Braibant-Meyer, ont été modifiés dans la version actuelle et ce en dépit du fait que, lors de la discussion de la proposition de compromis, une large majorité des délégués (notamment Nikula, Voggenhuber, Friedrich, Einem, Paciotti, Leinen, Hirsch Ballin, Olsen, Barros Moura, van den Burg, Kaufmann) se soit prononcée en sa faveur. Par ailleurs, outre les personnes mentionnées, un grand nombre de délégués avaient plaidé dans leurs propositions de modification écrites en faveur d'une règle concernant le "droit de travailler" (Convention 39 : amendements n° 35 Sole Tura, n° 39 Dieulangard, n° 46 Fayot, n° 47 Braibant, n° 51 Rodota/Paciotti/Manzella, n° 53 Beres et al.).

- e) D'une manière générale, il conviendrait de vérifier une nouvelle fois très attentivement l'équivalence des notions employées dans les différentes langues du texte de la Charte. C'est ainsi qu'à l'article 24 de la traduction allemande figurent les termes "behinderte Menschen" alors que les termes corrects généralement reconnus devraient être "Menschen mit Behinderung". On peut également se demander si les termes de "Würde der Männer und Frauen", au point 2 du préambule, sont bien choisis, car cette notion ne tient pas compte des enfants.

Les soussignés espèrent que la Convention disposera du texte de la Charte dans toutes les langues de l'UE avant sa transmission aux chefs d'État et de gouvernement.

II. Questions particulières

- a) Article 10. Liberté de pensée, de conscience et de religion

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Il convient d'ajouter à cet article un deuxième alinéa dans lequel sera inscrit le *droit à l'objection de conscience*. L'insertion donne suite à toute une série d'amendements (Convention 35 : amendements n° 256 Voggenhuber/Buitenweg, n° 257 Meyer/Leinen/Martin, n° 261 Gnauck et n° 262 Kaufmann notamment) et au point de vue exprimé par une majorité au cours de la discussion à la Convention.

b) Article 11, al. 2. Liberté d'expression et d'information

L'objectif de l'article 11, al. 2 est approuvé en principe, la notion de "médias" venant apporter plus de clarté par comparaison avec la version précédente (les notions de "liberté de la presse et de la radiodiffusion" ou de "l'information s'adressant au grand public" seraient toutefois plus précises); cependant, la rédaction du Présidium néglige trois aspects :

- i. Les organes de l'Union européenne *doivent être tenus de fournir des renseignements aux médias*. Cet aspect est tout aussi important pour la formation d'une opinion publique européenne que l'impératif de la transparence requise dans une communauté démocratique. Il est vrai que le projet du Présidium prévoit en son article 49 un droit d'accès général aux documents; néanmoins, compte tenu de leur rôle particulier en tant que "courroie de transmission" ou lien entre le pouvoir public et la population, les médias devraient se voir accorder un droit explicite à cet égard.
- ii. Le terme de "*transparence*" a été vivement critiqué par un certain nombre d'établissements du secteur des médias; ils craignent que l'administration publique n'invoque l'impératif de la transparence pour justifier des mesures ayant pour effet de restreindre la liberté.
Si la réglementation doit faire obligation aux médias d'assurer l'information selon les principes démocratiques, cet objectif est déjà atteint par les dispositions horizontales de l'article 52 et la concordance pratique. En revanche, si cette notion doit assurer la transparence *financière* des médias (Convention 35, amendement n° 284 Braibant), ce principe ne doit pas expressément être garanti dans une Charte des droits fondamentaux. C'est

pourquoi les soussignés proposent de rayer ce terme dans l'article en cause, d'autant que l'insertion de cette notion a fait l'objet d'un seul amendement.

- iii. Lors de la discussion à la réunion de la Convention, un certain nombre de délégués a critiqué le manque de précision de la notion de "*pluralisme*" (Goldsmith, Hirsch Ballin, Rodota, Partijn). Cette idée pourrait être exprimée avec plus de rigueur : à cet effet il conviendrait, en se référant notamment au Protocole n° 23 du traité d'Amsterdam, d'ajouter au texte de la Charte une garantie des acquis de la radiodiffusion de droit public, assurant ainsi la coexistence des médias privés et de droit public et de ce fait une information pluraliste.

c) Article 13. Liberté de la recherche

Il convient d'ajouter à cet article la *liberté des sciences, de l'enseignement et des arts*. Cet ajout correspond à une proposition précédente du Présidium (Convention 13, art.15 al. 2, à l'exception de "l'enseignement") que la Convention n'avait pas critiquée à cet égard. Bien au contraire, plusieurs délégués avaient souligné, au cours du débat, l'importance de cet alinéa (Meyer, Friedrich, Rack, Leinen, Einem, Rodota, Braibant, Mombaur, Papadimitriou), le justifiant dans un grand nombre d'amendements. Par ailleurs, ces libertés correspondent aussi bien aux traditions constitutionnelles communes des Etats membres qu'aux conventions internationales.

d) Article 26. Droit de négociation et d'actions collectives

Les soussignés proposent d'insérer dans cet article les termes "[actions collectives], y compris le droit de grève", formulation directement empruntée à la Charte sociale européenne (art. 6, al. 4) qui constitue, conformément au mandat de Cologne, une des bases sur lesquelles repose le travail de la Convention.

Les délégués qui souhaitent ne pas mentionner le droit de grève en invoquant le fait que son insertion dans la Charte appellerait également l'insertion du "lock-out", se méprennent sur ce point sur les traditions constitutionnelles communes existantes et sur le droit international reconnu par tous les Etats membres (Charte sociale européenne, art. 8, al. 1 d, Pacte international relatif aux droits économiques, sociaux et culturels, un grand nombre de Conventions de l'OIT).

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Renoncer à mentionner le droit de grève constituerait en quelque sorte une tentative de restreindre le droit en vigueur. C'est pourquoi la plupart des délégués se sont prononcés dans leurs amendements en faveur de la mention expresse du droit de grève dans cet article (Convention 39; amendements n° 93 Voggenhuber, n° 94 Dehousse, n° 95 Rodota/Paciotti/Manzella, n° 97 Braibant, n° 99 Dieulangard, n° 102 Fayot, n° 103 Beres, n° 104 van den Burg).

e) Article 32. Sécurité sociale et aide sociale

i. Les soussignés approuvent l'article tel que formulé à l'alinéa 1 et proposent de placer en tête de l'énumération de l'assurance sociale et des services sociaux les termes "*plus particulièrement*" afin de souligner que cette énumération n'est pas limitative. Les droits fondamentaux devant, par définition, avoir un caractère aussi durable que possible, il convient d'éviter toute liste limitative d'exemples, car les développements futurs dans ce domaine ne sont pas prévisibles.

ii. Par ailleurs, le Présidium n'a retenu à l'alinéa 3, ce que nous déplorons, qu'un seul aspect du "droit au logement", à savoir l'aide au logement, bien que la proposition Meyer-Braibant constitue un compromis majoritairement approuvé par la Convention et se contente de faire obligation à l'Union de respecter ce droit.

Rappelons encore dans ce contexte que le "*droit au logement*" est reconnu en droit international par tous les Etats membres (cf. notamment art. 25, al. 1 de la Déclaration universelle des droits de l'Homme, art. 11 du Pacte international des Nations Unies relatif aux droits économiques, sociaux et culturels, art. 27, al. 3 de la Convention des Nations Unies relative aux droits de l'enfant, art. 31 de la Charte sociale européenne révisée) et ancré dans nombre de constitutions des Etats membres (art. 23 Belgique, par. 15 a Finlande, art. 21, al. 4 Grèce, art. 22, al. 2, art. 65 Portugal, chapitre 1, par. 2 Suède, art. 47 Espagne; implicitement art. 1, 13, 14 et 20 Allemagne).

f) Article 43. Liberté de circulation et de séjour

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L'alinéa 2 de cet article ne définit pas de droit fondamental et annonce seulement une future révision éventuelle du traité susceptible de créer un droit à la libre circulation en faveur des ressortissants de pays tiers. De ce fait, la nouvelle rédaction n'exprime pas le point de vue défendu par la majorité lors des débats de la Convention (cf. notamment Voggenhuber, Meyer, van den Burg, Brax, Einem, Beres, Kaufmann, Paciotti, Leinen, Martin).

L'article 63 n° 4 du traité de la CEE autorise l'égalité de traitement des ressortissants de pays tiers concernant la liberté de circulation. La liberté de circulation constitue, selon l'article 13 de la Déclaration universelle des droits de l'Homme, l'article 12 du Pacte international relatif aux droits civils et politiques et l'article 2 du protocole n°4 de la Convention européenne des droits de l'Homme, un droit de l'Homme et non pas un droit civil.

Il conviendrait, et c'est ce que préconisent les soussignés, d'étendre, dans la Charte des droits fondamentaux, la liberté de circulation aux ressortissants d'Etats tiers en substituant à l'alinéa 1 les termes "toute personne" au terme "citoyen", ou encore de supprimer l'alinéa 2.

Avec mes meilleures salutations

Jürgen Meyer, Alima Bourmediene-Thiery, Andrew Duff, Caspar Einem, Ben Fayot, Michael Holoubek, Ulpu Ilvari, Sylvia-Yvonne Kaufmann, Jo Leinen, Hans-Peter Martin, Elena Paciotti¹, Ike van den Burg², Johannes Voggenhuber

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¹ Sous réserve des commentaires relatifs à l'art 11 (II. b).

² Sous réserve des commentaires relatifs à l'art 15 (I. d, parties des phrases).



Prof. Dr. Jürgen Meyer, MdB
 Stv. Vorsitzender des Ausschusses für die Angelegenheiten
 der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin · Unter den Linden 50 · 2122 / 2124

Berlin

Prof. Dr. Jürgen Meyer
 Deutscher Bundestag
 Büro: Unter den Linden 50 · 2122 / 2124
 ☒ Platz der Republik 1, 11011 Berlin
 Tel: (030) 227 - 79 12 0
 Fax: (030) 227 - 76 31 6
 Email: juergen.meyer@bundestag.de

Wahlkreis

Prof. Dr. Jürgen Meyer
 Münsterplatz 45
 Postfach 36 28
 89026 Ulm
 Tel: (0731) 6 02 13 61
 Fax: (0731) 6 13 21
 Email: juergen.meyer@wk.bundestag.de

August, the 31st 2000

MEYER AND 11 OTHERS

To the Chairperson of the Convent
 for elaborating the European Charter of Fundamental Rights
 Prof. Dr Roman Herzog

To the Vice-Chairpersons
 Prof. Dr Guy Braibant
 Gunnar Jansson
 Mendez de Vigo

Dear Sirs,

under the procedure proposed by the Praesidium in Convent 45 (Charte 4422/00), the signatories hereby submit the following general comments on the Draft Charter:

I. General

- (a) The signatories expressly welcome the Draft Charter and thank the Praesidium for the work it has accomplished. Many of the suggestions put forward in written amendments and in oral contributions by individual delegates have been incorporated in the Draft, which therefore provides a good basis for a Charter that can gain assent.
- (b) For systematic reasons, the reference in some articles to “national laws and practices” and “in accordance with Community law” should be taken out. The signatories are

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therefore in favour of deleting these references from Articles 9, 18, 25, 26, 32, 33 and 34.

It should be pointed out that this reference is superfluous because of the horizontal provision in Article 49(1) and (2). For systematic reasons the Convent agreed to formulate horizontal provisions separately, not least in order to render the Charter more legible and therefore make it easier for the citizens to identify with the EU.

In contrast, the system set out in Convent 45 gives the citizen the impression that specific articles are less important than others. That is consistent neither with the intention of the Convent nor with the Cologne mandate.

Moreover, it could give the impression that fundamental rights, which are generally understood as rights of the first order, are being made subject to the reservation of national laws and practices or future revisions of the Treaty. That would be a disastrous impression to give and would conflict with the spirit of Article 6(1) of the EU Treaty, which makes it quite clear that the Union attaches top priority to respect for human rights and fundamental freedoms. For that reason the signatories urgently call for Article 50(2) to be deleted without replacement.

- (c) The signatories welcome the fact that recital 5 of the Preamble lists the main sources drawn on in drafting the Charter. In accordance with the Cologne mandate, these are the European Convention on Human Rights, the constitutional traditions common to the Member States, the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

The Draft risks being less coherent if these sources are not also named in Article 51. The Preamble and Article 51 form the cornerstone of the Charter. The signatories therefore also urge the inclusion of the Social Charters adopted by the Community and by the Council of Europe in Article 51 as a minimum level of protection.

- (d) Article 15 "Freedom to choose an occupation" should be incorporated in Chapter IV "Solidarity" for systematic reasons and contain the earlier heading ("Freedom to choose an occupation and the right to work") and the general principle ("Every person has the right to work") proposed by the Praesidium (cf. Convent 41, ex-Article 31).

It is difficult to understand why the position and wording of the earlier Praesidium proposal (Convent 41), which was based on the Braibant-Meyer proposal, has been

changed in the present version, even though a large majority of delegates had endorsed the compromise proposal during the oral discussion (including Nikula, Voggenhuber, Friedrich, Einem, Paciotti, Leinen, Hirsch Ballin, Olsen, Barros Moura, van den Burg, Kaufmann). Moreover, a large number of delegates, besides those just mentioned, had tabled written amendments calling for a “right to work” provision (Convent 39: draft amendments Nos 35 Sole Tura, 39 Dieulangard, 46 Fayot, 47 Braibant, 51 Rodota/Paciotti/Manzella, 53 Beres et alia).

- (e) In general, it should be carefully checked again whether the Charter is worded appropriately in all the EU languages. For instance, the German translation of Article 24 refers to “behinderte Menschen” (disabled persons), while the accepted correct term is “Menschen mit Behinderung” (persons with disabilities). It is also questionable whether the choice of wording in recital 2 of the Preamble “dignity of men and women” is a happy one, since that does not cover, for instance, children.
- The signatories assume that the Charter will be available to the Convent in all the EU languages before it is submitted to the Heads of State and Government.

II. Specific comments

(a) Article 10 Freedom of thought, conscience and religion

A second paragraph should be added, referring to the *right to refuse military service*. The inclusion of a second paragraph to that effect would correspond to a number of draft amendments (Convent 35: draft amendments Nos 256 Voggenhuber/Buitenweg, 257 Meyer/Leinen/Martin, 261 Gnauck and 262 Kaufmann, et alia) and to the majority opinion expressed during the Convent discussion.

(b) Article 11 (2) Freedom of expression and information

While in principle we welcome the intention of Article 11(2), and especially the greater clarity in comparison with earlier versions thanks to the use of the term “media” (although the terms “freedom of the press and broadcasting”, i.e. “communication directed at the general public” would be more precise), three aspects are missing in the wording proposed by the Praesidium:

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- i. The European Union bodies should have a binding *obligation to inform the media*. That is as important to the development of a European public as the need for transparency is within a democratic community. Although Article 40 of the Praesidium's Draft does provide for a general right of access to documents, nevertheless the media, with their special task of acting as a "transmission channel", i.e. a connecting link between the public authority and the people, should be granted an explicit right in this regard.
- ii. A number of media institutions have strongly criticised the use of the term "*transparency*" in paragraph 2. Their underlying fear is that the public authorities could justify freedom-restricting measures by applying the transparency provision.

Should the intention of this provision be to oblige the media to report democratically, that intention is already achieved by the horizontal provision of Article 52 and practical concordance. If, however, the intention is to provide for the *financial* transparency of the media (Convent 35, draft amendment No 284 Braibant), that does not need to be guaranteed explicitly in a Charter of Fundamental Rights. For that reason, we recommend deleting that term from the article, given also that only one draft amendment called for it to be incorporated.
- iii. During the discussion in the Convent, a number of delegates criticised the imprecision of the term "*pluralism*" (Goldsmith, Hirsch Ballin, Rodota, Partijn). This concept can be worded more precisely. Accordingly – with reference also to Protocol No 23 to the Amsterdam Treaty – the Charter should also include a guarantee of the continued existence of public broadcasting, since this would ensure the coexistence of private and public media and guarantee pluralist reporting.

(c) Article 13 Freedom of research

That article should be supplemented with *Freedom of science, teaching and art*. That would comply with an earlier Praesidium proposal (Convent 13, Article 15(2), with the exception of "teaching"), which the Convent did not criticise in that regard. In fact, a number of delegates had emphasised the importance of that paragraph during

the oral debate (Meyer, Friedrich, Rack, Leinen, Einem, Rodota, Braibant, Mombaur, Papadimitriou) and also justified it in a large number of draft amendments.

Furthermore, the freedoms in question are consistent both with the constitutional traditions common to the Member States and with international conventions. For that reason, we urgently recommend that this article be supplemented.

(d) Article 26 Right of collective bargaining and action

The signatories recommend incorporating in that article the words “[collective action] *including the right to strike*”. That wording is directly derived from the European Social Charter (Article 6(4)), on which the Convent’s activities are based pursuant to the Cologne mandate.

Those delegates who want to leave out the right to strike on the basis that reference would then also have to be made to “lockout” are mistaken here with regard to existing common constitutional traditions and to the international law recognised by all Member States (European Social Charter, Article 8(1)(d), International Covenant on Economic, Social and Cultural Rights, many ILO conventions).

Not to refer to the right to strike would be equivalent to an attempt to devalue existing legislation. For that reason the majority of the delegates tabled amendments calling for it to be explicitly incorporated in that article (Convent 39: amendments Nos 93 Voggenhuber, 94 Dehousse, 95 Rodota/Paciotti/Manzella, 97 Braibant, 99 Dieulangard, 102 Fayot, 103 Beres, 194 van den Burg).

(e) Article 32 Social security and social assistance

- i. The signatories welcome the wording of paragraph 1 and suggest introducing the list of social security benefits and social services with the words “*in particular*”, to emphasise that it is an open list. Since fundamental rights should by their nature continue to exist as long as possible, any conclusive lists of examples should be avoided, since we cannot foresee future developments in these areas.
- ii. In paragraph 3, unfortunately the Praesidium has yet again referred only to a single aspect of the “right to housing” – housing benefit – although the Braibant-Meyer compromise proposal, which was endorsed by a majority of

the Convent, contains a reference to the Union's obligation to fully respect that right.

In this context, it should be recalled that the "*right to housing*" under international law is recognised by all the Member States (among others Article 25 (1) of the Universal Declaration of Human Rights, Article 11 of the International UN Covenant on Economic, Social and Cultural Rights, Article 27(3) of the UN Convention on the Rights of the Child, Article 31 of the revised European Social Charter) and in many Member State constitutions (Article 23 Belgium, paragraph 15 a Finland, Article 21(4) Greece, Articles 22(2) and Article 65 Portugal, Chapter 1, paragraph 2 Sweden, Article 47 Spain, implicit in Articles 1, 13, 14 and 20 Germany).

(f) Article 43 Freedom of movement and of residence

Paragraph 2 of that article does not contain a fundamental right, only a reference to a possible future Treaty revision, under which third country nationals could be granted a right of freedom of movement. So the new wording does not reflect the majority opinion, as expressed during the oral debate in the Convent (among others Voggenhuber, Meyer, van den Burg, Brax, Einem, Beres, Kaufmann, Paciotti, Leinen, Martin).

Third country nationals can be granted an equal right to freedom of movement under Article 63(4) of the EU Treaty. Pursuant to Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights and Article 2 of Protocol No 4 to the European Convention on Human Rights, freedom of movement is a human right and not a civil right.

Either, as the signatories believe, the extension of freedom of movement to third country nationals should be incorporated in the Charter of Fundamental Rights by replacing the term "citizen of the Union" in paragraph 1 by "Everyone", or paragraph 2 can be deleted entirely.

With regards

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Jürgen Meyer, Alima Bourmediene-Thiery, Andrew Duff, Caspar Einem, Ben Fayot, Michael Holoubek, Ulpu Ilvari, Sylvia-Yvonne Kaufmann, Jo Leinen, Hans-Peter Martin, Elena Paciotti¹, Ike van den Burg², Johannes Voggenhuber

¹ With reservation to the comments made to Art. 11 (II. b).

² With reservation to the comments made to Art. 15 (I. d, first half of the sentence).

EUROPÄISCHES PARLAMENT



Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Präsident des EU-Grundrechtskonvents
e-mail: fundamental.rights@consilium.eu.int

Herrn
Inigo Mendez de Vigo MdEP
Vorsitzender der Delegation des
Europäischen Parlaments im
EU-Grundrechtskonvent
e-mail: Jean-Paul.Jacque@consilium.eu.int

17. August 2000
M/re

**Entwurf der Charta der Grundrechte der Europäischen
Union/CONVENT 45 vom 28. Juli 2000**

Sehr geehrter Herr Professor Herzog,
sehr geehrter Herr Kollege Mendez de Vigo,

zu dem oben angeführten Vorentwurf möchte ich unter Beschränkung auf das
Wesentliche folgende Anmerkungen machen:

1. Präambel:

Die Ziffern 1 und 2 entsprechen meines Erachtens noch nicht dem Ziel, durch
eine Grundrechtcharta die Identität der Europäer zu verdeutlichen. Mit der
bloßen Benennung „gemeinsamer Werte“ und deren Aufzählung würde die
Charta sogar noch hinter den geltenden Text des EGV zurückfallen, der das
gemeinsame kulturelle Erbe der Europäer benennt.

Europäisches Parlament
Rue Wiertz 60; 10 E 140
B-1047 Brüssel
Tel.: 0032-2-284 5978
Fax: 0032-2-284 9978
Email: PMombaur@europarl.eu.int

Kaiser-Wilhelm-Ring 43
D-40545 Düsseldorf
Tel: 0049-211-55 57 17
Fax: 0049-211-55 17 85

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EUROPÄISCHES PARLAMENT



RA DR. PETER MICHAEL MOMBAUR
MITGLIED DES EUROPÄISCHEN PARLAMENTS

In der Magna Charta Libertatum, in der Präambel des deutschen Grundgesetzes, der griechischen und der irischen Verfassung sowie auch der polnischen neuen Verfassung lesen sich die Grundrechtsgrundlagen ganz anders.

Ich schlage daher vor, den europäischen Grundrechtsschutz dadurch zu bekräftigen, daß seine tatsächlichen historischen und ideengeschichtlichen Grundlagen benannt werden: **Die christlich-jüdische Tradition, die Ideen der französischen Revolution und die Verantwortung der Politiker vor Gott.**

Wer andere Quellen benennen möchte, aus denen ähnliche Grundrechtswirkungen abzuleiten sind, sollte dies vorschlagen.

2. Zu Artikel 9:

Die vorgeschlagene Formulierung verfehlt gleich zwei Ziele:

- Sie berücksichtigt die Formulierung der Europäischen Menschenrechtskonvention nicht (übrigens anders als der Entwurf zu Artikel 10).
- Sie verfehlt die Wertschätzung eines zentralen europäischen Kulturwertes. Ehe und Familie sichern „als Keimzelle jeder menschlichen Gesellschaft“ (so Artikel 16 Europäische Sozialcharta) den Weiterbestand der Gesellschaft.

Wenn Artikel 21 ein Diskriminierungsverbot enthält und Artikel 31 Ziffer 2 einen Anspruch auf Elternurlaub „jeder Person“ zugesteht – unabhängig von der Betreuungskonstellation -, kann Artikel 9 nicht ein derart leerer Kompromiß bleiben.

Vorschlag: Entsprechend der EMRK a) **Ehe als Verbindung von Mann und Frau** und b) **das Recht zur Heirat und Familiengründung als zusammengehörendes Recht** zu definieren.

EUROPÄISCHES PARLAMENT



RA DR. PETER MICHAEL MOMBAUR
MITGLIED DES EUROPÄISCHEN PARLAMENTS

3. Zu Artikel 22:

Im Konvent bestand Übereinstimmung darüber, daß der Grundsatz des gleichen Entgelts bei gleicher oder gleichwertiger Arbeit auf den einzelnen Mitgliedsstaat zu beziehen ist. Dementsprechend schlage ich vor, zu formulieren:

„... des **gleichen Entgelts im jeweiligen Mitgliedsstaat** ...“

4. Zu Artikel 23:

Absatz 2 trägt der Balance zwischen dem Recht der Kinder und dem Elternrecht nicht ausreichend Rechnung. Dementsprechend schlage ich vor zu formulieren:

„... muß **das übergeordnete Interesse des Kindes im Rahmen des Elternrechts zur Erziehung des und Sorge für das Kind** eine vorrangige Erwägung sein.“

5. Zu Artikel 34:

Die Aufnahme dieses Artikels über Artikel 16 EGV hinaus ist entbehrlich. Der Artikel sollte **gestrichen** werden.

6. Zu Artikel 35 und 36:

Im Blick auf die unterschiedlichen Kompetenzen der Europäischen Union einerseits und der Mitgliedsstaaten andererseits mit Bezug auf Umweltschutz und Verbraucherschutz kann den Unionsbürgern realistischere nicht dargestellt werden, daß die Politik in der Union diese Schutzbereiche sicherstellt. Daher schlage ich vor, **realistisch** in beiden Artikeln zu formulieren, daß **die Politik in der Union zu diesen Zielen „beiträgt“**.

Europäisches Parlament
Rue Wiertz 60; 10 E 140
B-1047 Brüssel
Tel.: 0032-2-284 5978
Fax: 0032-2-284 9978
Email: PMombaur@europarl.eu.int

Kaiser-Wilhelm-Ring 43
D-40545 Düsseldorf
Tel: 0049-211-55 57 17
Fax: 0049-211-55 17 85

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EUROPÄISCHES PARLAMENT



RA DR. PETER MICHAEL MOMBAUR
MITGLIED DES EUROPÄISCHEN PARLAMENTS

7. Zu Artikel 50:

Artikel 50 Abs. (1) verletzt in der gegenwärtigen Formulierung das Gebot, daß die Möglichkeit, Grundrechte zu beschränken, ihrerseits Beschränkungen unterliegen muß.

Einschränkungen dürfen sich auch nicht auf Leerformeln stützen, die zur Beliebigkeit einladen und daher rechtsstaatlich nicht tolerabel sind. Daher schlage ich vor zu formulieren:

- **„Die Einschränkung darf den Wesensgehalt der Grundrechte nicht verletzen.“**
- Die **„anderen legitimen Interessen in einer demokratischen Gesellschaft“** zu streichen.

Mit freundlichen Grüßen
Dr. Peter M. Mombaur

Europäisches Parlament
Rue Wiertz 60; 10 E 140
B-1047 Brüssel
Tel.: 0032-2-284 5978
Fax: 0032-2-284 9978
Email: PMombaur@europarl.eu.int

Kaiser-Wilhelm-Ring 43
D-40545 Düsseldorf
Tel: 0049-211-55 57 17
Fax: 0049-211-55 17 85

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Heinrich Neisser

*Mitglied des Konvents zur Erarbeitung eines Entwurfs einer
Grundrechte-Charta der Europäischen Union*

An das
Präsidium des Konvents

z.H. des Stellvertretenden Vorsitzenden
Guy Braibant

Wien, am 31. August 2000

Betrifft: Allgemeine Bemerkungen zum Gesamtentwurf der Charta (Convent 45)

Sehr geehrter Herr Braibant!

Ich erlaube mir, Ihnen im Folgenden einige allgemeine Bemerkungen zum jüngsten Gesamtentwurf der Charta zur Kenntnis zu bringen.

Ich möchte zunächst dem Präsidium Dank und Anerkennung für die geleistete Arbeit aussprechen. Der derzeitige Textentwurf ist das bislang beste Dokument und grundsätzlich positiv zu beurteilen. Meiner Ansicht nach sind wir mit diesem Entwurf nicht mehr weit entfernt von einem Text, der vom Konvent im Konsens verabschiedet werden kann. Ich halte es dennoch für notwendig, einige kurze Anmerkungen zu machen.

1.) Allgemeines

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- Positiv zu vermerken ist die Aufnahme sozialer Grundrechte in die Charta, welche entsprechend der horizontalen Bestimmung des Artikels 49 Abs. 2 keine neuen Zuständigkeiten und Aufgaben für die Gemeinschaft, und somit auch keine unmittelbaren neuen finanziellen Verpflichtungen mit sich bringen dürfen. Der Entwurf spiegelt hier den derzeitigen Bestand dieser Rechte wider und trägt den Strukturunterschieden zwischen „klassischen“ und sozialen Grundrechten Rechnung. Die Kapitelüberschrift „Solidarität“ sollte jedoch besser durch „Sozialer Zusammenhalt“ (engl.: social cohesion) ersetzt werden. Dies entspräche der Textierung des EG-Vertrages (XVII. Titel: Wirtschaftlicher und sozialer Zusammenhalt).
- Insbesondere in der deutschen Sprachfassung sollte auf eine durchgängig geschlechtsneutrale Formulierung geachtet werden.
- Punkt 3 der Präambel scheint etwas zu technisch formuliert, insbesondere auf den letzten Halbsatz könnte verzichtet werden.

2.) Fehlende Grundrechte

- Wie bereits in der Diskussion von mir und zahlreichen anderen Mitgliedern betont, sollte die Charta die Rechte der Minderheiten keinesfalls unerwähnt lassen. Insbesondere der Änderungsantrag 598 (Voggenhuber, Convent 35) scheint mir eine geeignete Grundlage für die Aufnahme von Minderheitenrechten in die Charta, da er den sprachlichen und kulturellen Aspekt dieses Rechtes hervorhebt.
- Unvollständig ist weiters Artikel 13: Hier müsste die Freiheit der Wissenschaft, Forschung und Lehre verankert werden. Dies vor allem deshalb, weil die Forschung ein integrierender Bestandteil der Wissenschaft ist und die Verbindung von Lehre und Forschung ein Wesenselement wissenschaftlicher Tätigkeit ist. In diesem Zusammenhang ist darauf hinzuweisen, dass in den meisten nationalen Verfassungsordnungen dieser Grundrechtsbezug deutlich gemacht wird.

3.) Zu streichende Artikel

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- Die Diskussionen innerhalb des Konvents haben meiner Erinnerung nach eine breite Ablehnung einer Aufnahme von Artikel 34 (Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse) gebracht. Die Aufnahme dieses Artikels widerspricht dem Charakter der Charta selbst: Diese soll nämlich eine Charta der Rechte darstellen; Artikel 34 begründet jedoch - wie aus den Erläuterungen hervorgeht - „kein eigentliches Recht“. Er sollte daher gänzlich gestrichen werden.

4.) Anmerkungen zu einzelnen Artikeln

- Der eher komplizierten Formulierung von Artikel 9 wäre eine Textierung im Sinne des Artikel 12 EMRK vorzuziehen.
- Die Verpflichtung zu Pluralismus und Transparenz in Artikel 11 Abs. 2 (Freiheit der Meinungsäußerung und Informationsfreiheit) könnte schwerwiegende Eingriffe in die Freiheit der Presse ermöglichen. Pluralismus und Transparenz in der Gesellschaft sollten nicht die Rechtfertigung für Eingriffe, sondern vielmehr das Ergebnis einer möglichst uneingeschränkten Medienfreiheit sein.
- Der neuerlich umformulierte Artikel 17 (Eigentumsrecht) lässt das Erfordernis einer vorherigen, angemessenen Entschädigung vermissen. Auf dieses Element kann nicht verzichtet werden. Im Lichte der Konventsdiskussion ergab sich eine Präferenz für eine Formulierung, die die Entschädigung vorher gewährleisten sollte.
- Artikel 35 (Umweltschutz) sollte insofern an Artikel 46 (Verbraucherschutz) angepasst werden, als auch beim Umweltschutz ein „hohes Schutzniveau“ anzustreben ist.
- Artikel 37 (Aktives und passives Wahlrecht zum Europäischen Parlament) sollte in Abs. 2 von gleicher, allgemeiner, unmittelbarer, freier und geheimer Wahl sprechen.
- Das aktive und passive Wahlrecht bei Kommunalwahlen (Artikel 38) korrespondiert mit der Autonomie der lokalen Gebietskörperschaften. Die Verankerung eines dementsprechenden Grundrechts auf lokale Selbstverwaltung

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würde der Bedeutung dieser Ausprägung des Subsidiaritätsprinzips Rechnung tragen.

3at

Paavo Nikula
elokuuta, 2000
Suomen hallituksen edustaja valmistelukunnassa

Helsingissä 28.

Tuija Brax
Suomen eduskunnan edustaja valmistelukunnassa

Jean-Paul Jacquè
Valmistelukunnan sihteeristön puheenjohtaja

Tiedoksi:

Guy Braibant
Ranskan tasavallan presidentin ja hallituksen edustaja valmistelukunnassa
Valmistelukunnan varapuheenjohtaja

Gunnar Jansson
Suomen eduskunnan edustaja valmistelukunnassa
Valmistelukunnan varapuheenjohtaja

EU:N PERUSOIKEUSKIRJA; HUOMAUTUKSIA LUONNOKSEEN EU:N PERUSOIKEUSKIRJAKSI (Convent 45)

Haluamme kiittää puheenjohtajistoa ensimmäisestä kokonaisvaltaisesta luonnoksesta Euroopan unionin perusoikeuskirjaksi. Olemme tutustuneet siihen huolellisesti ja keskustelleet siitä alan kansallisten asiantuntijoiden kanssa. Luonnos on myös esitelty Suomen hallitukselle.

Luonnos vastaa pitkälti niihin haasteisiin ja odotuksiin, joita perusoikeuskirjalle asetettiin, kun valmistelu aloitettiin. Olemme kiitollisia, että Suomen edustajien esittämiä ehdotuksia perusoikeuskirjaan kirjattaviksi oikeuksiksi on huomioitu luonnoksessa. Suomen hallituksen tavoitteena on, että Euroopan unionin perusoikeuskirja voidaan hyväksyä Nizzan Eurooppa-neuvoston kokouksessa joulukuussa 2000.

Haluamme kuitenkin tuoda vielä esiin muutamia kohtia, joiden osalta tarkennukset ovat tarpeen, jotta perusoikeuskirjasta tulee kattava, ja samalla Kölnin mandaatin mukainen asiakirja. Tässä muutosehdotukset artikloittain:

13 ja 14 artiklat. Tutkimuksen vapaus ja oikeus koulutukseen:

Muutosehdotus:

13 ja 14 artiklojen järjestys tulisi vaihtaa.

Perustelut:

On loogisempaa, että oikeus koulutukseen käsitellään ennen tutkimuksen vapautta.

17 artikla. Omaisuuden suoja:

Muutosehdotus:

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17(1) artiklan viimeinen virke (*omaisuuden käyttöä voidaan säännellä siinä määrin kuin sen on yleisen edun mukaan tarpeellista*) tulisi poistaa.

Perustelut:

Omaisuuksien käytön rajoittaminen ilman, että kävisi ilmi, missä olosuhteissa tällaisesta rajoituksesta on suoritettava korvaus, on epäselvä ja vaarantaa oikeusturvan. Koska käyttörajoitusta ei myöskään voi yksiselitteisesti liittää osaksi pakkolunastusta koskevaa korvausvelvollisuutta, tulisi virke poistaa kokonaan.

21 artikla. Syrjintäkielto:

Muutosehdotus:

Liitetään 21(1) artikla osaksi 20 artiklaa, jolloin 21(2) artiklasta tulee oma erillinen artiklansa. Uuden 21 artiklan perusteluista tulee ilmetä, että EU-kansalaisten syrjintäkielto on alisteinen kansainvälisten ihmisoikeussopimuksen yleiselle syrjintäkiellolle.

Perustelut:

Syrjintäkieltoartiklan jakautuminen yleiseen syrjintäkieltoon ja EU-kansalaisten syrjintäkieltoon on epäselvä ja aiheuttaa tulkintaongelmia. 21(1) artiklan liittäminen osaksi yleistä yhdenvertaisuutta selventäisi näiden kahden eri syrjintäkiellon eroa, ja toisi esiin sen, että EU-kansalaisten syrjintäkiellolla on oma erityinen soveltamisalansa. Tämänkin artiklan tulisi olla alisteinen kansainvälisten ihmisoikeussopimusten syrjintäkiellolle.

32 artikla. Sosiaaliturva ja sosiaaliapu

Muutosehdotus:

Haluamme muistuttaa, että olemme tehneet artiklaa koskevan muutosehdotuksen nro.0221 (Order n.244/ Amendment n.0221), jota puheenjohtajisto ei kuitenkaan huomionnut. Artiklan perusteluosassa tulisi viitata myös EY:n perustamissopimuksen 136 artiklaan, joka säätelee sosiaaliturvasta unionin tasolla. Perusteluosasta tulisi lisäksi käydä ilmi, että artiklassa mainittu hoidon tarve kattaa myös päivähoidon, samoin kuin työpaikan menetys kattaa myös työkyvyttömyystilanteen.

Perustelut:

Sosiaaliturvaa käsittelevän artiklan perusteluosa ei tällä hetkellä viittaa lainkaan EY:n perustamissopimuksen 136 artiklaan, joka on keskeinen sosiaaliturvasta säättävä artikla.

33 artikla. Terveiden suojelu:

Muutosehdotus:

1. Uusi otsikko: Terveys.

2. Artiklaan tulisi lisätä: Kaikkien yhteisön poliitikkojen ja toimintojen määrittelyssä ja toteuttamisessa varmistetaan ihmisten terveyden korkeatasoinen suojelu.

Perustelut:

Yleinen terveydenedistämismääräys on kirjattu EY:n perustamissopimukseen 152 artiklaan, minkä vuoksi tämän tulisi käydä ilmi myös perusoikeuskirjassa.

35 artikla. Ympäristönsuojelu:

Muutosehdotus:

Perusteluosaan tulisi lisätä, että artikla perustuu yhteiseen valtiosääntöperinteeseen sekä Euroopan ihmisoikeussopimuksen tulkintaan.

Perustelut:

Viittaus yhteiseen valtiosääntöperinteeseen ja Euroopan ihmisoikeussopimuksen tulkintakäytäntöön selventäisi artiklan oikeusperustetta. Asiaa on käsitelty yksityiskohtaisemmin ympäristönsuojeluartikkelia koskevan esityksemme yhteydessä (CHARTE 4205/00/Contribution 86, 4.4.2000).

39 artikla. Oikeus hyvään hallintoon:

Muutosehdotus:

Perusteluosasta tulisi käydä ilmi, että artiklan (2) kohdan luetteloa ei tule tulkita tyhjentävästi.

Perustelut:

Artiklan (2) kohdan luettelo on tarkoitettu esimerkinomaiseksi, ei tyhjentäväksi. Tämä tulisi selvittää perusteluosassa.

45 artikla. Oikeus tehokkaaseen oikeussuojakeinoon:

Muutosehdotus:

Perusteluosaan tulisi lisätä, että oikeus tehokkaaseen oikeussuojakeinoon, samoin kuin oikeus hyvään hallintoon, sisältää oikeuden hakea muutosta. Perusteluista tulisi lisäksi käydä ilmi, että muutoksenhakuoikeus on alisteinen 50 artiklan rajoituksille.

Perustelut:

Muutoksenhakuoikeus on yksilön kannalta keskeinen osa oikeusturvaa ja sen toteutumisen tausta. Tämän vuoksi perusteluissa tulisi mainita, että oikeus tehokkaaseen oikeussuojakeinoon, samoin kuin oikeus hyvään hallintoon, sisältää pääsääntöisesti myös oikeuden muutoksenhakuun.

7 luku. Yleiset määräykset:

Muutosehdotus:

Muutetaan luvun nimi: Perusoikeuskirjan soveltaminen

Perustelut:

"Yleiset määräykset" viittaavat usein teknisiin määräyksiin, joita kyseisessä luvussa olevilla määräyksillä ei tarkoiteta. Tämän, ja luvun keskeisen merkityksen vuoksi, uusi nimi olisi perustellumpi.

Lisäksi haluamme tuoda esiin, että perusoikeuskirjan perusteluosassa tulisi asianmukaisissa yhteyksissä Euroopan ihmisoikeussopimuksen ohella viitata myös muihin kansainvälisiin ihmisoikeussopimuksiin, jotka jäsenvaltioita sitovina kuuluvat yhteiseen valtiosääntöperinteeseemme. Tällaisia sopimuksia ovat ennen kaikkea YK:n kansalais- ja poliittisia oikeuksia (KP- sopimus) sekä taloudellisia, sosiaalisia ja sivistyksellisiä oikeuksia (TSS- sopimus) koskevat yleissopimukset sekä eräät ILO:n sopimukset. Perusoikeuskirjan 2 artiklan perusteluissa tulisi viitata KP- sopimukseen, samoin kuin Euroopan ihmisoikeustuomioistuimen käytäntöön voimankäytön rajoituksena. Vapautta ja turvallisuutta käsittelevän 6 artiklan perusteluissa tulisi mainita, että Euroopan ihmisoikeustuomioistuimen käytännön mukaan Euroopan ihmisoikeussopimuksen 5(1) artiklan d- f- kohtia tulisi tulkita supistavasti. Samaan viittaa myös YK:n ihmisoikeuskomitean käytäntö mielivaltaisen vapaudenriiston kiellon osalta. Koulutusta käsittelevän 14 artiklan perusteluissa tulisi viitata KP- sopimuksen 18(4) ja TSS- sopimuksen 13(3) artikloihin samoin kuin lasten oikeuksien sopimuksen 14(2) artiklaan.

Näiden artiklakohtaisten muutosehdotusten lisäksi haluamme kiinnittää huomion eri kieliversioiden epätarkkuuteen eri sukupuolia käsittelevien viittausten osalta. Artikloissa tulisi systemaattisesti viitata

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sekä nais- että miespuolisiin henkilöihin oikeuksien subjekteina. Toivomme, että puheenjohtajisto kiinnittää huomionsa asiaan ennen valmiin perusoikeuskirjaluonnoksen esittämistä hyväksyttäväksi.

Paavo Nikula
Oikeuskansleri
Suomen hallituksen edustaja valmistelukunnassa

Tuija Brax
Kansanedustaja
Suomen eduskunnan edustaja valmistelukunnassa

Paavo Nikula
Personal Representative of the Finnish Government

Helsinki 28th of August 2000

Tuija Brax
Representative of the Finnish Parliament

Mr. Jacquè
President of the Secretary

For the attention of:

Mr. Braibant
Personal Representative of the French Government and the President of the Republic
Vice-Chairperson of the Convention

Mr. Jansson
Representative of the Finnish Parliament
Vice-Chairperson of the Convention

**CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION;
AMENDMENTS TO THE DRAFT (Convent 45)**

We would like to thank the Praesidium for the first complete draft for the Charter of Fundamental Rights of the European Union (hereafter “the Draft”). We have carefully acquainted ourselves with the Draft and discussed it with national experts in the matters concerned. The Draft has also been presented to the Finnish Government.

The Draft meets well the expectations and challenges that were set when the negotiations for the Draft started. We are grateful that the amendments proposed by the Finnish representatives have been taken into account in the Draft. The goal of the Finnish Government is the adoption of the Charter of Fundamental Rights of the European Union in the European Council meeting in Nice in December 2000.

We would, however, like to draw attention to a few articles that need to be adjusted for the purpose of making the Charter of Fundamental Rights cover everything that is necessary, in accordance with the Cologne Mandate. We propose the following amendments:

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Articles 13 and 14. Freedom of research and the right to education:

Proposed amendment:

The order of articles 13 and 14 should be changed.

Explanation:

It is more logical to present the right to education before the freedom of research.

Article 17. Right to property:

Proposed amendment:

The last sentence of article 17 should be removed (*The use of property may be regulated insofar as necessary for the general interest*).

Explanation:

A restriction on the use of property, without providing for the conditions on which a compensation must be paid for such a restriction, is unclear and imperils the legal protection. However, since the provision concerning the regulation of the use of property cannot as such be inserted in the previous sentence providing for the obligation to pay compensation for expropriation, the sentence should be removed.

Article 21. Equality and non-discrimination:

Proposed amendment:

Paragraph 1 of article 21 should be inserted in article 20, making paragraph 2 of article 21 a separate article. The explanatory part of the new article 21 should indicate that the non-discrimination article concerning EU-citizens is dependent on the non-discrimination clauses of the international human rights conventions.

Explanation:

The division into a general prohibition of discrimination and a prohibition of the discrimination of EU citizens is unclear and causes problems of interpretation. Inserting paragraph 1 in the general provision concerning equality would clarify the difference between the two clauses of non-discrimination and would express the fact that the provision on the non-discrimination of the EU-citizens has its own special scope of application. This article too should be dependent on the non-discrimination clauses of the international human rights conventions.

Article 32. Social security and social assistance:

Proposed amendment:

We would like to observe that we have made a proposal of amendment number 0221 (Order No. 244/Amendment 0221) to this article, which the Praesidium did not take notice of. In the explanatory part of the article there should be reference also to article 136 EC which regulates the social security at the Union level. In addition the explanatory part

should make clear that the need of care mentioned in the article also covers children's day care and the loss of employment also covers the situation of disability for work.

Explanation:

At the moment the explanatory part of the article concerning the social security does not refer to article 136 EC at all, this being the most important article regulating social security.

Article 33. Health care:

Proposed amendment:

1. Change of the heading: Health.
2. The following should be added to the article: *A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.*

Explanation:

A general duty to promote health is included in article 152 EC and should therefore be also mentioned in the Charter of Fundamental Rights.

Article 35. Environmental protection:

Proposed amendment:

It should be added to the explanatory part that the article is based on the common constitutional traditions as well as on the interpretation of the European Convention of Human Rights.

Explanation:

The legal basis of the article would be clarified with a reference to the common constitutional traditions and the interpretation of the European Convention of Human Rights. This has been dealt with in more detail in the contribution of the Finnish representatives (Contribution 86/CHARTE 4205/00, 4th of April 200).

Article 39. Right to good administration:

Proposed amendment:

It would be important that the explanatory part clearly mentions that the list in paragraph 2 of the article should not be interpreted as being exhaustive.

Explanation:

The list in paragraph 2 should be interpreted as being exemplary, not exhaustive. This should be made clear in the explanatory part.

Article 45. Right to an effective remedy and to a fair trial:

Proposed amendment:

It should be added to the explanatory part that the right to an effective remedy and to a fair trial as well as to a good administration includes the right to appeal. It should also be mentioned that the right to appeal is subject to the restrictions of article 50.

Explanation:

The right to appeal is an inherent part of the individual's legal protection and the guarantee for its implementation. This is why the explanatory part should mention that

the right to an effective remedy and to a fair trial as well as the right to good administration include, as a general rule, the right to appeal.

Chapter 7. General provisions:

Proposed amendment:

Change of the chapter's name: Application of the Charter of Fundamental Rights.

Explanation:

“General provisions” often refers to the technical provisions of a document, which is not the case here. Because of this and because of the high importance of the chapter the new name is justified.

In addition we would like to note that, in the explanatory part of the Charter, the European Convention of Human Rights together with the other international conventions of human rights, which because of their binding nature are part of the common constitutional traditions of the Member States, should also be referred to as appropriate. Conventions of this nature include above all the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and some of the ILO conventions. The explanatory part of article 2 of the Charter of Fundamental Rights should refer to the International Covenant on Civil and Political Rights as well as to the case-law of the European Court of Human Rights concerning the limitations of the use of force. The explanatory part of article 6 concerning freedom and safety should indicate that according to the case-law of the European Court of Human Rights article 5(1) (d) to (f) of the European Convention of Human Rights should be interpreted restrictively. The UN Committee for Human Rights applies the same kind of interpretation in cases concerning the prohibition of arbitrary detention. The explanatory part of the article 14 regulating education should refer to article 13(3) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as to article 14(2) of the Convention of the Rights of the Child.

In addition to these amendments concerning individual articles we would like to draw attention to the unclarity concerning the references made to the different sexes in the various language versions. The articles should systematically refer to both males and females as the subjects of the rights laid down in the Charter. We hope that the Praesidium pays attention to this fact before the Draft Charter of Fundamental Rights will be proposed to be accepted.

Paavo Nikula
Chancellor of Justice
Personal Representative of
the Finnish Government

Tuija Brax
Member of Parliament
Representative of
the Finnish Parliament

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DR. HARALD OFNER
VERTRETER DES NATIONALRATES
DER REPUBLIK ÖSTERREICH IM
CONVENT ZUR ERARBEITUNG DER
CHARTA DER GRUNDRECHTE DER
EUROPÄISCHEN UNION

1160 WIEN, SCHUHMEIERPLATZ 14 (THALIASTRASSE)
TEL. (01) 486 14 35, 486 86 16 FAX (01) 485 21 98
SPRECHSTUNDEN:
2340 Mödling, Spechtgasse 33, Tel. (02236) 44 910
e-mail: dr.ofner@aon.at
Creditanstalt BLZ.:11000, Kto.Nr.: 0973-30781/00

An das
Präsidium des Konvents zur Erarbeitung der
Charta der Grundrechte der Europäischen Union
z. Hd. Herrn Stellvertretenden Vorsitzenden
Gunnar Jansson

Wien, 31. August 2000
Dr. Ofner/V
V8918.DOC

Sehr geehrter Herr Vorsitzender!

Ihnen persönlich und mit Ihnen dem gesamten Präsidium des Konvents darf ich für die souveräne Bewältigung der umfangreichen Arbeit, der Sie sich im Zusammenhang mit der Erarbeitung des Entwurfes der Charta der Grundrechte der Europäischen Union in den vergangenen Wochen und Monaten so nachhaltig unterzogen haben, meinen und meiner parlamentarischen Umgebung in Österreich aufrichtigen Dank aussprechen.

Das Papier 4422/00 vom 28.7.2000 hält ein in der Tat respektables - wohl nur vorläufiges - Ergebnis dieser so eindrucksvollen Bemühungen fest.

Fristgerecht darf ich zu Ihren Händen, sehr geehrter Herr Vorsitzender, folgende Anmerkung zu einem Problemkreis, der in dem Entwurf bisher nicht einmal Erwähnung gefunden hat, obwohl ihm nach meinem Erachten wesentliche und sozusagen von Tag zu Tag steigende Bedeutung zukommt, anbringen:

Seit Jahren wird im Bereich der Europäischen Union und über ihre Grenzen hinaus immer deutlicher die Notwendigkeit der Normierung von Volksgruppenrechten, verbindlich und durchsetzbar, erkannt und hervorgehoben; das heißt, Festlegung von Regeln, die es autochthonen ethnischen Minderheiten ermöglichen, in ihrer angestammten Heimatgebieten weiter bestehen zu können, Minderheiten, die es in fast allen europäischen Ländern gibt.

Es geht diesbezüglich um viel mehr als nur um das Verbot der Diskriminierung von einzelnen Angehörigen von Minderheiten, sondern darüberhinaus um die Anerkennung von Minderheiten als Gruppen und um die Ausstattung eben dieser Gruppen mit besonderen Rechten.

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Daß diese Problematik in dem Entwurf mit keinem Wort auch nur gestreift wird, wird dem Konvent, so fürchte ich, nicht nur den Vorwurf des politischen Zynismus eintragen, sondern auch die Beschlußfassung hinsichtlich des Gesamtwerkes der Charta wesentlich beeinträchtigen bzw. erschweren.

Ich bitte Sie, sehr geehrter Herr Vorsitzender, und über Sie das gesamte Präsidium des Konvents, sohin, im Rahmen der bevorstehenden Überarbeitung des Entwurfes der Formulierung und Aufnahme von Volksgruppenrechten im angeführten Sinne entsprechendes Augenmerk zu schenken.

Einer Erläuterung bedarf nach meinem Dafürhalten Punkt 6. der Präambel des Entwurfes:

Hier könnte man zu der Ansicht gelangen, daß der diesbezügliche Text beinhaltet, daß die Möglichkeit der Inanspruchnahme von Menschenrechten gemäß der Charta mit der Übernahme bzw. Erfüllung von Pflichten gegenüber Mitmenschen etc. junktiniert sei.

Ich persönlich neige zwar dieser Auslegung nicht zu, eine in dieser Richtung klärende Passage erschiene aber, so glaube ich, sinnvoll.

Mit aufrichtigem Dank und freundlichen Grüßen

O'KENNEDY

PROPOSED AMENDMENTS TO CONVENT 45 AND REASONING IN RELATION TO SUCH PROPOSALS

General Provisions

Article 49: Scope

Proposed amendment

In the second sentence of 49.1, delete the phrase “respect the rights, observe the principles” and replace with “observe the rights and recognise and respect the principles”.

Revised Article to read

49.1 *The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore observe the rights and recognise and respect the principles and promote the application thereof in accordance with their respective powers.*

Reasons

This amendment is consistent with suggested amendments to the Preamble and the suggested amendment to Article 50 which would add a paragraph 4, and has the same purpose.

Article 50: Scope of guaranteed rights

Proposed amendments

In the first sentence of 50.1, delete “by the competent legislative authority” and replace with “in accordance with law”.

At the end of 50.2, insert “and secondary legislation”.

The Charter Articles to which it applies should be listed in 50.2.

In the third line of 50.3, “similar” should be deleted and replaced by “identical” and “unless this Charter affords greater or more extensive protection” should be deleted and replaced by “as interpreted by the European Court of Human Rights”.

The Charter Articles to which it applies should be listed in 50.3.

Insert a new horizontal provision, becoming 50.4, as set out below.

Revised Article to read

50.1 *Any limitation on the exercise of the rights and freedoms recognised by this Charter*

must be provided for in accordance with law. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.

- 50.2 *Rights recognised by this Charter, in Articles [to be listed] which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties and secondary legislation.*
- 50.3 *Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights in Articles [to be listed] shall be identical to those conferred on them by the said Convention as interpreted by the European Court of Human Rights.*
- 50.4 *Articles [to be listed] set out economic and social principles which apply insofar as they are provided in Community law or national law and practice and shall be implemented or promoted accordingly. In the light of the foregoing, Article 50.1 does not apply to these principles.*

Reasons

As the conditions under which, and the limitations within which, rights are to be exercised are sometimes contained in secondary legislation under Treaty provisions, rather than in the Treaty provisions themselves, this fact should be covered in paragraph 2. This could be done simply by adding the words “.....and secondary legislation”. In the interest of certainty, the relevant Charter provisions should be listed in the paragraph.

The word “similar” in the third line of 50.3 is vague and implies that some difference between the effect of the corresponding provisions of the Charter and the Convention for the Protection of Human Rights and Fundamental Freedoms is not ruled out. To remove this implication, “similar” should be replaced by “identical”.

Likewise the final phrase in Article 50.3 “unless this Charter affords greater or more extensive protection” invites an examination of the Charter provisions to ascertain whether, as worded, they are more expansive. For example, in Charter Article 2.1, this would surely result in a conclusion that the exceptions in Article 2.2 of the Convention do not apply. Accordingly, the final phrase in Article 50.3 should be omitted. The addition of “as interpreted by the European Court of Human Rights” would ensure that the significant evolution of the Convention rights through the jurisprudence of the Court would be incorporated into the Charter.

In the interest of necessary certainty in the Charter, Article 50.3 should list the Charter Articles to which it applies.

The new horizontal Article 50.4 is to cover our concerns in relation to economic and social

principles as explained in the reasons for change to paragraph 4 of the Preamble.

THE PREAMBLE

Paragraph 4

Proposed amendment

Insert “and the recognition of economic and social principles” after “fundamental rights” in the first line; insert “and principles” after “those rights” in the third line.

Revised paragraph to read

In adopting this Charter the Union intends to enhance the protection of fundamental rights and the recognition of economic and social principles in the light of changes in society, social progress and scientific and technological developments by making those rights and principles more visible.

Reasons

The Charter deals with economic and social rights as well as fundamental civil and political rights. The former, although not inferior to the latter, differ from them, in conformity with their current status in the instruments from which they are drawn, in not being judicially enforceable. In the Charter, which includes these two sets of different rights, it would be misleading to apply the term “rights” to both. Thus it would be more appropriate to refer to the economic and social provisions as principles and to amend the paragraph accordingly.

Paragraph 5

Proposed amendment

Insert “and principles” after “rights” in the second line.

Revised paragraph to read

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

Reasons

For the reasons outlined above in relation to the amendment proposed to paragraph 4, it is necessary to include a reference to “principles”.

Paragraph 6

Proposed amendment

Insert “and principles” after “rights” in the first line.

Revised paragraph to read

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

Reasons

For the reasons outlined above in relation to the amendment proposed to paragraph 4, it is necessary to include a reference to “principles”.

Paragraph 7***Proposed amendment***

Delete in its entirety and replace by a new paragraph as set out below.

Revised paragraph to read

Therefore this Charter sets out the rights and fundamental freedoms to be observed, and the principles to be recognised and respected, by the institutions and bodies of the Union and the Member States when they are implementing Union law.

Reasons

The word “guaranteed” in the current paragraph 7 is inappropriate when the legal status of the Charter is undecided and is, in any case unacceptable in the context of the principles in the economic and social sphere. Therefore, it is preferable to use the suggested revised language for Article 49 of the draft Charter.

INDIVIDUAL ARTICLES

Article 3: Right to the integrity of the person

Proposed amendment

Insert “subject to the limitations recognised by law” at the end of the first indent of 3.2.

Revised Article to read

3.2 *In the fields of medicine and biology, the following principles must be respected in particular:*

- *free and informed consent of the person concerned subject to the limitations recognised by law,*
- *prohibition of eugenic practices, in particular those concerned with the selection of persons,*
- *prohibition on making the human body and its parts a source of financial gain,*
- *prohibition of the reproductive cloning of human beings.*

Reasons

Limitations are necessary in order to reflect current national medical norms and practices, for example, exceptional cases involving medical treatment of persons unable to give consent. Article 50.1 may not offer sufficient certainty in this respect.

Article 5: Prohibition of slavery and forced labour

Reasons

While we have no difficulty with the principle expressed in Article 5.3, in the absence of further clarification of the legal source for this right, and of definition of the terms “trafficking” and “human beings”, Article 5.3 as drafted is problematic. Further definition and clarification is therefore required.

Article 8: Protection of personal data

Proposed amendment

Add “in accordance with the provisions of Community law” at the end of the first sentence.

Revised Article to read

Everyone has the right to the protection of personal data concerning him in accordance with the provisions of Community law. Such data must be processed

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

Reasons

As the legal basis for this right is contained in an EC directive, it is preferable to include a reference to Community law.

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

Proposed amendment

Insert “of men and women” after “The right” and delete “the right” where it appears in the second place in this Article.

Revised Article to read

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

Reasons

The proposed amendment brings the essence of this right closer to that contained in the relevant Article in the ECHR. The existing language is too vague and would introduce confusion.

Article 11: Freedom of expression and information

Proposed amendment

Delete paragraph 2

Reasons

Paragraph 2 appears to be creating a new right, or rather, expanding an existing right, in an unacceptable fashion. Freedom of the press is protected adequately under Article 11.1. Highlighting it paragraph 2 is unnecessary. Also, paragraph 2 is linking it to undefined concepts of “pluralism” and “transparency” and it is unclear what the purpose of such linkage is.

Article 13: Freedom of research

Proposed amendment

Delete in its entirety.

Reasons

This Article is unacceptable and there is no need for it as the right is adequately covered by other Articles in the draft Charter, for example Articles 10 and 11. If it is to be specifically included, numerous qualifications will be necessary.

Article 14: Right to education***Proposed amendment***

Delete “and to have access to vocational and continuing training” in the first sentence of paragraph 1.

Insert a new paragraph 2 as set out below.

Renumber existing paragraph 2 as paragraph 3.

Revised Article to read

1. *Everyone has the right to education. This right includes the right to receive free compulsory education.*
2. *The Union recognises and respects the entitlement of its citizens and nationals of third countries who are legally entitled to work in the territories of the Member States to have access to vocational and continuing training in accordance with Community law and national law and practice.*
3. *The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with national laws governing the exercise of such freedom and right.*

Reasons

In Ireland, access to vocational and continuing training is only available to EU citizens and those legally entitled to work in the country.

The provisions in Articles 14.2, 15.1, 16, 24, 26, 27, 28, 29.1, 31.1, 32.1 and 33 comprise provisions in relation to economic and social matters. As indicated in the explanation for change to paragraph 4 of the Preamble, these differ from other rights in not being judicially enforceable, in conformity with the instruments from which they are drawn. Their practical application rests on Community law and national law and practice. This difference should be reflected in the case of each of the above provisions by an introduction reading “The Union

recognises and respects the entitlement to...” and addition at the end of the phrase “in accordance with Community law and national law and practice.” As these changes usually require adjustment of the existing wording, the amended version of each of the individual provisions is set out.

Article 15: Freedom to choose an occupation

Proposed amendment

Reword the first paragraph as set out below.

Delete “or receive” in paragraph 2.

Insert “legally entitled to work” instead of “ authorised to reside” in paragraph 3.

Revised Article to read

1. *The Union recognises and respects the entitlement of everyone to engage in a freely chosen occupation to earn a living in accordance with Community law and national law and practice.*
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are legally entitled to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Reasons

With regard to paragraph 1, the right to engage in an occupation does not exist without qualification. It is necessary therefore to introduce a reference to Community law and national laws and practices to clarify that this right can be fettered. It should also be restated as a principle, please see the explanation under Article 14.

The entitlement contained in paragraph 3 is available only to nationals of third countries who are legally entitled to work in the territories of Member States and the provision should so limit it.

Article 16: Freedom to conduct a business

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement to conduct a business in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 17: Right to property***Proposed amendment***

Replace “has the right to own, use, dispose of and bequeath” with “is entitled to the peaceful enjoyment of” in the first sentence of paragraph 1.

Replace “his” with “these” in the second sentence of paragraph 1. Insert “and subject, in appropriate cases, to fair compensation” instead of “,subject to fair compensation” in the second sentence of paragraph 1.

Delete paragraph 2 of this Article.

Revised Article to read

Every person is entitled to the peaceful enjoyment of his lawfully acquired possessions. No one may be deprived of these possessions, except in the public interest and in the cases and under the conditions provided for by law, and subject, in appropriate cases, to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.

Reasons

This right is derived from Article 1 of the First Protocol to the ECHR. Ireland has a concern that the changes to the language contained in Article 1 may imply a change in the scope of this right. Ireland would prefer, therefore, to keep to the essence of the wording contained in Article 1 of the First Protocol.

In addition, Ireland has concerns about the reference to fair compensation, as that right cannot exist in all cases. For example, in the field of intellectual property rights, international law allows some scope for exceptions to the protection of intellectual property rights (for example, copyright law allows free (that is no payment) exceptions for certain copying conducted for the purposes of research and private study, etc.). Therefore, the reference to fair compensation must be deleted or else qualified as proposed.

Ireland also advocates the deletion of paragraph 2 as intellectual property is protected under paragraph 1 in any case. If intellectual property is singled out for a particular mention then the same qualifications contained in paragraph 1 should be included.

Article 19: Protection in the event of removal, expulsion or extradition***Proposed amendment***

In paragraph 2, replace “could” with “would”.

Revised Article to read

2. ***No one may be removed, expelled or extradited to a State where he would be subjected to the death penalty, torture or other inhuman or degrading treatment.***

Reasons

Changing “could” to “would” introduces the concept of real risk to the Article. It also more accurately reflects ECHR jurisprudence.

Article 21: Equality and non-discrimination***Proposed amendment***

Reword paragraph 1 as set out below.

Insert a new paragraph 2 as set out below.

Renumber existing paragraph 2 as paragraph 3.

Revised Article to read

1. ***Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prohibited to the extent that the Council has, in accordance with the Treaty establishing the European Community, so provided.***
2. The enjoyment of those rights and freedoms in this Charter which are guaranteed by the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
3. **Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.**

Reasons

Article 21 .1 as currently drafted is unacceptable to Ireland. It does not reflect an established right in any of the relevant instruments. Article 13 of TEC, which is cited as a source for this right, is an enabling provision to permit the Council to take action to combat discrimination

on the basis of an exhaustive list of grounds. Also, the application of Article 14 of the ECHR, which is cited as another source for this right, is confined to the freedoms and rights contained in the ECHR. The proposed revised wording addresses these concerns.

It would also be appropriate if this Article included a provision relating to affirmative action.

Article 24: Integration of persons with disabilities

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 25: Workers' right to information and consultation within the undertaking

Proposed amendment

Delete in its entirety.

Reasons

There is no general right to information and consultation under Irish law or under Community law.

Article 26: Right of collective bargaining and action

Proposed amendment

Delete and replace in its entirety.

Revised Article to read

The Union recognises and respects the entitlement of employers and workers to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action in accordance with Community law and national law and

practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 27: Right of access to placement services

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement of everyone to access to a placement service in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 28: Protection in the event of unjustified dismissal

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement of every worker to protection against unjustified dismissal in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 29: Fair and just working conditions

Proposed amendment

Replace “Every worker has the right” with “The Union recognises and respects the entitlement of every worker” in paragraph 1.

Insert “in accordance with Community law and national law and practice” at the end of

paragraph 2.

Revised Article to read

1. ***The Union recognises and respects the entitlement of every worker to working conditions which respect his or her health, safety and dignity.***
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

In addition, paragraph 2 should include a reference to Community law and national law and practice which set out qualifications which apply to the rights listed.

Article 31: Reconciling family and professional life

Proposed amendment

Reword paragraph 1 as set out below.

Reword paragraph 2 as set out below.

Revised Article to read

1. The Union recognises and respects the entitlement of the family to enjoy legal, economic and social protection in accordance with Community law and national law and practice.
2. There shall be protection from dismissal because of pregnancy, and paid maternity leave and parental leave shall be available following the birth or adoption of a child in accordance with Community law and national law and practice and with a view to allowing everyone to reconcile their family and professional lives.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 32: Social security and social assistance

Proposed amendment

Replace “social security and social services” with “social protection” in paragraph 1. Insert “subject to the rules laid down by Community law and national law and practice” instead of

“in accordance with the rules laid down by Community law and national laws and practices” at the end of paragraph 1 and reword the entitlements as set out below.

Reword paragraph 2 as set out below, including replacing “social security benefits, social advantages and access to health care” with the term “social protection”.

Delete paragraph 3.

Revised Article to read

1. The Union recognises and respects the entitlement to social protection in the event of sickness, maternity, invalidity, old age, accidents at work and occupational diseases, death and unemployment, and to ensure a decent existence for persons lacking sufficient resources, subject to the rules laid down by Community law and national law and practice.
2. Nationals of a Member State who are workers in another Member State, and members of their families, have the right to the same social protection as nationals of that State, subject to the rules laid down by Community law.

Reasons

The term “social protection” encompasses all the social and health benefits, including social assistance, provided in the various Member States. The term “social protection” is used already in the draft Charter, in Article 31.

The provision in paragraph 1 should be restated as a principle; please see the explanation under Article 14. The entitlements referred to are drawn from Article 4.1 of Regulation (EEC) No 1408/71.

In relation to paragraph 2, the various rights expressed therein are subject to conditions in secondary Community legislation to which there should be a reference.

The use of the term “social protection” and a reference to ensuring a decent existence for persons lacking sufficient resources in paragraph 1 enables the deletion of paragraph 3. The reference to housing benefit in this Article creates serious problems for Ireland, which does not address housing problems in this manner.

Article 33: Health care

Proposed amendment

Delete “Everyone has the right of” and replace with “The Union recognises and respects the entitlement to access to” and delete “the right ” before “to benefit”.

Replace the phrase “under the conditions established by national laws and practices” with “in accordance with Community law and national law and practice”.

Revised Article to read

The Union recognises and respects the entitlement to access to preventive health care

and to benefit from medical treatment in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 35: Environmental protection

Proposed amendment

Delete and replace in its entirety.

Revised Article to read

Environmental protection requirements must be integrated into the definition and implementation of all Community policies, in particular with a view to promoting sustainable development.

Reasons

This principle derives from Article 6 TEC and it is therefore necessary to reflect the wording contained in that Article. The current draft of Article 35 does not do so.

Article 39: Right to good administration

Proposed amendment

Replace “official languages of such institutions” with “languages referred to in Article 21 of the Treaty establishing the European Community” in paragraph 4.

Revised Article to read

Every person may write to the institutions of the Union in one of the languages referred to in Article 21 of the Treaty establishing the European Community and have an answer in the same language.

Reasons

Article 39(4) does not accurately reflect what is contained in the last paragraph of Article 21 of the TEC and as originally drafted does not include the right to correspond in the Irish language.

Article 45: Right to an effective remedy and to a fair trial

Proposed amendment

Delete paragraph 1 and replace by a new paragraph as set out below.

Delete paragraph 2 and replace by a new paragraph as set out below.

Delete paragraph 3 in its entirety.

Revised Article to read

Everyone whose directly enforceable rights and freedoms derived from community law are violated by the institutions or bodies of the Union or by a Member State exclusively when implementing Union law has the right to an effective remedy before a court. In such proceedings the rights guaranteed by Article 45.2 shall apply not withstanding the character of such proceedings.

Everyone is entitled to a fair and public hearing within a reasonable time in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.

Reasons

The application of the Article should be limited as set out in the proposed amendment in the same way that Article 13 of the ECHR is limited to rights and freedoms as set forth in the Convention. Article 13 of the ECHR refers to an effective remedy before a “national authority” not necessarily a court. This broad interpretation is confirmed by the jurisprudence. The proposal would ensure that the Article applies only to alleged violations of EU law which would have to be dealt with by a court in any case.

In 45.2, the deletion of “previously” established by law is suggested as, although it is in accordance with ECHR jurisprudence, is not in Article 6 of the ECHR. The horizontal article will import ECHR jurisprudence.

It is suggested that the second sentence of 45.2 be deleted as in ECHR jurisprudence it is only in criminal cases that there is a guarantee of legal representation. The sentence would have the risk that it would require universal civil legal aid and that it would require the right to be legally represented before all administrative tribunals.

With regard to Article 45.3, this derives from ECHR jurisprudence with regard to civil cases. However, the ECHR requirement with regard to legal representation in criminal cases is more onerous. Attempting to reduce an ECHR decision to one sentence and attempting to apply it to criminal cases is not appropriate and consequently paragraph 3 should be deleted.

Article 47: Principles of legality and proportionality of criminal offences and penalties

Proposed amendment

Delete 47.3

Reasons

There is no apparent source for 47.3 in international law and we have concerns that the ECJ could involve itself in arguments that penalties for breaches of offences relating to community matters was not proportionate by comparison with other non EU offences in the jurisdiction.

Article 48: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Reasons

The Article appears to extend the immunity in Article 4 of Protocol 7 of the ECHR. The effect of this Article will need to be clarified.

Mme Paciotti

La Carta dei diritti fondamentali e le due Corti: la Corte di giustizia e la Corte europea dei diritti dell'uomo.

I quindici Stati membri dell'Unione europea hanno, ciascuno separatamente e in tempi diversi, sottoscritto e ratificato la Convenzione europea dei diritti dell'uomo e delle libertà fondamentali firmata il 4 novembre 1950 ed entrata in vigore il 3 settembre 1953. Ad essa aderiscono molti altri Stati europei (in tutto 41) che non fanno parte dell'Unione, ma fanno parte del Consiglio d'Europa.

Il Consiglio d'Europa, e in particolare la Corte di Giustizia, formata da un numero di giudici pari a quello degli Stati contraenti (ma che opera attraverso tre diversi tipi di organi: i comitati, composti di tre membri, le Camere, composte di sette giudici e la Grande Camera, composta di diciassette giudici) assicura la protezione dei diritti degli individui contro gli abusi dei pubblici poteri degli Stati contraenti, garantendo ai singoli un diritto di ricorso individuale allorché – esauriti i ricorsi interni al sistema giudiziario dello Stato contraente – si lamenti la persistenza dell'abuso.

Nell'Unione europea il rispetto del diritto nell'interpretazione e nell'applicazione del Trattato da parte degli Stati membri e delle Istituzioni e degli organi dell'Unione è assicurato dalla Corte di Giustizia, composta di quindici giudici (che può creare nel suo ambito delle sezioni), assistita da nove avvocati generali, nominati di comune accordo dai governi degli Stati membri.

In questa sua funzione la Corte di giustizia garantisce anche il rispetto nell'ambito dell'Unione dei diritti fondamentali: lo ha affermato reiteratamente la stessa Corte a partire dal 1969 (sentenza 12 novembre 1969 causa 29-69) osservando che "la tutela dei diritti fondamentali costituisce parte integrante dei principi giuridici generali di cui la Corte di giustizia garantisce l'osservanza". Lo stesso Consiglio Europeo di Colonia nella sua decisione di elaborare una Carta dei diritti ha ricordato che "... L'obbligo dell'Unione di rispettare i diritti fondamentali è confermato e definito dalla Corte di giustizia europea nella sua giurisprudenza."

L'attuale formulazione dell'art. 6, 2° comma del Trattato dell'Unione ha poi fissato esplicitamente questo dovere, prescrivendo: "l'Unione rispetta i diritti fondamentali quali sono garantiti dalla Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, firmata a Roma il 4 novembre 1950, e quali risultano dalle tradizioni costituzionali comuni degli Stati membri, in quanto principi generali del diritto comunitario". Ovviamente, come ha stabilito la stessa Corte (sentenza 11 luglio 1985 cause riunite 60 e 61/84), "benché spetti alla Corte garantire l'osservanza dei diritti fondamentali nel settore specifico del diritto comunitario, non le spetta tuttavia esaminare la compatibilità con la Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali di una legge nazionale riguardante un campo soggetto alla valutazione del legislatore nazionale".

È evidente che ci si trova di fronte a due diversi sistemi ordinamentali, l'uno che fa capo al Consiglio d'Europa e l'altro che fa capo all'Unione europea: nel primo l'obiettivo principale del sistema è quello di garantire il rispetto dei diritti fondamentali delle persone all'interno degli Stati contraenti; nel secondo il rispetto dei diritti fondamentali è un requisito di legittimità dell'ordinamento sovranazionale. In ciascuno dei due diversi ordinamenti una apposita Corte, secondo apposite procedure, decide sull'osservanza delle norme e dei principi relativi ai diritti fondamentali.

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È teoricamente possibile che la giurisprudenza delle due corti europee diverga a proposito dell'interpretazione di taluno di questi diritti, ma in questo caso non si può parlare di un "conflitto" perché, appunto, le due Corti operano nell'ambito di ordinamenti diversi (nessuno parlerebbe di "conflitto" tra una corte francese e una corte tedesca, se interpretassero in modo diverso lo stesso principio): si tratterebbe di mere diversità interpretative che, in linea di massima, costituiscono una ricchezza e uno stimolo a una sempre più affinata e aggiornata evoluzione del diritto. In pratica, peraltro, questa divergenza interpretativa solitamente non si verifica poiché le due corti conoscono e tengono in considerazione la rispettiva giurisprudenza.

Allorché si è proposto di fare aderire la Comunità alla Convenzione europea dei diritti dell'uomo, giustamente la Corte di giustizia (parere 2/94 del 28 marzo 1996) ha osservato, fra l'altro, che ciò non sarebbe stato possibile in mancanza di una riforma dei Trattati perché tale adesione "determinerebbe una modificazione sostanziale dell'attuale regime comunitario di tutela dei diritti dell'uomo, in quanto comporterebbe l'inserimento della Comunità in un sistema internazionale distinto". L'ipotesi dell'adesione dell'Unione europea alla Convenzione europea per la salvaguardia dei diritti dell'uomo solleverebbe inoltre non pochi problemi pratici (per esempio circa la nomina di un ulteriore giudice in "rappresentanza" dei 15 Paesi già singolarmente "rappresentati") e giuridici, perché a questo punto si potrebbe verificare un vero e proprio "conflitto" tra le due corti, che appartenerebbero allo stesso sistema ordinamentale, e perché occorrerebbe stabilire apposite procedure per risolvere questa ed altre non semplici questioni, come quella relativa al diritto di ricorso individuale generalizzato, esistente in un sistema e non nell'altro.

La decisione di redigere una Carta dei diritti fondamentali dell'Unione europea non crea alcun nuovo problema, mentre risolve alcuni problemi preesistenti.

Risolve, fra l'altro, il problema della definizione dei diritti fondamentali vigenti nell'Unione europea, finora affidato alla giurisprudenza "creativa" della Corte di giustizia.

Non determina alcuna nuova ipotesi di "conflitto" con la Corte di Strasburgo, perché, quanto al rapporto tra i due ordinamenti e le due corti, mantiene la situazione esistente, limitandosi a specificare esplicitamente quali siano i diritti fondamentali genericamente richiamati nell'articolo 6 del Trattato dell'Unione.

L'adozione della Carta dei diritti influirà comunque sulla giurisprudenza della Corte di giustizia: indirettamente, come riferimento culturale, se non avrà valore vincolante; direttamente, come riferimento normativo, se sarà in qualche forma integrata nei Trattati.

A questo punto perseguire parallelamente anche l'obiettivo dell'adesione dell'UE alla Convenzione europea per la salvaguardia dei diritti dell'uomo creerebbe ulteriori problemi, anche perché la Convenzione contempla unicamente i tradizionali diritti civili e politici, mentre la nuova Carta prevederà anche i diritti economici e sociali. Sicché si avrebbe l'ulteriore rischio di un duplice regime di tutela giurisdizionale, a seconda della natura del diritto fondamentale in questione: si creerebbe un insieme difficilmente districabile di problemi giuridici, procedurali, istituzionali che sarebbe auspicabile evitare.

Un possibile fondamento istituzionale del doveroso coordinamento della giurisprudenza delle due Corti potrebbe essere rinvenuto nella considerazione che delle tradizioni costituzionali comuni degli Stati membri fa parte la giurisprudenza della Corte di Strasburgo, nel senso che i diritti fondamentali delle persone contenuti nella Convenzione vengono interpretati dalle Corti statali tenendo presente la giurisprudenza di Strasburgo.

In questo modo anche la Corte di Giustizia, tenuta ad interpretare i diritti fondamentali "quali risultano dalle tradizioni costituzionali comuni degli Stati membri" (obbligo che non verrebbe

meno neppure quando i diritti fondamentali saranno inseriti nella Carta) non potrà prescindere dalla giurisprudenza della Corte europea per la salvaguardia dei diritti dell'uomo.

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PACIOTTI

Bruxelles, 30 agosto 2000

Ill.mo signore

Prof. I. Mendez de Vigo
Vice presidente della Convenzione
Incaricata di elaborare la Carta dei
diritti fondamentali dell'Unione europea

Nel complimentarmi con il Presidium per l'elaborazione del progetto completo della Carta, rassegno qui di seguito le mie osservazioni, segnalando che analoghi rilievi vengono formulati dal prof. Stefano Rodotà, delegato del Presidente del Consiglio dei Ministri italiano e dal prof. Andrea Manzella, rappresentante del Senato italiano.

Sul preambolo:

Al punto 3, non appare adeguata la formula secondo cui l'Unione assicura uno sviluppo equilibrato e sostenibile "attraverso" la libera circolazione delle persone, dei beni, dei capitali e dei servizi: si esprime così un rapporto da mezzo a fine fra libertà di circolazione e sostenibilità dello sviluppo che è perlomeno dubbio. Storicamente, l'Unione europea ha cercato di promuovere uno sviluppo equilibrato e sostenibile favorendo la coesione sociale e il rispetto dell'ambiente. E' opportuno non ignorare nel preambolo questo dato di fatto, componente essenziale del "modello europeo".

Si può rimediare all'incongruenza semplicemente dicendo "L'Unione assicura uno sviluppo equilibrato e sostenibile e garantisce la libera circolazione delle persone, dei beni, dei capitali e dei servizi"; meglio sarebbe, tuttavia, menzionare esplicitamente la coesione sociale (ed eventualmente anche il rispetto dell'ambiente), dicendo **"L'Unione assicura uno sviluppo equilibrato e sostenibile promuovendo la coesione sociale e il rispetto dell'ambiente e garantisce la libera circolazione..."**.

Al punto 5, crea perplessità l'indicazione, fra le fonti da cui derivano i diritti fondamentali riconosciuti nella Carta, della giurisprudenza delle Corti

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europee, che non può essere collocata allo stesso livello dei trattati, delle convenzioni e delle carte formalmente adottate dagli Stati.

Ulteriori perplessità crea la menzione in questa sede della Corte europea dei diritti dell'uomo, che appartiene ad un ordinamento diverso da quello dell'Unione: essa infatti non è indicata, a differenza della Corte di giustizia, nel mandato di Colonia.

(Sulla questione dei rapporti fra le due Corti europee in relazione alla Carta dei diritti fondamentali in corso di elaborazione, allego un appunto che esprime il mio punto di vista).

Sulla struttura:

E' pienamente condivisibile e apprezzabile, per la sua efficacia e novità, la suddivisione del testo sotto i titoli "dignità", "libertà", "uguaglianza", "solidarietà", "cittadinanza", "giustizia", anche se comporta inevitabilmente qualche forzatura nella collocazione di alcuni articoli, ispirati a principi molteplici. **Sarebbe tuttavia di gran lunga preferibile che l'articolo dedicato al diritto alla salute (attuale articolo 33) venisse collocato nel capo intitolato alla dignità.** In questo modo si darebbe immediata e giusta evidenza ad uno fra i più significativi nuovi diritti, considerato elemento essenziale per la tutela della dignità delle persone.

La libertà di circolazione (attuale articolo 43) andrebbe invece meglio inserita nel Capo relativo alle libertà.

Sull'articolato:

All'art.1 si ritiene necessario insistere sulla formula **"la dignità umana è inviolabile"** e comunque sulla menzione della inviolabilità della dignità della persona, nel senso che la garanzia e la tutela della dignità umana devono essere riferite a un bene concettualmente intangibile da parte dei pubblici poteri. Ci si preoccupa, infatti, del modo in cui i cittadini europei reagiranno alla lettura della Carta: poiché nei testi in cui è nominata (ad esempio, l'art.1 del Grundgesetz) la dignità è appunto dichiarata "inviolabile" o "intangibile", ogni diversa formulazione può essere percepita come un indebolimento della tutela: E, trattandosi del primo articolo della Carta, questo potrebbe determinare una lettura complessiva della Carta come testo debole.

All'art.11, Si propongono le seguenti modifiche:

Al comma 1, dopo le parole: "libertà di ricevere", aggiungere le parole: "di ricercare".

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Al comma 2, aggiungere le parole: "anche nei confronti delle concentrazioni dei mezzi di comunicazione di massa".

Si insiste perché, al comma 1, si indichi espressamente la libertà di "cercare" informazioni, non solo di riceverle. Tale diritto, già compreso nell'art. 19 della Dichiarazione dell'Onu del 1948, è oggi primario nella nuova dimensione di Internet (non a caso, i regimi dittatoriali cercano di negarlo).

Al comma 2, appare opportuno che la garanzia del pluralismo dell'informazione vada assicurata anche nei confronti delle gigantesche concentrazioni proprietarie in atto nel mondo.

All'art.12, Si propone la seguente modifica:

Al comma 2, dopo le parole: "ad esprimere", aggiungere le parole: "con metodo democratico".

E' essenziale infatti che l'Unione Europea, che si fonda sul principio di democrazia, come è anche detto nel Preambolo, riconosca la qualifica di partito politico soltanto alle formazioni che agiscono "con metodo democratico", nel rispetto, cioè, di quel valore.

All'art.13 Si propone l'aggiunta del seguente comma:

"Tutti hanno il diritto di beneficiare, a condizioni eque, dei risultati delle ricerche scientifiche, in particolare nel campo bio-medico".

L'attenzione dell'opinione pubblica si è concentrata massimamente e con interesse crescente sui problemi della ricerca, soprattutto nel campo della bio-medicina, e sui problemi della brevettabilità e della commercializzazione esclusiva dei risultati della ricerca. Il comma di cui si propone l'introduzione stabilisce un principio di contemperamento tra il diritto di ognuno di beneficiare dei risultati della ricerca, in specie nel campo bio-medico, ed il giusto riconoscimento economico dei costi della ricerca stessa.

All'art.15, comma 1, non appare accettabile che si dica che, per guadagnarsi da vivere ciascuno ha "il diritto di esercitare una professione" ma non di lavorare. Occorre aggiungere la menzione del diritto al lavoro. Si propone di sostituire il primo comma con il seguente:

"1. Ogni individuo ha il diritto di realizzare le sue capacità personali con un lavoro liberamente scelto o accettato".

La diversa formulazione del comma fa, infatti, riferimento alla realizzazione personale dell'individuo e non al solo elemento economico del guadagno per vivere, ma anche al lavoro nel suo significato più generale, comprendente ogni tipo di attività, economica, culturale e artistica, svolta in condizione di indipendenza o autonomia.

All'articolo 16 si propone di aggiungere, in fine, le seguenti parole:

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"nel rispetto del principio di uno sviluppo economico e sociale equilibrato e sostenibile".

L'affermazione della libera imprenditorialità deve essere qui contemperata con il concetto di sviluppo equilibrato e sostenibile, secondo l'indirizzo fondamentale del modello sociale europeo. Si ricorda a tal riguardo che in nessuna delle Costituzioni europee il diritto di impresa è affermato in maniera assoluta e incondizionata. Esso è sempre contemperato con principi di sostenibilità sociale ed ecologica e di equilibrio economico.

Un elemento caratteristico di tutto il costituzionalismo del novecento, è stato, infatti, proprio quello di legare il riconoscimento dei diritti di libertà economica a finalità di ordine sociale. Se fosse mantenuta l'attuale formulazione dell'articolo 16 (come quella del successivo articolo 17), la norma in questione sarebbe percepita come un arretramento rispetto a tradizioni costituzionali comuni.

All'articolo 17 si propone di sostituire il terzo periodo del primo comma con il seguente:

"L'esercizio del diritto di proprietà può essere limitato dalla legge nell'interesse generale e per assicurarne la funzione sociale".

L'espressione "limitato dalla legge", in luogo di quella "regolamentato", offre una migliore garanzia del diritto di proprietà, perché esclude limitazioni che provengano da atti non aventi forza di legge.

Inoltre, il riferimento alla "funzione sociale" rafforza il riferimento all' "interesse generale", che sarebbe altrimenti troppo debole, ed è in linea con la tradizione del costituzionalismo del novecento, come si è detto sopra. Non basterebbe, a tal fine, la clausola orizzontale dell'art. 50, perché essa postula appunto l'ordinaria assolutezza dei diritti garantiti, mentre nel caso qui discusso (ed in quello di cui al precedente articolo 16) si tratta proprio di stabilire che il riconoscimento di questi particolari diritti è ormai collegato strutturalmente con finalità di interesse generale.

All'art.21, Si suggerisce l'aggiunta del seguente comma:

"3. L'unione adotta le politiche opportune per eliminare le disparità di fatto e per promuovere le condizioni che rendono effettiva l'uguaglianza".

L'enunciazione meramente formale e negativa del principio di uguaglianza appare, infatti, insufficiente. E' dunque, necessario rafforzarla vincolando l'Unione europea ad adottare politiche attive per rimuovere le condizioni che impediscono di fatto la parità delle opportunità e il riconoscimento di effettiva pari dignità a tutti gli individui.

All'art.23, Appare opportuno aggiungere - all'inizio dell'articolo ovvero dopo il primo comma - il seguente comma:

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"Le bambine e i bambini devono essere protetti contro ogni minaccia alla loro maturazione intellettuale e alla loro integrità psicologica e sessuale".

Il nuovo comma si fa carico delle minacce che incombono sui bambini (anche attraverso tecnologie di informazione) e vincola il potere pubblico ad un obbligo di protezione nei loro confronti. Si tratta di un'esigenza assai sentita dall'opinione pubblica europea.

Si insiste sull'opportunità dell'inserimento di un nuovo articolo **23-bis**, relativo ai diritti degli anziani, formulato come segue:

"Articolo 23-bis. Diritti degli anziani.

Ogni individuo anziano ha diritto ad un'esistenza autonoma e dignitosa e a partecipare pienamente alla vita politica, sociale e culturale".

L'andamento demografico nei paesi dell'Unione europea impone, infatti, di considerare specificamente la sfera dei diritti delle persone anziane. La norma proposta richiama, d'altronde, l'articolo 23 della Carta sociale europea.

All'art.26, si suggerisce la seguente modifica:

dopo le parole: "concludere contratti collettivi", inserire le parole: "anche a livello dell'Unione", e dopo le parole: "azioni collettive", aggiungere le parole: "compreso lo sciopero".

Il riconoscimento nella Carta del diritto di negoziazione collettiva acquista significato, infatti, solo se accompagnato dalla specificazione del possibile ambito europeo della contrattazione. La mancata menzione del diritto di sciopero, riconosciuto dalla Carta sociale europea e da un gran numero di Convenzioni dell'OIL, oltre che dalle tradizioni costituzionali comuni dei Paesi membri, rischia, invece, di essere intesa come una restrizione dei diritti vigenti.

All'art.29, si propongono le seguenti modifiche:

Al primo comma, aggiungere, in fine, le parole: "e ad una giusta retribuzione proporzionata alla qualità e quantità del lavoro prestato".

Al secondo comma, aggiungere, in fine, le parole: "e non può rinunziarvi".

Tra le condizioni di lavoro "giuste ed eque" deve necessariamente inserirsi il diritto ad una retribuzione giusta e proporzionata alla prestazione. L'irrinunciabilità alle ferie risponde, invece, ad una tipica necessità di protezione della parte più debole del rapporto di lavoro.

Sorprende, nella formulazione di alcuni diritti sociali, l'uso di espressioni attenuate o indirette, che paiono affievolire il riconoscimento di alcuni diritti rispetto ad altri. Così, mentre all'art.31 si dice che "è garantita la protezione della famiglia" (pur trattandosi evidentemente di un diritto che richiede per la sua effettività interventi legislativi e amministrativi a molteplici livelli nell'ambito degli Stati membri e non solo dell'Unione), all'art.32, concernente la sicurezza e l'assistenza sociale, si usa una formula generica e non impegnativa: non solo

questi diritti non sono “garantiti”, ma l’Unione si limita a riconoscere e rispettare l’esistente “secondo le modalità stabilite dal diritto comunitario e le legislazioni e prassi nazionali”, formula questa più volte ripetuta soltanto per alcuni diritti , indipendentemente dal fatto che trovino regolamentazione primaria nella legislazione nazionale o in quella comunitaria, e pur trattandosi di una formula superflua in presenza della clausola generale dell’art.49.

All’art.34 si giunge poi ad una formulazione inaccettabile, che non fa cenno ad alcun diritto, neppure nella formula attenuata del riconoscimento da parte dell’Unione di un diritto sancito da legislazioni nazionali, ma al semplice “rispetto dell’accesso ai servizi d’interesse generale quale previsto dalle legislazioni e prassi nazionali, ai sensi delle disposizioni del Trattato...”. Si tratta di una formula tanto sovrabbondante quanto inutile, che dovrà essere adeguata al tenore degli altri articoli.

Si propone di sostituire il testo dell'articolo 34 con il seguente:

"Al fine di promuovere la coesione sociale e territoriale l'Unione riconosce e rispetta il diritto di ogni individuo all'accesso a servizi di interesse generale che assicurino le prestazioni necessarie a garantire la qualità della vita e le possibilità di lavoro. Le prestazioni di servizi di interesse generale si basano sui principi di uguaglianza di accesso, di universalità, di continuità, di trasparenza".

E' opportuno che il diritto ad usufruire di servizi di interesse generale sia inquadrato in principi-guida che, salve le differenziazioni nazionali, ne garantiscano l'effettività, anche in funzione della promozione della coesione sociale e territoriale dell'Unione, prevista dall'articolo 16 del Trattato CE (se venisse menzionata la finalità di garantire le possibilità di lavoro potrebbe, inoltre, essere qui assorbito l'articolo 27 relativo ai servizi di collocamento).

All’art.36, si propone l'aggiunta del seguente comma:

"I consumatori hanno diritto ad una informazione completa sulla qualità dei beni e dei servizi e ad una pubblicità non ingannevole che risponda ai criteri di trasparenza e veridicità".

La sensibilità popolare europea si è fatta particolarmente acuta riguardo ai criteri di fabbricazione e manipolazione di prodotti alimentari e di beni di consumo personale. E' necessario che una Unione sempre più vicina ai bisogni della gente si faccia carico nelle sue politiche di queste diffuse preoccupazioni.

All’art.37 si propone di premettere il seguente nuovo comma, che assorbirebbe il secondo comma previsto nel progetto del Presidium:

"1. I cittadini dell'Unione hanno il diritto di partecipare all'esercizio del potere pubblico a livello dell'Unione per il tramite di un'assemblea rappresentativa eletta a suffragio universale diretto, libero e segreto".

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Il principio di democrazia su cui, com'è detto nel Preambolo, si basa l'Unione europea, deve trovare nell'affermazione del "diritto al Parlamento", contenuto in questo nuovo comma, la concretizzazione di democrazia partecipativa e parlamentare. La formulazione è tratta dalla giurisprudenza della Corte di giustizia (e, in particolare, dalle sentenze Roquette e Maizena).

Il secondo comma nella formulazione del Presidium, è la specificazione di questo "diritto al Parlamento", che ne costituisce pertanto la premessa da esplicitare necessariamente.

All'art.47, si propone di aggiungere, alla fine del terzo comma, le seguenti parole:

"e devono tendere alla rieducazione del condannato".

E' infatti un principio di civiltà giuridica, recepito in varie Costituzioni e ordinamenti europei, che l'espiatione della pena debba accompagnarsi a misure dirette a recuperare e rieducare la personalità del condannato.

All'art.49, Si propone di riformulare il primo comma come segue:

"1. Le istituzioni e gli organi dell'Unione, come pure gli Stati membri quando attuano il diritto dell'Unione, rispettano i diritti fondamentali e osservano i principi enunciati nella presente Carta e ne promuovono l'applicazione nel rispetto del principio di sussidiarietà".

Molti dei diritti fondamentali enunciati nella Carta trovano, infatti, attuazione principalmente nell'ambito nazionale, costituendo, per il diritto dell'Unione, un quadro di riferimento, di orientamento e di limitazione della regolamentazione comunitaria. Affermare che le disposizioni della Carta si applicano agli Stati membri "esclusivamente" nell'attuazione del diritto dell'Unione può creare incomprensioni, dato che al comma 2 dell'articolo 49 già si ribadisce che la Carta non modifica alcuna competenza istituzionale.

All' art.50, si suggerisce di riformulare il terzo comma come segue:

"3. I diritti e le libertà riconosciuti dalla presente Carta, che siano già disciplinati dalla Convenzione Europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, possono subire le medesime restrizioni previste dalla Convenzione: non possono subire restrizioni maggiori di quelle, ma possono godere della protezione maggiore e più estesa prevista dalla presente Carta".

Nel terzo comma del testo proposto dal Presidium, l'uso del termine "simili", riferito al significato ed alla portata dei diritti fondamentali, può essere fonte di confusione. Con il nuovo testo del comma, si intende proporre una formulazione più chiara e semplice di quella del Presidium, che metta in luce due dati essenziali: e cioè che, con riferimento ai diritti della Convenzione, non vi possono essere restrizioni maggiori di quelle previste dalla Convenzione stessa; ma che, al contempo, la Carta può garantire ad essi una protezione maggiore o più estesa.

Infine, si insiste affinché nel capo relativo alla **dignità** (ovvero in quello relativo alla libertà) siano aggiunti due articoli, già proposti in sede di emendamenti, il cui inserimento è sollecitato dai movimenti femminili, riferiti al diritto all'autodeterminazione e al diritto alla libertà sessuale. Si tratta di articoli che rispecchiano il testo di atti dell'Onu (si veda in particolare il par.96 della Dichiarazione di Pechino) sottoscritti da tutti i Paesi membri, idonei a qualificare le libertà degli europei rispetto a mondi vicini, che vedono l'oppressione quotidiana delle donne e la repressione di libertà sessuali presso di noi pienamente riconosciute. Se ne trascrivono i testi:

“Art.5 bis. Diritto all'autodeterminazione.

Ogni individuo ha il diritto di prendere liberamente le decisioni che riguardano la sua vita e la sua persona, al riparo da ogni forma di coercizione, discriminazione o violenza e con il pieno rispetto dell'eguaglianza tra i generi”.

“Art.5 ter. Diritto alla libertà sessuale.

Ogni individuo ha diritto di decidere liberamente per quanto riguarda la sua sessualità, che comprende il diritto alla salute sessuale e riproduttiva garantito contro ogni forma di coercizione, violenza e discriminazione tra donne e uomini”.

Quanto alla forma del progetto, cioè agli aspetti linguistici e redazionali, mi riservo qualche osservazione sulla versione italiana quando si disporrà del testo definitivo.

Con i sensi della mia più alta considerazione

Elena Paciotti

1 allegato

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PAPADIMITRIOU

August 30, 2000

Subject: Comments on CHARTE 4422/00

Dear Mr. Braibant

As personal representative of the Prime Minister of the Hellenic Republic, I would like to congratulate the Praesidium for their work and to welcome the outcome, the very balanced text of draft Charter (doc.4422/00).

Having said that, I would like, also, to forward to you some comments in order to clarify specific provisions and to ameliorate the general impression of the draft Charter.

1. In the Preamble, I believe that it is a matter of reasoning to redraft the first paragraph in order to show the logical sequence
"1. The peoples of Europe, resolved to share a peaceful future based on common values, have established an ever closer union between them."
2. In the Preamble, second paragraph, at the end, I think that the addition of *social justice* after the principle of democracy and the rule of law, would be the most appropriate way to announce *Chapter IV. Solidarity* that follows. This addition also improves the message of the Charter reflecting the social awareness and sensitivity of the Union.
3. In the Preamble, third paragraph, the second sentence (*it ensures...and services*) could become a separate paragraph (3a) underlining the current importance of sustainable development, recognized inter alia by article 6 TEC.
4. At the title of Chapter I could be added the adjective *HUMAN* in order to anticipate the forthcoming provisions.
5. The second sentence of article 12 is more appropriate to be placed at article 37 (as third paragraph) for systematic reasons.
6. At article 24, at the end, the present wording sounds as restricting the integration of persons with disabilities. It is, to my belief, better to rephrase as follows in order to achieve a better result: *"... participation in social and public life"*.
7. At article 45 par. 1, the expression *"Everyone whose rights and freedoms are violated..."* is not legally accurate. Since to certify such a violation could not be a prerequisite, in order to provide with an effective remedy, I think that the following wording is correct: *"Everyone whose rights and freedoms are deemed to be violated..."*
8. At article 49, par. 1, the expression *"... only when they are implementing Union law"* may produce the false assumption that, a contrario, in any other case, both the Union and its member states are not obliged to take account of the provisions of the Charter. Given the fact that the provisions of the Charter derive from common constitutional traditions and mutually ratified international conventions, this overclarification is both unnecessary and misleading. So, I would propose to strike out the word *only* in order to avoid undesirable interpretations of article 49.

Dear Mr. Braibant,

I finally recall that an exact and harmonized translation of the text of the Charter in every language of the Union is a matter of special concern and importance and must be conducted under the guidance of the personal representatives.

Sincerely yours,

Professor George Papadimitriou

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PATIJN

Aan: Het Presidium van de Conventie voor het Handvest van de grondrechten van de Europese Unie
Ter attentie van: de heer Jansson, Vice-voorzitter
Van: M. Patijn, vertegenwoordiger van de Nederlandse Tweede Kamer der Staten-Generaal bij de Conventie

Volgens de door de Conventie vastgestelde procedure doe ik u hieronder mijn algemene opmerkingen toekomen op het concept-Handvest, weergegeven in document CHARTE 4422/00 CONVENT 45, alsmede de daarop betrekking hebbende toelichting, weergegeven in document CHARTE 4423/00 CONVENT 46.

Ik complimenteer het Voorzitterschap met het tot nu toe bereikte resultaat, met name gelet op de omvang van de opdracht en de krappe termijn waarbinnen deze dient te worden gerealiseerd.

De voornaamste meerwaarde van het thans voorgestelde concept-Handvest is dat het een geslaagde poging betreft om alle bestaande grondrechten, fundamenteel en anderszins, die in diverse rechtsbronnen zijn vastgelegd, in één codificatie bijeen te brengen. Daarmee biedt het de burger van de Unie meer overzicht en duidelijkheid. Voorts zal het Handvest, gelet op het gestelde in artikel 49 van het thans voorliggende concept, de burger een betere rechtsbescherming kunnen bieden bij besluiten van de instellingen en organen van de Unie, alsmede van de Lidstaten wanneer zij Unieregelgeving tenuitvoerleggen.

Uitgangspunt is voor mij steeds geweest dat een te realiseren Handvest geen afbreuk dient te doen aan de werking van het Europees Verdrag voor de Rechten van de Mens en de daarop gebaseerde jurisprudentie van het Europese Hof voor de Rechten van de Mens te Straatsburg. Bij een zorgvuldige beoordeling van het thans voorliggende concept, met name voor wat betreft de juridische consistentie en houdbaarheid, dienen daarom nog enige verbeteringen te worden aangebracht, wil ik aan mijn parlement onverkort kunnen adviseren met het Handvest akkoord te gaan, laat staan in een latere fase mee te werken aan het toekennen van bindende werking daarvan. Mijn wensen tot verbetering hebben betrekking op de volgende punten.

1. Relatie Handvest-EVRM

De Nederlandse vertegenwoordigers hebben zich van meet af aan op het standpunt gesteld dat de juridische behandeling van fundamentele rechten die in het EVRM zijn geregeld, zodanig dient te zijn dat er in de praktische rechtstoepassing geen verschillen kunnen ontstaan tussen het Handvest enerzijds en het EVRM en de daarop gebaseerde jurisprudentie anderzijds, behoudens die gevallen dat het Handvest een verdergaande bescherming biedt. Dit uitgangspunt lijkt nog onvoldoende veilig gesteld in het huidige concept-Handvest. Artikel 50, lid 3 van het concept ondervangt dit, in juridische zin niet afdoende. Dit geldt met name de vraag of de in het EVRM toegestane beperkingen van fundamentele rechten, alsmede de jurisprudentie daarover, onverkort van toepassing zijn. Daarom dient in de artikelsgewijze toelichting, die een officiële status dient te krijgen, per artikel te worden vastgesteld dat het corresponderende EVRM-artikel en de daarop betrekking hebbende jurisprudentie van toepassing zijn. Hiertoe dient de toelichting helder te zijn. Zo dient bijvoorbeeld het woordgebruik eenduidig te worden gemaakt en dienen verschillende termen als “fondé sur” en “inspiré par” niet zonder reden naast elkaar gebruikt te worden.

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2. Codificatie nieuwe grondrechten

De in het Handvest op te nemen nieuwe grondrechten (zoals de rechten van het kind en de bescherming van persoonsgegevens) betreffen niet eerder gecodificeerde grondrechten. Uit de tekst van het concept-Handvest en de toelichting blijkt niet of en, zo ja, op welke wijze, deze nieuwe grondrechten door de wetgever van eventuele beperkingen mogen worden voorzien. Is bijvoorbeeld het recht op bescherming van persoonsgegevens absoluut?

3. Beperking van sommige grondrechten tot burgers van de Unie

Vraagtekens zet ik bij de huidige redactie van de artikelen 15 en 43. De beperking van een bepaald grondrecht tot burgers van de Unie betekent a contrario dat dit niet geldt voor burgers van derde landen met een vaste verblijfstitel. Beargumenteerd kan worden dat dit de huidige stand van zaken in de communautaire rechtsontwikkeling weergeeft. Het is echter beter de redenering om te draaien door deze rechten aan eenieder toe te kennen en in de tekst op te nemen dat deze rechten kunnen worden uitgeoefend in overeenstemming met de toepasselijke communautaire en nationale regelgeving.

4. Rechtsmacht HvJEG en EHRM

Hoewel het Handvest voorhands een niet-bindend karakter zal hebben en daardoor de afbakening van de rechtsmacht van het Hof van Justitie van de Europese Gemeenschap en van het Europese Hof voor de Rechten van de Mens thans nog geen discussie behoeven, dient reeds nu te worden nagedacht over de verhouding tussen beide Hoven voor het geval het Handvest uiteindelijk wél een bindend karakter zal hebben. Dit zal uitdrukkelijk onder de aandacht van de Europese Raad dienen te worden gebracht.

5. Strijdigheid van het Handvest met de Nederlandse wetgeving

De Nederlandse regeringsvertegenwoordiger, de heer Korthals Altes, heeft in zijn commentaar aan de heer Braibant gesteld onoverkomelijke bezwaren te hebben ten aanzien van de huidige formulering van de artikelen 14 lid 1, 15 lid 1, 27, 32 lid 3 en 33. Bij deze bezwaren sluit ik mij nadrukkelijk aan.

Den Haag, 31 augustus 2000

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observations Rack.txt

RACK

Sehr geehrter Herr Vizepräsident, lieber Inigo!

Zum Text der Charta, den das Präsidium uns übermittelt hat, möchte ich die folgenden Bemerkungen machen.

Erstens, der Text ist insgesamt nunmehr doch bereits recht ausgewogen und so gesehen eine gute Grundlage für unsere abschließende Arbeitsphase.

Zweitens, in einem wesentlichen Punkt glaube ich nach wie vor, daß eine Ergänzung des Textes um eine ausdrückliche Schutzgarantie für Rechte der Volksgruppen und Minderheiten im Lichte der historischen Erfahrungen, die wir in Europa im 20. Jahrhundert mit diesem Thema gemacht haben, unverzichtbar ist. Ich erneuere in diesem Sinn in meinem eigenen Namen und unter Berücksichtigung von vielen Zuschriften, die ich zum Thema Minderheitenschutz in den letzten Wochen erhalten habe, meine Bitte um Berücksichtigung meines seinerzeitigen Amendments 597 bzw. vergleichbarer Vorschläge anderer Konventmitglieder. Wenn trotz allem ein derartiges spezifisches Minderheitenrecht nicht mehrheitsfähig erscheint, dann sollte zumindest die Vielfaltsgarantie des Art 37 Diversity aus dem Vorschlag von Hirsch Ballin/ Altmeier Eingang in unseren Text finden.

Drittens fehlt mir nach wie vor noch ein entsprechender ausdrücklicher Hinweis auf die Wertebasis der Charta. Ein Bezug auf das jüdisch-christliche Erbe Europas und die Zeit der Aufklärung könnte hier den einzelnen konkreten Grundrechtsgewährleistungen mehr Farbe und damit auch mehr Inhalt verleihen.

Eine vierte und abschließende Bemerkung betrifft die innere Ausgewogenheit des derzeit vorliegenden Textes. Hier meine ich, daß nach wie vor allzu große Unterschiede in der sprachlichen Formulierung alter klassischer Garantien und Gesetzesvorbehalte einerseits und neuer - und in diesem Sinn daher sichtlich noch nicht so ausgereifter - Garantien ohne ausformulierte Vorbehalte andererseits, die Wirkung der Charta insgesamt mit unnötigen Verständnis- und Akzeptanzproblemen belasten könnten. Auffallend der Unterschied zwischen Art 3, 8, 14 und 15 einerseits und Art 16 andererseits. Überall und dann gleichförmig weniger wäre vor allem ein Mehr an allgemeiner Verständlichkeit!

Ich hoffe, diese Bemerkungen tragen dazu bei unser gemeinsames Anliegen zu fördern.

Reinhard Rack

RODOTÁ

Bruxelles, 30 agosto 2000

Ill.mo signore

Guy Braibant
Presidium della Convenzione
Incaricata di elaborare la Carta dei
Diritti fondamentali dell'Unione europea

Nel complimentarmi con il Presidium per l'elaborazione del progetto completo della Carta, rassegno qui di seguito le mie osservazioni, segnalando che analoghi rilievi vengono formulati dall'on. Elena Paciotti, rappresentante del Parlamento europeo e dal prof. Andrea Manzella, rappresentante del Senato italiano.

Sul preambolo:

Al punto 3, non appare adeguata la formula secondo cui l'Unione assicura uno sviluppo equilibrato e sostenibile "attraverso" la libera circolazione delle persone, dei beni, dei capitali e dei servizi: si esprime così un rapporto da mezzo a fine fra libertà di circolazione e sostenibilità dello sviluppo che è perlomeno dubbio. Storicamente, l'Unione europea ha cercato di promuovere uno sviluppo equilibrato e sostenibile favorendo la coesione sociale e il rispetto dell'ambiente. E' opportuno non ignorare nel preambolo questo dato di fatto, componente essenziale del "modello europeo".

Si può rimediare all'incongruenza semplicemente dicendo "L'Unione assicura uno sviluppo equilibrato e sostenibile e garantisce la libera circolazione delle persone, dei beni, dei capitali e dei servizi"; meglio sarebbe, tuttavia, menzionare esplicitamente la coesione sociale (ed eventualmente anche il rispetto dell'ambiente), dicendo **"L'Unione assicura uno sviluppo equilibrato e sostenibile promuovendo la coesione sociale e il rispetto dell'ambiente e garantisce la libera circolazione..."**.

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Al punto 5, crea perplessità l'indicazione, fra le fonti da cui derivano i diritti fondamentali riconosciuti nella Carta, della giurisprudenza delle Corti europee, che non può essere collocata allo stesso livello dei trattati, delle convenzioni e delle carte formalmente adottate dagli Stati.

Ulteriori perplessità crea la menzione in questa sede della Corte europea dei diritti dell'uomo, che appartiene ad un ordinamento diverso da quello dell'Unione: essa infatti non è indicata, a differenza della Corte di giustizia, nel mandato di Colonia.

Sulla struttura:

E' pienamente condivisibile e apprezzabile, per la sua efficacia e novità, la suddivisione del testo sotto i titoli "dignità", "libertà", "uguaglianza", "solidarietà", "cittadinanza", "giustizia", anche se comporta inevitabilmente qualche forzatura nella collocazione di alcuni articoli, ispirati a principi molteplici. **Sarebbe tuttavia di gran lunga preferibile che l'articolo dedicato al diritto alla salute (attuale articolo 33) venisse collocato nel capo intitolato alla dignità.** In questo modo si darebbe immediata e giusta evidenza ad uno fra i più significativi nuovi diritti, considerato elemento essenziale per la tutela della dignità delle persone.

La libertà di circolazione (attuale articolo 43) andrebbe invece meglio inserita nel Capo relativo alle libertà.

Sull'articolato:

All'art.1 si ritiene necessario insistere sulla formula "**la dignità umana è inviolabile**" e comunque sulla menzione della inviolabilità della dignità della persona, nel senso che la garanzia e la tutela della dignità umana devono essere riferite a un bene concettualmente intangibile da parte dei pubblici poteri. Ci si preoccupa, infatti, del modo in cui i cittadini europei reagiranno alla lettura della Carta: poiché nei testi in cui è nominata (ad esempio, l'art.1 del Grundgesetz) la dignità è appunto dichiarata "inviolabile" o "intangibile", ogni diversa formulazione può essere percepita come un indebolimento della tutela: E, trattandosi del primo articolo della Carta, questo potrebbe determinare una lettura complessiva della Carta come testo debole.

All'art.11, Si propongono le seguenti modifiche:

Al comma 1, dopo le parole: "libertà di ricevere", aggiungere le parole: "di ricercare".

Al comma 2, aggiungere le parole: "anche nei confronti delle concentrazioni dei mezzi di comunicazione di massa".

Si insiste perché, al comma 1, si indichi espressamente la libertà di "cercare" informazioni, non solo di riceverle. Tale diritto, già compreso nell'art. 19 della Dichiarazione dell'Onu del 1948, è oggi primario nella nuova dimensione di Internet (non a caso, i regimi dittatoriali cercano di negarlo).

Al comma 2, appare opportuno che la garanzia del pluralismo dell'informazione vada assicurata anche nei confronti delle gigantesche concentrazioni proprietarie in atto nel mondo.

All'art.12, Si propone la seguente modifica:

Al comma 2, dopo le parole: "ad esprimere", aggiungere le parole: "con metodo democratico".

E' essenziale infatti che l'Unione Europea, che si fonda sul principio di democrazia, come è anche detto nel Preambolo, riconosca la qualifica di partito politico soltanto alle formazioni che agiscono "con metodo democratico", nel rispetto, cioè, di quel valore.

All'art.13 Si propone l'aggiunta del seguente comma:

"Tutti hanno il diritto di beneficiare, a condizioni eque, dei risultati delle ricerche scientifiche, in particolare nel campo bio-medico".

L'attenzione dell'opinione pubblica si è concentrata massimamente e con interesse crescente sui problemi della ricerca, soprattutto nel campo della bio-medicina, e sui problemi della brevettabilità e della commercializzazione esclusiva dei risultati della ricerca. Il comma di cui si propone l'introduzione stabilisce un principio di contemperamento tra il diritto di ognuno di beneficiare dei risultati della ricerca, in specie nel campo bio-medico, ed il giusto riconoscimento economico dei costi della ricerca stessa.

All'art.15, comma 1, non appare accettabile che si dica che, per guadagnarsi da vivere ciascuno ha "il diritto di esercitare una professione" ma non di lavorare. Occorre aggiungere la menzione del diritto al lavoro. Si propone di sostituire il primo comma con il seguente:

"1. Ogni individuo ha il diritto di realizzare le sue capacità personali con un lavoro liberamente scelto o accettato".

La diversa formulazione del comma fa, infatti, riferimento alla realizzazione personale dell'individuo e non al solo elemento economico del guadagno per vivere, ma anche al lavoro nel suo significato più generale, comprendente ogni tipo di attività, economica, culturale e artistica, svolta in condizione di indipendenza o autonomia.

All'articolo 16 si propone di aggiungere, in fine, le seguenti parole:

"nel rispetto del principio di uno sviluppo economico e sociale equilibrato e sostenibile".

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L'affermazione della libera imprenditorialità deve essere qui contemperata con il concetto di sviluppo equilibrato e sostenibile, secondo l'indirizzo fondamentale del modello sociale europeo. Si ricorda a tal riguardo che in nessuna delle Costituzioni europee il diritto di impresa è affermato in maniera assoluta e incondizionata. Esso è sempre contemperato con principi di sostenibilità sociale ed ecologica e di equilibrio economico.

Un elemento caratteristico di tutto il costituzionalismo del novecento, è stato, infatti, proprio quello di legare il riconoscimento dei diritti di libertà economica a finalità di ordine sociale. Se fosse mantenuta l'attuale formulazione dell'articolo 16 (come quella del successivo articolo 17), la norma in questione sarebbe percepita come un arretramento rispetto a tradizioni costituzionali comuni.

Si suggerisce quindi il seguente testo dell'articolo 16:

" è riconosciuta la libertà di impresa che si esercita nel rispetto dei diritti fondamentali e dei principi enunciati nella presente Carta".

All'articolo 17 si propone di sostituire il terzo periodo del primo comma con il seguente:

"L'esercizio del diritto di proprietà può essere limitato dalla legge nell'interesse generale e per assicurarne la funzione sociale".

L'espressione "limitato dalla legge", in luogo di quella "regolamentato", offre una migliore garanzia del diritto di proprietà, perché esclude limitazioni che provengano da atti non aventi forza di legge.

Inoltre, il riferimento alla "funzione sociale" rafforza il riferimento all' "interesse generale", che sarebbe altrimenti troppo debole, ed è in linea con la tradizione del costituzionalismo del novecento, come si è detto sopra. Non basterebbe, a tal fine, la clausola orizzontale dell'art. 50, perché essa postula appunto l'ordinaria assolutezza dei diritti garantiti, mentre nel caso qui discusso (ed in quello di cui al precedente articolo 16) si tratta proprio di stabilire che il riconoscimento di questi particolari diritti è ormai collegato strutturalmente con finalità di interesse generale.

All'art.21, Si suggerisce l'aggiunta del seguente comma:

"3. L'unione adotta le politiche opportune per eliminare le disparità di fatto e per promuovere le condizioni che rendono effettiva l'uguaglianza".

L'enunciazione meramente formale e negativa del principio di uguaglianza appare, infatti, insufficiente. E' dunque, necessario rafforzarla vincolando l'Unione europea ad adottare politiche attive per rimuovere le condizioni che impediscono di fatto la parità delle opportunità e il riconoscimento di effettiva pari dignità a tutti gli individui.

All'art.23, Appare opportuno aggiungere - all'inizio dell'articolo ovvero dopo il primo comma - il seguente comma:

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"Le bambine e i bambini devono essere protetti contro ogni minaccia alla loro maturazione intellettuale e alla loro integrità psicologica e sessuale".

Il nuovo comma si fa carico delle minacce che incombono sui bambini (anche attraverso tecnologie di informazione) e vincola il potere pubblico ad un obbligo di protezione nei loro confronti. Si tratta di un'esigenza assai sentita dall'opinione pubblica europea.

Si insiste sull'opportunità dell'inserimento di un nuovo articolo *23-bis*, relativo ai diritti degli anziani, formulato come segue:

"Articolo 23-bis. Diritti degli anziani.

Ogni individuo anziano ha diritto ad un'esistenza autonoma e dignitosa e a partecipare pienamente alla vita politica, sociale e culturale".

L'andamento demografico nei paesi dell'Unione europea impone, infatti, di considerare specificamente la sfera dei diritti delle persone anziane. La norma proposta richiama, d'altronde, l'articolo 23 della Carta sociale europea.

All'art.26, si suggerisce la seguente modifica:

dopo le parole: "concludere contratti collettivi", inserire le parole: "anche a livello dell'Unione", e dopo le parole: "azioni collettive", aggiungere le parole: "compreso lo sciopero".

Il riconoscimento nella Carta del diritto di negoziazione collettiva acquista significato, infatti, solo se accompagnato dalla specificazione del possibile ambito europeo della contrattazione. La mancata menzione del diritto di sciopero, riconosciuto dalla Carta sociale europea e da un gran numero di Convenzioni dell'OIL, oltre che dalle tradizioni costituzionali comuni dei Paesi membri, rischia, invece, di essere intesa come una restrizione dei diritti vigenti.

All'art.29, si propongono le seguenti modifiche:

Al primo comma, aggiungere, in fine, le parole: "e ad una giusta retribuzione proporzionata alla qualità e quantità del lavoro prestato".

Al secondo comma, aggiungere, in fine, le parole: "e non può rinunziarvi".

Tra le condizioni di lavoro "giuste ed eque" deve necessariamente inserirsi il diritto ad una retribuzione giusta e proporzionata alla prestazione. L'irrinunciabilità alle ferie risponde, invece, ad una tipica necessità di protezione della parte più debole del rapporto di lavoro.

Sorprende, nella formulazione di alcuni diritti sociali, l'uso di espressioni attenuate o indirette, che paiono affievolire il riconoscimento di alcuni diritti rispetto ad altri. Così, mentre all'art.31 si dice che "è garantita la protezione della famiglia" (pur trattandosi evidentemente di un diritto che richiede per la sua effettività interventi legislativi e amministrativi a molteplici livelli nell'ambito degli Stati membri e non solo dell'Unione), all'art.32, concernente la sicurezza e l'assistenza sociale, si usa una formula generica e non impegnativa: non solo

questi diritti non sono “garantiti”, ma l’Unione si limita a riconoscere e rispettare l’esistente “secondo le modalità stabilite dal diritto comunitario e le legislazioni e prassi nazionali”, formula questa più volte ripetuta soltanto per alcuni diritti , indipendentemente dal fatto che trovino regolamentazione primaria nella legislazione nazionale o in quella comunitaria, e pur trattandosi di una formula superflua in presenza della clausola generale dell’art.49.

All’art.34 si giunge poi ad una formulazione inaccettabile, che non fa cenno ad alcun diritto, neppure nella formula attenuata del riconoscimento da parte dell’Unione di un diritto sancito da legislazioni nazionali, ma al semplice “rispetto dell’accesso ai servizi d’interesse generale quale previsto dalle legislazioni e prassi nazionali, ai sensi delle disposizioni del Trattato...”. Si tratta di una formula tanto sovrabbondante quanto inutile, che dovrà essere adeguata al tenore degli altri articoli.

Si propone di sostituire il testo dell'articolo 34 con il seguente:

"Al fine di promuovere la coesione sociale e territoriale l'Unione riconosce e rispetta il diritto di ogni individuo all'accesso a servizi di interesse generale che assicurino le prestazioni necessarie a garantire la qualità della vita e le possibilità di lavoro. Le prestazioni di servizi di interesse generale si basano sui principi di uguaglianza di accesso, di universalità, di continuità, di trasparenza".

E' opportuno che il diritto ad usufruire di servizi di interesse generale sia inquadrato in principi-guida che, salve le differenziazioni nazionali, ne garantiscano l'effettività, anche in funzione della promozione della coesione sociale e territoriale dell'Unione, prevista dall'articolo 16 del Trattato CE (se venisse menzionata la finalità di garantire le possibilità di lavoro potrebbe, inoltre, essere qui assorbito l'articolo 27 relativo ai servizi di collocamento).

All’art.36, si propone l’aggiunta del seguente comma:

"I consumatori hanno diritto ad una informazione completa sulla qualità dei beni e dei servizi e ad una pubblicità non ingannevole che risponda ai criteri di trasparenza e veridicità".

La sensibilità popolare europea si è fatta particolarmente acuta riguardo ai criteri di fabbricazione e manipolazione di prodotti alimentari e di beni di consumo personale. E' necessario che una Unione sempre più vicina ai bisogni della gente si faccia carico nelle sue politiche di queste diffuse preoccupazioni.

All'articolo 37, che apre l'enunciazione dei diritti riservati ai cittadini europei, andrebbe utilmente premesso un articolo del seguente tenore:

"Articolo 36-bis. Diritto alla cittadinanza.

Ogni individuo ha diritto ad una cittadinanza. Nessuno può essere arbitrariamente privato della sua cittadinanza, né del diritto di mutare cittadinanza".

Si tratta di un diritto universale, che richiama l'articolo 15 della Dichiarazione universale di diritti dell'uomo, e appare importante come premessa di ogni altra specificazione dei diritti di cittadinanza.

All'art.37 si propone di premettere il seguente nuovo comma, che assorbirebbe il secondo comma previsto nel progetto del Presidium:

"1. I cittadini dell'Unione hanno il diritto di partecipare all'esercizio del potere pubblico a livello dell'Unione per il tramite di un'assemblea rappresentativa eletta a suffragio universale diretto, libero e segreto".

Il principio di democrazia su cui, com'è detto nel Preambolo, si basa l'Unione europea, deve trovare nell'affermazione del "diritto al Parlamento", contenuto in questo nuovo comma, la concretizzazione di democrazia partecipativa e parlamentare. La formulazione è tratta dalla giurisprudenza della Corte di giustizia (e, in particolare, dalle sentenze Roquette e Maizena).

Il secondo comma nella formulazione del Presidium, è la specificazione di questo "diritto al Parlamento", che ne costituisce pertanto la premessa da esplicitare necessariamente.

All'art.47, si propone di aggiungere, alla fine del terzo comma, le seguenti parole:

"e devono tendere alla rieducazione del condannato".

E' infatti un principio di civiltà giuridica, recepito in varie Costituzioni e ordinamenti europei, che l'espiazione della pena debba accompagnarsi a misure dirette a recuperare e rieducare la personalità del condannato.

All'art.49, Si propone di riformulare il primo comma come segue:

"1. Le istituzioni e gli organi dell'Unione, come pure gli Stati membri quando attuano il diritto dell'Unione, rispettano i diritti fondamentali e osservano i principi enunciati nella presente Carta e ne promuovono l'applicazione nel rispetto del principio di sussidiarietà".

Molti dei diritti fondamentali enunciati nella Carta trovano, infatti, attuazione principalmente nell'ambito nazionale, costituendo, per il diritto dell'Unione, un quadro di riferimento, di orientamento e di limitazione della regolamentazione comunitaria. Affermare che le disposizioni della Carta si applicano agli Stati membri "esclusivamente" nell'attuazione del diritto dell'Unione può creare incomprensioni, dato che al comma 2 dell'articolo 49 già si ribadisce che la Carta non modifica alcuna competenza istituzionale.

All' art.50, si suggerisce di riformulare il terzo comma come segue:

"3. I diritti e le libertà riconosciuti dalla presente Carta, che siano già disciplinati dalla Convenzione Europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, possono subire le medesime restrizioni previste

dalla Convenzione: non possono subire restrizioni maggiori di quelle, ma possono godere della protezione maggiore e più estesa prevista dalla presente Carta".

Nel terzo comma del testo proposto dal Presidium, l'uso del termine "simili", riferito al significato ed alla portata dei diritti fondamentali, può essere fonte di confusione. Con il nuovo testo del comma, si intende proporre una formulazione più chiara e semplice di quella del Presidium, che metta in luce due dati essenziali: e cioè che, con riferimento ai diritti della Convenzione, non vi possono essere restrizioni maggiori di quelle previste dalla Convenzione stessa; ma che, al contempo, la Carta può garantire ad essi una protezione maggiore o più estesa.

Infine, si insiste affinché nel capo relativo alla **dignità** (ovvero in quello relativo alla libertà) siano aggiunti due articoli, già proposti in sede di emendamenti, il cui inserimento è sollecitato dai movimenti femminili, riferiti al diritto all'autodeterminazione e al diritto alla libertà sessuale. Si tratta di articoli che rispecchiano il testo di atti dell'Onu (si veda in particolare il par.96 della Dichiarazione di Pechino) sottoscritti da tutti i Paesi membri, idonei a qualificare le libertà degli europei rispetto a mondi vicini, che vedono l'oppressione quotidiana delle donne e la repressione di libertà sessuali presso di noi pienamente riconosciute. Se ne trascrivono i testi:

"Art.5 bis. Diritto all'autodeterminazione.

Ogni individuo ha il diritto di prendere liberamente le decisioni che riguardano la sua vita e la sua persona, al riparo da ogni forma di coercizione, discriminazione o violenza e con il pieno rispetto dell'eguaglianza tra i generi".

"Art.5 ter. Diritto alla libertà sessuale.

Ogni individuo ha diritto di decidere liberamente per quanto riguarda la sua sessualità, che comprende il diritto alla salute sessuale e riproduttiva garantito contro ogni forma di coercizione, violenza e discriminazione tra donne e uomini".

Quanto alla forma del progetto, cioè agli aspetti linguistici e redazionali, mi riservo qualche osservazione sulla versione italiana quando si disporrà del testo definitivo.

Con i sensi della mia più alta considerazione

Stefano Rodotà

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JORDI SOLÉ TURA

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Observaciones generales

sobre el proyecto final

de la

Carta Europea de Derechos Fundamentales.

Senador
ESPAÑA
Agosto 2000

PREÁMBULO

En general, el “**Preámbulo**” adolece de una redacción pesada. Yo estoy de acuerdo en situar a “**los pueblos europeos**” como los sujetos principales de la creación de una unión, pero tal como está redactado el párrafo num.1 “**la unión**” es un concepto genérico mientras que en el **párrafo 2** la “**Unión**”, con mayúscula, ya designa una estructura política consolidada. Creo, por consiguiente, que en el párrafo 1 habría que añadir, después de “..valores comunes.”, una nueva frase del tenor siguiente: “**La Unión Europea es la expresión de esta voluntad**”. Así tendría pleno sentido que el párrafo 2 empezase con la expresión de “La Unión.....”, etc.

El párrafo 5 debe estructurarse de otra forma y, a la vez, debería introducirse en él un concepto que no figura en la versión actual, como es el derecho internacional. Propongo, pues, la redacción siguiente :” **Con el respeto de las competencias y las tareas de la Comunidad y de la Unión, así como del principio de subsidiariedad, la presente Carta reafirma los derechos que resultan especialmente de las tradiciones constitucionales comunes de los Estados miembros y del derecho internacional, del Tratado de la Unión Europea, etc.etc.**”

El párrafo 6 se debe redactar de manera más sencilla. Propongo el siguiente texto: “ **El disfrute de estos derechos implica responsabilidades y deberes, tanto en lo que concierne a toda la comunidad humana como a las generaciones futuras**”

Capítulo I : DIGNIDAD

Creo que el **artículo 2**, sobre el derecho a la vida, está bien redactado pero quizá se podría enfatizar más su contenido introduciendo algunos conceptos generales como el siguiente: “**El derecho a la vida será protegido por la ley, la pena de muerte será abolida para siempre y nadie podrá ser condenado a ella ni ejecutado**”.

Nada que objetar al **artículo 3**, pero creo que el punto primero del párrafo 2 se podría redactar mejor, diciendo : “**-- consentimiento libre e informado de la persona concernida**”

En cuanto al **artículo 4** no entiendo porque se ha copiado el texto del artículo 5 de la Declaración Universal de los Derechos Humanos de 1948 pero, a la vez, se ha suprimido la palabra "cruels". Creo que habría que reproducir todo el texto del citado artículo 5 y decir, por consiguiente : **"Nadie prodrá ser sometido a tortura ni a tratos cruels, inhumanos o degradantes"**

El párrafo 2 del **artículo 5** plantea un problema importante en su párrafo 2 porque, como prevé el art. 4, 3. del Convenio Europeo de Derechos Humanos, hay trabajos obligatorios que no se consideran forzados, como los trabajos exigidos a los detenidos, los servicios de carácter militar, los servicios en casos de crisis o catástrofes y los trabajos que forman parte de las obligaciones cívicas. Estas excepciones deberían introducirse en el párrafo 2 o en un nuevo párrafo del art. 5.

Capítulo II. LIBERTADES.

Quizá se podría ampliar el **artículo 6** con alguna referencia a aspectos concretos del concepto de **"seguridad"**, sobre todo en lo que se refiere al derecho a ser informado de los derechos de la persona, en relación a las detenciones, a las garantías judiciales y a los derechos de los menores.

En el **artículo 7** hay que introducir el concepto de que sólo se puede entrar en un domicilio con autorización judicial o con consentimiento del titular, salvo en caso de flagrante delito. También hay que añadir que el secreto de las comunicaciones puede ser anulado por una resolución judicial. Y no estaría de más añadir el concepto de limitación del uso de la informática, todo ello en los términos del art. 18 de la Constitución Española, que en este punto se adelantó a muchas otras.

En el **artículo 8** la redacción se presta a algunas confusiones, por lo menos en las versiones española y francesa . Por ejemplo, la frase "Estos datos se tratarán de modo leal..." (versión española) y "doivent être traitées loyalement(versión francesa) carecen de rigor jurídico. Por consiguiente, propongo la siguiente redacción : **"Estos datos se tratarán con el máximo respeto y con plena seguridad para fines legalmente determinados y siempre con el consentimiento de la persona afectada o en los términos específicos previstos por la ley. Toda persona tiene derecho a acceder a los datos que la conciernan y a exigir su rectificación cuando considere que no se ajustan a la verdad. El respeto y el control de estas normas corresponderán a una autoridad independiente"**.

Respecto al **artículo 9**, creo que hay que explicitar mejor su auténtico contenido. A mi entender, lo que se garantiza no es un derecho sino dos: por un lado, el derecho a contraer matrimonio y, por otro lado, el derecho a fundar o crear una familia, independientemente de que se haya contraído matrimonio o no, como en el caso de la pareja de hecho. La remisión genérica a las “.. leyes nacionales que rijan su ejercicio..” no añade nada nuevo o, más exactamente, se supedita a lo que digan ellas. Por esto creo que este artículo debería ser más contundente y propongo la siguiente redacción: “ **El derecho a contraer matrimonio y el derecho a fundar una familia, independientemente de que se haya contraído matrimonio o no, serán garantizados por las leyes nacionales**”.

Considero que en el **artículo 10** hay que introducir el concepto de **objeción de conciencia** porque no es suficiente reconocer la libertad de conciencia en general: una cosa es la libertad personal y otra la expresión legal de esta libertad en el ejercicio de otros derechos y deberes, como el del servicio militar.

Creo también que el concepto de “.. cambiar de religión o de convicciones” no resuelve el problema general de estas libertades y que, por consiguiente, habría que introducir otro concepto, como es el del **derecho a no tener creencias religiosas ni a practicar ninguna religión**. Del mismo modo hay que introducir el concepto de que **nadie está obligado a declarar sobre sus propias creencias**.

El **artículo 11** plantea un serio problema, como es el de los límites de la libertad de expresión y de información. El art. 10, 2 del Convenio Europeo de Derechos Humanos establece una serie de límites muy importantes para que la libertad de expresión no perjudique otros valores fundamentales de la sociedad democrática. Estos límites son reconocidos, a su vez, por algunos textos constitucionales, como el art. 20, 4. de la Constitución Española. Por esto considero que debe introducirse un apartado segundo en este artículo 11 que recoja los límites generales enunciados en estos textos.

Algo parecido ocurre en el **artículo 12** sobre la libertad de reunión y de asociación. El artículo 11 del Convenio Europeo de Derechos Humanos reconoce, en su apartado 2, la posibilidad y hasta la necesidad de algunas restricciones, sobre todo en lo que se refiere a la seguridad nacional, la seguridad pública, la defensa del orden, la prevención de la criminalidad, la protección de la sanidad o de la moral o la protección de los derechos y de las libertades de las personas y, de manera muy concreta, prevé la posibilidad de limitación de estos derechos a los miembros de las fuerzas armadas, la policía o la administración del Estado. En los mismos términos se expresa el artículo 28, 1 de la Constitución Española.

Por otro lado, no entiendo bien el sentido del **apartado 2 de dicho artículo 12**. El texto de este apartado parece más una afirmación optimista de carácter general que el reconocimiento de un derecho o de una libertad. Sin duda los

partidos políticos a escala europea contribuyen a expresar la voluntad política de los ciudadanos europeos , pero no son lo mismo los partidos democráticos que los antidemocráticos. Por lo demás, también contribuyen a expresar esta voluntad política general los partidos políticos democráticos de ámbito estatal, nacional o regional. Creo,por consiguiente, que este **apartado 2 del artículo 12** tiene que ser modificado o,incluso, eliminado .

En el apartado 1 del **artículo 15** propongo que se suprima el párrafo inicial "Para ganarse la vida ...". Es totalmente superfluo.

Entre los **artículos 16 y 17** hay diferencias en los tiempos verbales que no se comprenden, Así,por ejemplo, en el **artículo 16** se dice que "**Se reconoce** la libertad de empresa ", o sea, en tiempo verbal presente, mientras que en el apartado 2 del **artículo 17** se dice que "**Se protegerá** la propiedad intelectual...", en tiempo de futuro. Mejor sería utilizar en los dos casos una misma fórmula, como por ejemplo :"**Se reconoce y protege ...**" la libertad de empresa y la propiedad intelectual.

Capítulo III. IGUALDAD

En el apartado 1 del **artículo 22** el concepto de "Debe garantizarse....(versión española) o " .. doit être assurée.(versión francesa) no se corresponden con el sentido profundo del propio artículo ni , en general, con el contenido y la razón de ser de la Carta. Decir que que la igualdad entre hombres y mujeres "debe garantizarse" es abandonar la lógica jurídica de la Carta y convertirla en una especie de declaración de buenas intenciones. Propongo,por consiguiente, una nueva redacción : "**La igualdad de oportunidades y de trato entre hombres y mujeres en materia de empleo y de trabajo, incluida la igualdad de retribución por un mismo trabajo o por un trabajo de igual valor, es un principio fundamental que orientará la política económica y social de la Unión**".

Capítulo IV. SOLIDARIDAD

El **artículo 25** debe redactarse de forma que el concepto de garantía no se convierta en un principio inconcreto. Propongo, pues, la siguiente redacción: **“ Los trabajadores y sus representantes tendrán garantizadas, con anticipación suficiente, la información y las consultas necesarias sobre los asuntos que les conciernan en el seno de la empresa, de conformidad con el derecho comunitario y la legislación y las prácticas nacionales”**

En el **artículo 32** , apartados 1 y 3, se dice que la Unión reconoce y respeta unas determinadas prestaciones de la seguridad social y los servicios sociales y una ayuda a la vivienda ,pero todo ello condicionado por “las modalidades establecidas por el derecho comunitario y las legislaciones y las prácticas nacionales”. Tratándose, como se trata, de una cuestión esencial ,en el que la Unión debe formular estos derechos como otros tantos principios rectores de la presente Carta, no es serio que todo se reconduzca a un derecho comunitario ya existente y a unas legislaciones y unas prácticas nacionales igualmente existentes. Con este sistema, el artículo 32 dejar de ser un principio rector para convertirse en un simple recordatorio de derechos y legislaciones comunitarias y nacionales, que es tanto como transformar la presente Carta de Derechos Fundamentales en un documento secundario. Propongo, por consiguiente, suprimir las frases finales de los apartados 1 y 3 , **“.. según las modalidades establecidas por el derecho comunitario y las legislaciones y prácticas nacionales”**

El **artículo 33** repite el planteamiento del artículo anterior. Propongo, pues, suprimir la frase final **“.. en las condiciones establecidas por las legislaciones y prácticas nacionales”**.

Capítulo V. CIUDADANÍA

En diversos artículos de este capítulo aparece el concepto de “Todo ciudadano”, que engloba por igual al hombre y a la mujer. Considero que en estos casos – que afectan a la mayoría de los artículos del capítulo – el término “todo ciudadano” debería ser substituído por el de “ **Los ciudadanos y las ciudadanas de la Unión... tienen derecho**”. Tal es el caso de los **artículos 37, 1; 38 ; 40; 41; 42; 43 y 44.0**

Creo que hay que introducir en este capítulo una cláusula de futuro sobre el derecho de los ciudadanos y las ciudadanas de la Unión a ser electores y elegibles en las elecciones a los Parlamentos de los países miembros. Propongo, pues, un **nuevo artículo, 38 bis** ,con el siguiente contenido:

“En la medida en que la Unión fortalezca su unidad y su solidaridad todos los ciudadanos y las ciudadanas de la misma accederán al derecho de ser electores y elegibles en las elecciones parlamentarias , generales y regionales, del Estado miembro en que residan, en las mismas condiciones que los nacionales de dicho Estado”

Capítulo VI. JUSTICIA

Considero que en el **artículo 48** hay que introducir una referencia al concepto de jurisdicción única. Por consiguiente, propongo la siguiente redacción del texto: “ **Nadie podrá ser juzgado o condenado penalmente a causa de una infracción de la cual ya haya sido absuelto o condenado por una misma jurisdicción mediante sentencia penal firme conforme a la ley**”.

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Capítulo VII, DISPOSICIONES GENERALES

El **artículo 50** plantea varios problemas. El primero concierne al **apartado 1** cuando prevé la posibilidad de que una autoridad legislativa competente pueda limitar el ejercicio de los derechos y libertades reconocidos por la Carta. Ciertamente que estas limitaciones sólo serán factibles si son necesarias y responden a objetivos de interés general o a la protección de los derechos y libertades, pero éstos son conceptos genéricos que cualquier autoridad legislativa, a nivel de la Unión o de cada Estado miembro, puede interpretar a su manera, sin que este artículo 50 prevea ninguna limitación a la posible acción de una "autoridad legislativa". Incluso es posible que se puedan establecer limitaciones en artículos de la Carta que no las prevén expresamente. Y, por encima de todo, no está claro cuál es la autoridad superior que puede hacer respetar el principio de proporcionalidad e impedir la acción arbitraria de la genérica "autoridad legislativa competente". Por consiguiente propongo:

- A. Que se suprima el apartado 1 del artículo 50.
- B. En caso de no suprimirse, que se establezcan y se enumeren -- en el propio artículo o en forma de cláusula final -- el número y el contenido de las posibles limitaciones que puedan preverse en los derechos de configuración más compleja.

En cuanto al **apartado 3** de este mismo **artículo 50** propongo que en la frase "... su sentido y alcance serán similares a los que les confiere dicho Convenio..." las palabras "...serán similares..." se substituyan por "**no serán inferiores**". Con ello, creo que se puede suprimir la frase final de dicho apartado, "... a menos que la Carta asegure una protección más elevada o más amplia", que puede entrar en contradicción con el **artículo 51**.

PROPUESTAS DE MODIFICACIÓN DEL TEXTO DE LA VERSIÓN ESPAÑOLA

En la versión española del párrafo 2 del **Preámbulo** habría que decir “..la dignidad”, “la libertad, “la igualdad”, “la solidaridad” y substituir el verbo “reposa” por “**se basa**”.

En el párrafo 3 del **Preámbulo** habría que substituir la frase “.. el fomento de tales valores..” por “**el fomento de estos valores...**” y la frase final del párrafo, que empieza ,tras un punto y coma, con el verbo “..vela..” debería decir “... y **asegura, un desarrollo equilibrado y sostenible mediante la libre circulación de personas, bienes, capitales y servicios**”.

En el párrafo 4 habría que substituir la palabra inicial “mediante” por “**con**” y reemplazar las palabras “.. tiene la intención..” por “**quiere**”.

Remitiéndome siempre al texto de la versión española, creo que el **artículo 1** sobre la dignidad de la persona debe redactarse al revés y debe decir : “**La dignidad de la persona será respetada y protegida**”

En el **artículo 23** se plantea un problema de redacción. Si en la versión francesa se puede utilizar el término “enfants” y en la inglesa el término “children” para referirse a los niños y a las niñas, en español el término “niño” supone una discriminación de las niñas. Propongo,por consiguiente que en el enunciado del artículo se substituya la actual redacción – “Protección de los niños” – por el de “**Protección de los menores**”. Propongo también que en el apartado 1 del **artículo 23** (versión española) se haga una leve modificación del primer párrafo: “**Los menores tienen derecho a la protección y a los cuidados necesarios para su bienestar**” y, en general, que en el conjunto del artículo la palabra “niño” o “niños” se substituya por la de “**menores**”.

La versión española del **artículo 27** se presta a una cierta confusión, con el concepto de “servicio de empleo”. Propongo,pues, la siguiente redacción:” **Toda persona tiene derecho a acceder a un servicio de colocación y empleo**”.

La versión española del apartado 1 del **artículo 29** también debe redactarse de otra manera . Sugiero la siguiente redacción : “**Todo trabajador tiene derecho a trabajar en condiciones sanas, seguras y dignas**”.

El apartado 2 del **artículo 30** (versión española) debe redactarse de la siguiente forma: “**Los jóvenes admitidos a trabajar deben disponer de condiciones de**

trabajo adaptadas a su edad y estar protegidos contra la explotación económica o contra cualquier otro trabajo perjudicial para su seguridad, su salud, su desarrollo físico, mental, moral o social o que ponga en peligro su educación”

En la frase final del apartado 3 del **artículo 50** , debe suprimirse la palabra **“no”**. Si esta frase final se mantiene su redacción debe ser la siguiente: **.. a menos que la presente Carta garantice una protección más elevada o más amplia”**.

Stockholm 1 September 2000

Mr Guy Braibant
Vice-President of the Convention
Jean-Paul.Jacque@consilium.eu.int

Comments on Convent 45 by prof. Daniel Tarschys, Sweden

Dear Mr. Braibant,

In accordance with the procedure proposed by the Presidium I would like to share with you my observations on the first complete version of the Charter as presented in Convent 45.

Reflected in my comments are some early reactions by experts in various Swedish ministries and organisations. Since the valuable explanations contained in Convent 46 were not yet available in either Swedish or English, some of these experts have not been able to complete their examination of Convent 45. Further comments may therefore be added at a later stage.

In a subsequent letter to Mr. Jacqué I will make some suggestions on the Swedish translation of the text.

General comments

The Presidium and Secretariat have faced a great many tough choices and should be given due recognition for their work. Several articles now read much better than they did in previous drafts. This being said, significant changes are still needed before the text can be regarded as acceptable.

The most serious flaw in the draft Charter is still that it promises very much in Articles 1-48 and then takes back a substantial part of these pledges through the provisions in Articles 49-50. We must improve the document so as to make it completely honest and avoid raising irredeemable expectations.

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A second very important problem is the risk that the Charter, instead of promoting the cause of fundamental rights, might actually damage this important objective by introducing legal uncertainty where there is none today. At stake here are the significant *acquis* which have been attained over several decades through the ECHR, the Strasbourg caselaw, the EC and EU Treaties and secondary legislation as well as the Luxembourg jurisprudence.

1. The first-mentioned effect is brought about particularly through the framework established by the following five provisions:

- First we have the preambular paragraph 7 which claims that the rights and freedoms contained in the Charter are "guaranteed" - but without disclosing just *how* they are guaranteed, to *what extent* the various rights are justiciable, and *which particular institutions* can be held responsible for their enforcement or implementation.
- No light is shed on such questions until the declaration in art. 49:1 that the provisions in the Charter are addressed only to the institutions and bodies of the Union and to the member states exclusively when they implement Community law.
- Since no new tasks or additional competence are conferred upon the Union through the Charter (art. 49:2), this means that *most* public policies, *most* categories of government service provision and hence also *most* encounters between citizens and public authorities fall *outside* the area covered by the Charter. Some articles become virtually void of substance since what they promise are services *neither* provided by the European Union (e.g., compulsory basic education, social assistance) *nor* established through Community legislation. The fact that the Community is in many cases authorised to support, supplement or stimulate national policy does not place the national legislation in such fields within the sphere of art. 49:1.
- Then follow two very important restrictions on the rights recognised in the Charter. First, it is stated (art. 50:1) that limitations on the exercise of the rights and freedoms inscribed into the Charter may be imposed by the "competent legislative authority". It is not clear whether this expression refers to national institutions, union institutions, or both. Many articles obviously refer to national legislation, but the above-mentioned art. 49:1 limits the applicability of the Charter to the sphere of Community law,

and such legislation can hardly be modified unilaterally by national parliaments. This riddle remains unsolved.

- A second important restriction is introduced in art. 50:2 which proclaims that the provisions of the Charter are subject to all conditions and exceptions contained in the Treaties. If art. 50:3 makes the ECHR a "floor" for the rights recognised in the Charter, art. 50:2 produces an opposite effect by making the Treaties a "ceiling" for these rights. Promises which at first glance seem bold and innovative (e.g., art. 40 on access to union documents) are effectively neutralised through this rule, which implies that in the area covered by the Treaties, no new ground is broken by the Charter.

To produce a credible Charter, it is imperative to reconsider this framework. If art. 49 would be used as a criterion for selection of rights to be included in the Charter, a significant number of articles would have to be either dropped or, alternatively, reformulated so as to indicate more clearly that the purpose of their inclusion was not *to grant* these rights but to oblige EU institutions *to support or at least not impede* their implementation.

Such a Charter defining only the "EU added value" in fundamental rights protection would be relatively meagre and certainly disappointing to many of those who have followed the work of the Convention. A more attractive solution would be to maintain the ambition of drafting a comprehensive list of fundamental rights and principles recognised by both the EU and the member states, combined with an honest and truthful piece of "consumer information" in the Preamble explaining what readers are to expect.

My proposal is to achieve this through a new version of the preambular paragraph 7, which in its present form is categorically and irremediably unacceptable – particularly through its claim of "guarantees". My alternative would read:

The rights and principles recognised in this Charter shall be respected and promoted by the Union, subject to the restrictions contained in articles 49-52.

2. As for the second problem, the main issue is still the divergence in several articles between the Charter and the ECHR. The meaning of various concepts in the European Convention have been considered by

the Court and Commission over several decades. Introducing legal uncertainty and risking new rifts in Europe between EU members and non-members could introduce quite unnecessary obstacles to the defence of human rights. Following suggestions by i.a. Mr. Olsen and Mr. Korthals Altes, we should therefore amend art. 50 so that it is unambiguously clear that the provision in the Charter and the Convention do not have a *similar* but *the same* meaning and scope. The Swedish version already satisfies this requirement, but neither the French nor the English version.

A further necessity is to delete the final line of art. 50.3 which in its present form can have quite unintended consequences. Two examples:

- Art. 2:2 of the ECHR lists a number of cases in which every human being's "right to life" shall not be considered to have been violated. Art. 2 of Convent 45, in contrast, proclaims "the right to life" without any qualifications. Clearly, the Charter therefore offers a higher level of protection, which would imply that the particular exceptions listed in the European Convention would not be permissible under the Charter.

- In art. 10 of the ECHR there is a provision for the possible licensing of television and radio stations which is not reproduced in art. 11 of Convent 45. Such licensing would no longer be possible (within the EU legal system) since art. 50:3 of the Charter promises a higher level of protection in case of divergence between the two texts. This would run counter to the legislation of member states and, for Sweden, even come into conflict with the Constitution. It would also seem to contradict Council Directive 89/552/EC of 3 October 1989 which also allows restrictions.

* * *

Another problem much discussed during the meetings of the Convention is that of *brevity vs. comprehensiveness*.

Either of these solutions has its obvious advantages and disadvantages. Crisp and succinct articles are easier to read and more forceful. Longer provisions with more details and some principal exceptions spelled out are more correct and informative.

On balance, I support the decision of the Presidium to opt for brevity. This is more fitting for a political declaration aimed at the general public.

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Readers who want to learn about the details of the legally binding provisions will at any rate have to consult other texts such as the EHCR, the Treaties, secondary Community legislation, the jurisprudence of the Courts etc., and will be well advised in this respect by the explanations provided (presently Convent 46). It is in this way that the Charter will serve as a *guide to law*, not a *source of law*.

Convent 45, however, is not consistent in following the brevity line. After some short and snappy articles such as 4, 5, 6, and 7, the reader suddenly plunges into the much more detailed art. 8. There seems to be a need for harmonisation which would be best achieved by trimming some articles with excessive information. Some articles also become clumsy by clinging too closely the wording used in the Treaties. This is not necessary, given the blanket provision in art. 50:2.

Finally, I note with satisfaction that the Swedish version is now gender neutral and hope that this principle will be observed in the other languages, too.

Comments on the Preamble and Specific Articles

The **Preamble** has been improved but is still in need of substantial revision:

Paragraph 2. Instead of repeating my suggestions of 19 July, I would on further reflection like to align myself with those who have suggested a wording inspired by art. 6:1 in the TEU. The treaty-defined fundamental principles of the Union should be stable and not suddenly changed by the Convention. These principles should therefore be confirmed in a first sentence of this paragraph. A second sentence could then refer to such important objectives as solidarity and equality between women and men.

Paragraph 3 still does not read very well. I reiterate my point that the objective cannot be so much to “develop” the common values as to pursue them and make them guide and inspire our action.

Paragraph 4 echoes the Cologne mandate but remains superfluous.

Paragraph 5. There have been several suggestions to make references to further instruments such as the UN Covenants and ILO Conventions. One objection is that this would make the catalogue even heavier than it already is. My proposal would be to add a mere three words: **and**

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international obligations, to be inserted between “constitutional traditions” and “common to the member states”. Such a formula would automatically refer only to instruments ratified by all members states.

Paragraph 7. As indicated above I am particularly concerned about this text which must be reformulated to define adequately the character and implications of the Charter and also reflect the restrictions contained and limitations permitted in the horizontal articles.

Article 1 - dignity of the person

The Swedish heading is satisfactory but “Human dignity” would seem to be a better heading in English.

Article 3 – right to integrity of the person

The concept of “mental integrity” remains a mystery to Swedish experts who cannot find it in either the Convention on Biomedicine and Human Rights or any other international instrument.

I also have problems with the second indent of paragraph 2, where the clause starting “in particular” seems to indicate that there are eugenic methods with a different purpose than the one indicated in the clause. Unless there is some good explanation to this query it seems better to end this sentence after the first four words.

Article 4 – prohibition of torture and inhuman or degrading treatment and punishment

In order not to set lower standards than those in existing international human rights instruments (art. 5 of the UN Universal Decl., art. 7 of the ICCPR as well as the title and preamble of the UN Convention against torture), we should insert the word "cruel" before "inhuman".

A minor adjustment should be made in Convent 46, where there is mention of the limitations “guaranteed” by the ECHR. These limitations are not guaranteed but permitted.

Article 7 - respect for private and family life

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The scrapping of “correspondence” in favour of “communications” is of course intended to adapt the text to modern information technology, but this is not necessarily a change for the better. Electronic mail is also a form of correspondence whereas communications is a puzzling term in this context as it comprises many different forms of physical transportation.

Article 8 - protection of personal data

This text differs in style and detail from other articles. The most important provisions seem to be sentences 1 and 3 which should be presented as two separate paragraphs. The final sentence deals with an aspect not covered in other articles.

Article 11 - freedom of expression and information

In the general part I have already mentioned a serious problem with this text, i.e. the issue of television and radio licensing. Another one is paragraph 2 where the reference to pluralism and transparency is highly ambiguous. Are these objectives *motives* for guaranteeing the freedoms of media and information, or reasons for *restrictions* in such guarantees? If the latter, what kind of restrictions?

Article 12 – freedom of assembly and association

This text is not satisfactory. The final part of the first sentence seems to indicate that there is one area where the freedom of assembly and association is particularly important and another one, undefined, where it is less so. The second paragraph is normative in the Swedish version but descriptive in the French and English versions. Though undoubtedly true, this piece of information serves no particular purpose in the Charter.

Article 13 – freedom of research

Convent 46 rightly refers to Articles 1 and 50. It could also mention Article 3 which introduces some restrictions in the freedom of research.

Article 14 – right to education

In a previous version, the rights of the parents were to be “respected”. In the new draft they are to be “guaranteed”. I would propose a return to the former term, which corresponds to the wording of Protocol 1, art. 2, to

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the ECHR. Another problem with this article is that it gives complete precedence to the convictions of the parents over those of the child, which comes in conflict with Article 23. Accepting that it would be too complicated to add this aspect in Art. 14, I suggest instead a strongly worded cross-reference to Art. 23 in the explanation of Art. 14.

Article 15 – the right to choose an occupation

The heading of this article only reflects paragraph 1, which seems less important from an EU point of view than paragraph 2 and could well be deleted. Paragraph 3 is liable to misunderstanding in its present wording since the right of residence and right to work are not necessarily co-extensive.

Article 18 – the right to asylum

This text should be brought into conformity with the conclusions of the Tampere Council. I am not convinced of the need for a reference to the Treaty if the only motive for this is the argument advanced in Convent 46, which is that the Treaty obliges the Union to respect the Geneva Convention.

Article 20 – equality before the law

I suggest the deletion of the words "men or women" as redundant. They might also seem to exclude children which could not be the intention.

Article 21 – equality and non-discrimination

As I have explained at length in my comment to Convent 28, this article presents very serious difficulties. For an efficient combat against discrimination there is a need for more precise and targeted provisions, as evident from the discussions that have been conducted over several years both in the Council of Europe and in various institutions of the Union. Convent 46 claims that the provision is inspired by Art. 13 of the TEC, but the latter has no direct effect and can rather be seen as an agenda for action. With regard to ethnic discrimination, for instance, the proposed wording goes much further than the Commission's draft directive. The moot question of *Drittwirkung* is dealt with neither in the Article nor in the explanation.

Article 22 – equality between men and women

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I propose the insertion of the word "**education**" before "employment and work" to widen the scope of the provision.

Article 23 – protection of children

The new version appears to be a mixture of articles 3 and 12 of the UN Convention on the Rights of the Child (CRC) but with particular emphasis on the need for protection. This is a step backwards since the notion of the child as an active subject with its own rights has been toned down.

I would recommend that the title is changed to read: **the rights of the child**.

Furthermore, I would reiterate my previous proposal concerning the wording of this article: "***In all actions concerning children the best interestes of the child shall be a primary consideration and the rights of the child shall be respected and ensured without discrimination of any kind. The child shall be assured the right to express its views freely in all matters affecting the child, the views of the child being given due weight.***" This formulation should present no major problems as all EU member states have ratified the CRC.

Article 25 – workers right to information and consultation within the undertaking

The text should be fully brought in line with art. 2.1 of the Additional Protocol to the European Social Charter (1988) and art. 21 of the Revised Social Charter and therefore read "workers **or** their organisations", instead of "workers **and** their organisations". Divergence between the two texts might lead to harmful legal uncertainty.

Article 26 - workers' right to negotiations and collective agreements

Same point as under art. 25; in this case the crucial **or** is found in art. 6.2 of the Social Charter. I also want to reiterate my earlier proposal to insert the words "or promote" after "defend" (art 26, second sentence).

Article 28 – protection in the event of unjustified dismissal

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I suggest that art. 28 be brought in line with art. 24 of the revised European Social Charter of 1996 and therefore read: **"All workers have the right to protection in cases of termination of their employment."**

Article 30 – protection of young people at work

The UN Convention on the Rights of the Child (CRC) defines as child anybody under 18 years of age. This creates probably unintended consequences in the first sentence of *Article 30*, which should refer to “minors” rather than “children”.

The provision about “rules that may be more favourable to young people” is too ambiguous for the Charter since it is anybody’s guess what such rules may imply. In the second paragraph, the words “economic exploitation” are also ambiguous and can easily be deleted since they add nothing to the subsequent extensive definition of harmful work.

Article 34 – right of access to services of a general economic interest

This text reproduces a provision which is ambiguous already in art.16 TEC without adding any clarity about the delimitation of the services mentioned. The problem with these services, however defined, is hardly restrictions on the right of access but rather the cost barriers which may limit effective access. If the idea with this proposal is that certain types of monopoly or subsidy should be accepted, it would seem better to discuss such issues head-on with due regard also to the basic principles of free competition.

Article 39 – right to good administration

In this draft article, the nexus linking the first and second parts of the second indent of paragraph 2 is not sincere enough and the second part itself is not precise enough. What is intended here can hardly be anything else than a restriction on the right to access to documents. As such, it is too sweeping.

Article 45 - right to an effective remedy and to a fair trial

As explained in my comment on Convent 28, I have serious problems with this text. Art. 13 of the ECHR on which this provision is based is more precise as it is limited to the rights and freedoms recognised by the Convention. The present article is open-ended in all three paragraphs and

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may give the impression of creating opportunities for legal redress and legal aid which do not exist today.

Art. 6 in the ECHR and art. 14(3) of the ICCPR provide for legal aid only in criminal matters. Swedish national law is also more restrictive than the proposed provision. Careful considerations are required if the suggested wording is expected to impose new costs on either the Community or the member states.

For the above reasons I suggest that the draft article is reviewed and brought in line with the corresponding articles in the ECHR

Article 46 – presumption of innocence and right of defence

This text raises questions about the intended field of applicability, in the light of Art. 49:1.

Article 49 - field of application

I refer to my comments on this article in the general part.

Article 50 – scope of guaranteed rights

As indicated above, I propose the deletion of the final part of the last sentence of *Article 50:3*. Since so many provisions on permissible exceptions are not taken over from the ECHR, the level of protection will automatically seem to be much higher in the Charter (before the reader reaches the horizontal articles). With the present promise at the end of Art. 50 it would then appear as if the Charter derogated a number of rules in the ECHR which of course it has no authority to do.

Looking forward to discuss further any proposals which may not meet with the agreement of the Presidium, let me again express my high appreciation of the constructive efforts of the Presidium and the Secretariat and assure you of my sincere wish to contribute to the successful conclusion of the work of the Convention.

Yours sincerely

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Daniel Tarschys

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TOBISSON

To the Praesidium of the Convention

(for the special attention of Mr Jansson)

General comments on the first complete draft of the Charter (Convent 45)

1. The role and the status of the charter

The key question is the relationship between the Charter and other documents aiming at the protection of fundamental rights, in particular the ECHR.

Since its creation in 1950 an important role in furthering human values has been played by the ECHR in combination with the case-law that has evolved out of the original text. This convention has been of particular importance for the development of the new CEE democracies after the collapse of communism.

It would be most unfortunate, if there should exist in the future two separate and competing systems for the protection of fundamental rights on the European level. We would then run the risk that the ECHR could be looked upon as a lower set of rules for the countries outside the EU, which might erode the authority of the Strasbourg court.

Admittedly, there is a gap in the protection of the individual, when it comes to the application of EU law. This is basically due to the fact that the Union stands outside the Council of Europe and therefore has not adopted the ECHR. Furthermore, this unprotected area is widening, as new matters are brought under EU competence.

The question of the EU's accession to the ECHR and the formal complications associated with it does not fall under the mandate of the Convention. But when the proposed text of the Charter has been delivered, it is necessary to face the crucial problem of the relationship between the two documents.

The best solution would be that changes are made in the treaties of the Council of Europe and the European Union, so that the EU could join the Council and adopt the ECHR. When a future IGC sets out to consolidate the treaties - maybe even write a constitution for the EU - the proposed Charter could then be transformed into a preamble.

If the rights contained in such a legally binding text should go further than the ECHR, it would not constitute a problem - that is already the case with several national declarations of rights. The Luxembourg court should, of course, have jurisdiction based on its "constitution", but in those areas where the subject matter would be covered by the ECHR the final authority would lie in Strasbourg. In practice a consultative procedure could be expected to develop between the two courts.

The necessity to avoid a situation in Europe with two parallel systems and two competing courts, which could lead to conflicting decisions on matters concerning fundamental rights, leads to the conclusion that the EU Charter should be given the status of a political declaration *until* the reforms sketched above can be realised.

2. Structure

The draft Charter consists of a preamble, 48 articles of substance and 4 horizontal articles. The 52 articles are numbered consecutively. They are organised into seven chapters.

It is doubtful, if there is a real need for a division into chapters. The fact that there is no suggestion of a list of contents may be taken as an indication that it is superfluous.

Under all circumstances there should be no headings to the chapters. Those now proposed are arbitrarily chosen and do not correspond to the contents of the articles in the respective chapters.

The first chapter is a case in point. The heading is "Dignity". The very first article is then titled "Dignity of the person", which must be considered a mere repetition. The situation becomes even more confused, when one finds that the heading of the chapter

in the Swedish version is "Individens rättigheter" (= "The rights of the individual"), which is what the whole charter is about.

Moreover, the heading of Chapter II ("Freedoms") does not sound right in plural. In what way can the right to education (article 14) be considered "a freedom"? It seems to be more of a social right. And are the right to asylum (article 18) and the protection against removal, expulsion and extradition (article 19) really "freedoms"?

The chapter heading "Solidarity" has come to stand for what was in the discussions called "economic and social" issues. It would be better to spell that out, if chapter headings are really necessary.

In general, the distinction that was made by the Praesidium during the deliberations between "rights" and "principles" has been obfuscated. There are now many "rights" which are "ensured" when in reality they are "social principles" to be "promoted" - sometimes outside the competence of EU.

It would be preferable to follow the distinction in the original Cologne mandate between rights of different kinds. That would also mean that they would be presented in a more logical fashion and in an order more similar to the one used in our discussions.

Finally, it is somewhat unsatisfactory that a lot of far-reaching promises are given in the first 48 articles, only to be restricted - sometimes most appreciably - by the final horizontal clauses. Those restrictions should at least be hinted at in the preamble.

3. The preamble

In spite of the critical comments at the July 17-19 meeting of the Convention the general structure of the preamble outlined by the Praesidium has been maintained. A shorter version, more along the lines the Mr Tarschys indicated at the meeting, is to be preferred.

Each paragraph starts with a number (1-7). Are they supposed to remain? It seems a little strange to have figures in the lofty wording of a preamble and, therefore, they ought to be deleted.

As to the first paragraph I criticized already during the deliberations the "timing". The phrase should be turned around. Besides, it is strange that we "have established (*static!*) an ever closer (*evolving!*) union". The wording could be changed in the following way: *"Resolved to share a peaceful future based on common values the peoples of Europe are building an ever closer union between them."*

The second paragraph contains a lot of solemn and slightly bombastic words without a clear meaning. Its purpose seems mostly to be to foreshadow the following structure and division into chapters, which I have already questioned. It would be preferable to have something closer to the Tarschys proposal: *"The Union is founded on the principles of liberty, democracy, the rule of law, and equal opportunities for men and women"*.

In paragraph 3 it seems strange that fundamental values, which according to the preceding paragraph are "indivisible" and "universal", could be under "development". Maybe "evolution" would be a better word.

In paragraph 6 there is a lot of overlapping between "other persons", "human community" and "future generations". It should suffice to say "...other persons, including future generations".

In paragraph 7 the word "therefore" seems out of place. Moreover, the word "guaranteed" is much too strong. The wording should be replaced by the final (fourth) paragraph in Mr Tarschys` s version from the July meeting.

4. The articles

My comments on the draft charter have so far dealt with the structure and the preamble, which have been discussed rather hastily at the latest meeting of the Convention. The

wording of the proposed articles has been more thoroughly analyzed and debated. However, some additional remarks are motivated.

In general, in those cases where rights are covered by the ECHR there should be more of an ambition to use an identical wording in order to avoid the evolution of varying interpretations.

Moreover, for somebody who is not a legal expert it is somewhat confusing that the expression "Union law" alternates with "Community law" without any apparent reason.

Article 1. The heading of the article in relation to the chapter title has already been commented upon. In addition, the word "person" seems a bit awkward and a little ambiguous. Are "legal persons" (i.e. companies; cf. Article 40) included? Would it not be better to use the word "human being" here and elsewhere in the Charter, when human persons are aimed at exclusively?

Article 3. There is no need for a distinction between "physical" and "mental" integrity. Replace those words with "personal" (integrity). Incidentally, does the 2nd para, 3rd indent, mean that the sale of human hair for the production of wigs is forbidden?!

Article 12. Freedom of association is expressly excluded from Community law. If it is yet to be included in the Charter - with a particular emphasis put on "trade union matters" as in the proposed text - the right to remain outside an association should be treated in the same manner. There has been a clear development in case-law to place the positive and the negative aspects of the freedom to associate on an equal footing.

Article 17. The protection given to property rights in the Charter is too weak. Changes in the text compared to the original wording, which may have been done with the purpose to strengthen these rights, will in fact work the other way. The concept "fair compensation" can be misused to deny the owner adequate compensation for his loss. If the wording "full compensation" is impossible for some reason, the word "fair" must disappear under all circumstances. Write "compensation for his loss" or merely "compensation"!

In comparison to the initially proposed text the words "a prior guarantee" have disappeared. The reason is said to be that there are national bills of rights that don't include such a provision. But the right to compensation is not worth anything, if it takes years and years before it is paid out. After the word "compensation" there should, therefore, be added "to be paid without undue delay".

In paragraph 1 there has appeared a new, third sentence, probably with the aim to restrict the use of regulations to instances where a clear general interest is affected. But the concept of "general interest" - just as "public interest" in the second sentence - is vague and can be interpreted broadly. Therefore, the third sentence should be deleted and the second one reformulated. The whole paragraph 1 should then read:

"Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except when there is a strong public need and in the cases and under the conditions provided for by law, subject to compensation (for his loss) to be paid without undue delay."

Article 20. There is no gender aspect to equality before the law. The insertion "man or woman", which actually weakens the universality of the concept, seems to have been inspired by the chapter heading, and it should be deleted.

Article 27. The right of access to a placement service can not be regarded as a fundamental right on the same level as other freedoms and rights in the Charter. Besides, this service is in the process of being transferred to private agencies working on the market. The whole article should be deleted.

Article 32. There have been efforts to include the social principle/objective of "good housing" in the Charter. This lies clearly outside the EU competence. But there appears in paragraph 3 a remnant of this idea in the form of a right to "housing benefit". This is, however, just one out of many methods to ensure that everyone lives under decent conditions. Subsidies of housing costs for the needy must be considered to be included in "social assistance", and the words "and housing benefit" should, therefore, be deleted.

Article 34. It is totally unclear what is meant by "services of general economic interest". The explanation given by Mr Patijn for the corresponding provision in the Treaty of Amsterdam shows that this is no fundamental right to be included in the Charter.
Delete!

Article 35. The expression "a good quality living environment" looks and sounds strange and should be reformulated. The easiest way is to delete the word "quality".

5. Conclusion

My main concern is the relationship between the proposed Charter and other bills of rights, in particular the ECHR. The lack of clarity in this regard affects my willingness to endorse the Charter.

As to the proposed text my most important objections bear upon the structure of the document. This is the first time the members of the Convention see the complete text and can weigh its components (the preamble, the substantial and the horizontal articles) against each other. We have just received Convent 46 with the crucial explanatory text provided by the Secretariat, and this document has not even been discussed!

I deplore that the timetable has been speeded up with the intention to deliver the proposed Charter to the Biarritz summit in October instead of the Nice summit in December as originally decided. Several important aspects remain to be discussed, and many outstanding problems are not satisfactorily settled.

Therefore, as one of the two national parliamentarians from Sweden and representing the leading opposition party I can not recommend that the Charter is adopted - not even as a political declaration - in its present form.

Lars F Tobisson

VITORINO

Bruxelles, le 23/08/00 11:40

JAI/A1 FP/fp D(2000)

Observations du représentant de la Commission sur le document CONVENT 45

1. QUESTIONS DE FOND

- Préambule

Dans son troisième paragraphe, le préambule fait actuellement référence aux « quatre libertés », sans aucune référence à la citoyenneté de l'Union, donnant une image réductrice de l'intégration européenne. En même temps, la rédaction paraît maladroite car elle donne l'impression de réduire la notion de développement équilibré et durable, utilisée dans un sens très large à l'article 2, premier tiret TUE, aux seules quatre libertés du marché intérieur.

La Commission propose le texte suivant:

Insérer à la fin du deuxième paragraphe :

elle place la personne humaine au cœur de son action, en garantissant la libre circulation des personnes, des biens des capitaux et des services, en instituant la Citoyenneté de l'Union et en créant un espace de liberté, de sécurité et de justice.

Biffer la dernière partie du troisième paragraphe (« elle assure...et durable »)

- Article 25. Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

L'article 25 fait désormais référence à l'information et à la consultation des travailleurs "sur les questions qui les concernent", un segment de phrase qui n'apparaissait pas dans la version précédente (Charte 4316/00 Convent 34, 16 mai 2000).

Le texte précédent était basé sur la Charte sociale européenne révisée (art. 21) et la Charte communautaire des droits sociaux (art. 17). Il était cohérent avec le texte que la Commission a proposé dans son projet de directive sur l'information et la consultation des travailleurs (COM 1998/612 final) qui est actuellement en discussion au Conseil.

Du point de vue juridique, la nouvelle formulation n'altère pas fondamentalement la version antérieure. En revanche, du point de vue

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politique, le texte actuel apparaît en retrait de la version antérieure, et donc aussi en retrait des textes qui en étaient la base.

La Commission propose le libellé suivant:

Les travailleurs et leurs représentants doivent se voir garantir une information et consultation en temps utile au sein de l'entreprise conformément au droit communautaire et aux législations et pratiques nationales.

• **Article 32, paragraphe 2. Sécurité sociale et aide sociale**

Après un examen attentif de ce texte, la Commission constate qu'il n'est pas conforme au droit communautaire en matière de sécurité sociale, en particulier aux principes essentiels garantis par le Règlement (CEE) n° 1408/71¹ qui coordonne les systèmes nationaux de sécurité sociale.

Le Règlement 1408/71 vise à protéger les droits à la sécurité sociale non seulement des travailleurs qui sont des ressortissants de l'Union et des membres de leur famille mais aussi d'autres catégories de personnes qui se déplacent à l'intérieur de l'Union, en vue de ne pas les léser par rapport aux personnes sédentaires. Il assure cette protection grâce à quatre grands principes fondamentaux, à savoir 1) l'égalité de traitement avec les ressortissants nationaux, 2) l'unicité de la législation applicable 3) l'exportation des prestations de sécurité sociale et enfin, 4) la totalisation des périodes d'assurance.

Considérant cette réglementation communautaire, la Commission estime que l'article 32, paragraphe 2 devrait être formulé différemment et propose le texte suivant :

Toute personne, qui réside et se déplace légalement à l'intérieur de l'Union, a droit aux prestations de sécurité sociale et aux avantages sociaux dans les conditions établies par les législations nationales et le droit communautaire.

Il est proposé ainsi de supprimer les termes de "travailleurs ressortissants d'un Etat membre et résidant dans un autre Etat membre" et de les remplacer par les termes "toute personne qui réside et se déplace légalement à l'intérieur de l'Union". En effet, le terme "travailleur" n'inclut pas certaines catégories importantes de personnes, telles que les étudiants et les retraités qui sont couvertes par le Règlement 1408/71.

En outre, le terme "personne" permet de couvrir non seulement les citoyens de l'Union, mais aussi les ressortissants des Etats tiers qui résident et se déplacent

¹ JO n° L 149 du 05.07.1971 p. 2-50.

légalement à l'intérieur de l'Union. En effet, bien que le Règlement 1408/71 s'applique, à l'heure actuelle, aux seuls ressortissants des Etats membres, il existe toutefois une proposition de la Commission européenne² qui vise à étendre ledit règlement aux ressortissants d'un Etat tiers qui résident et se déplacent légalement dans l'Union. Cette idée a été confirmée par le Conseil européen de Tampere du 18 octobre 1999³ et semble également la conséquence logique de la jurisprudence de la Cour européenne des droits de l'homme⁴.

Il est aussi proposé de remplacer les termes "ont droit aux mêmes prestations.....que les ressortissants de cet Etat" par "ont droit aux prestations de sécurité sociale... dans les conditions établies par les législations nationales et le droit communautaire".

En effet, bien que le texte actuel reflète le principe d'égalité de traitement avec les ressortissants nationaux, il néglige de tenir compte des principes fondamentaux de l'unicité de la législation applicable et de l'exportation des prestations garanties par le Règlement 1408/71. Ainsi, le principe de l'unicité de la législation applicable prévoit que c'est généralement la législation de l'État de travail seule qui s'applique et non pas la législation de l'État de résidence, ce que le texte actuel suggère. En outre, alors que le Règlement oblige l'État de travail à exporter les prestations aux assurés qui résident dans un autre Etat membre, le texte actuel ne se réfère qu'à un droit à des prestations servies par l'État de résidence, ce qui pourrait avoir des conséquences importantes, notamment en ce qui concerne les travailleurs transfrontaliers.

Suite à cette proposition de changement, les termes "à un même accès aux soins de santé" sont superflus car les soins de santé font partie de la notion plus large de "prestations de sécurité sociale".

• **Article 43. Liberté de circulation et de séjour**

Au paragraphe 2, il convient d'insérer une référence à la liberté de séjour, afin de tenir compte de la compétence donnée à la Communauté dans l'article 63, paragraphe 4 TCE (qui est déjà citée dans les explications à l'article 43).

² Proposition de règlement du Conseil visant l'extension aux ressortissants de pays tiers du règlement (CEE) n° 1408/71 relatif à l'application des régimes de sécurité sociale aux travailleurs salariés, aux travailleurs non salariés et aux membres de leur famille qui se déplacent à l'intérieur de la Communauté, Document COM (1997) 0561 final.

³ Paragraphe 21 : « *Le statut juridique des ressortissants de pays tiers devrait être rapproché de celui des ressortissants des États membres. Une personne résidant légalement dans un État membre pendant une période à déterminer et titulaire d'un permis de séjour de longue durée devrait se voir octroyer dans cet État membre un ensemble de droits uniformes aussi proches que possible de ceux dont jouissent les citoyens de l'Union européenne (...)* ».

⁴ Affaire *Gaygusuz*, n° 39/1995/545/631.

La Commission propose le libellé suivant :

La liberté de circulation et de séjour peut être accordée, conformément au traité instituant la Communauté européenne, aux ressortissants des pays tiers résidant légalement sur le territoire d'un État membre.

2. QUESTIONS DE REDACTION

• Article 3. Droit à l'intégrité de la personne

Étant donné la nouvelle rédaction de l'article 49, qui établit une nette distinction entre droits et principes contenus dans la Charte, la Commission considère que, pour des motifs de cohérence de rédaction, il convient désormais de distinguer clairement entre droits subjectifs et principes objectifs dans la Charte, et par conséquent d'éviter le mot "principes" là où on vise en réalité des droits subjectifs.

La Commission propose le libellé suivant:

Dans le cadre de la médecine et de la biologie, doivent notamment être respectés:

- *le consentement libre et éclairé de la personne concernée,*
- *l'interdiction des pratiques eugéniques, notamment celles qui ont pour but la sélection des personnes,*
- *l'interdiction de faire du corps humain et de ses parties une source de profit,*
- *l'interdiction du clonage reproductif des êtres humains.*

• Article 11. Liberté d'expression et d'information

La Commission s'interroge sur la formule "la liberté d'information" au 2ème paragraphe. Vu que le premier paragraphe consacre déjà la "liberté de recevoir ou de communiquer des informations", ou bien cette formule est un pléonasme, ou bien elle a une signification supplémentaire. Dans la dernière hypothèse, la Commission s'interroge si la signification de cette formule pourrait être celle d'une "freedom of information", c'est-à-dire le droit des individus à obtenir des informations des autorités publiques, à savoir ici des institutions communautaires. Interprétée d'une telle manière, cette formule pourrait non seulement avoir des conséquences pratiques graves pour le fonctionnement de la Commission, mais serait aussi clairement en conflit avec l'article 40 "droit d'accès aux documents" de la Charte qui règle l'accès aux informations des institutions de manière exhaustive et en respectant soigneusement l'état du droit actuel contenu dans l'article 255 TCE.

La Commission propose donc de clarifier, dans les explications (doc. CONVENT 46) sous cet article, que la formule "liberté d'information" n'est pas à interpréter dans le sens évoqué ci-dessus mais vise uniquement à affermir la liberté notamment des journalistes dans les médias de recevoir et communiquer des informations.

- **Article 35. Protection de l'environnement**

On pourrait encore améliorer la rédaction actuelle, pour mieux refléter les objectifs de la politique en matière d'environnement tels que fixés dans le TUE et le TCE, en y ajoutant une référence à la santé humaine. Il est certes probable que la protection de la santé humaine est déjà implicitement couverte par l'article 35 dans sa version actuelle, mais il paraît opportun d'exprimer cette notion de façon expresse, eu égard à son importance.

Le libellé proposé est donc le suivant :

La protection et la conservation d'un cadre de vie de qualité, ainsi que l'amélioration de la qualité de l'environnement et la protection de la santé des personnes, en tenant compte du principe du développement durable, sont assurées dans toutes les politiques de l'Union.

- **Article 39. Droit à une bonne administration**

Au 2ème tiret du paragraphe 2 de cet article, la formule "secret professionnel des affaires" est erronée car elle mélange deux concepts juridiques distincts, l'un étant le "secret des affaires", ce qui est la notion classique utilisée fréquemment dans la jurisprudence en matière de droit de concurrence, et l'autre le secret professionnel, concept plus large utilisé à l'article 287 TCE et qui vise tout ce dont un fonctionnaire d'une institution communautaire a pris connaissance en fonction du service (dont, le cas échéant des informations reçues par des entreprises qui peuvent faire partie du secret des affaires).

Il ne s'agit là probablement que d'une erreur de frappe, omettant le mot "et".

La Commission propose le libellé suivant :

- le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret professionnel et des affaires ;

Afin d'éviter tout malentendu, la Commission propose par ailleurs de clarifier dans les explications (doc. CONVENT 46) que le terme "secret professionnel" correspond à celui utilisé dans l'article 287 TCE et qu'il vise dès lors le secret professionnel des fonctionnaires communautaires.

- **Article 47. Principes de la légalité et de la proportionnalité des délits et des peines**

Les mots "d'après le droit international" à la fin du deuxième paragraphe de cet article posent un problème rédactionnel. L'intention poursuivie par le Présidium avec cette formule est certes compréhensible: Il s'agit de moderniser le libellé de l'article 7.2 de la CEDH qui parle des "principes généraux de droit reconnus par les nations civilisées". Mais contrairement à l'intention du Présidium, le libellé actuel ne laisse pas apparaître que le paragraphe 2 de cet article constitue une *dérogation* du paragraphe 1, vu que ce dernier paragraphe vise, lui aussi, "une infraction d'après le droit national ou le droit international".

La Commission propose le libellé suivant :

Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par l'ensemble des nations."

Ce libellé correspond à celui de l'article 15.2 du Pacte international relatif aux droits civils et politiques)

- **Article 48. Droit à ne pas être jugé ou puni pénalement deux fois pour un même délit**

Le libellé actuel de cet article pourrait être compris en ce sens qu'un jugement définitif rendu dans n'importe quel pays tiers pourrait empêcher toute poursuite pénale dans un Etat membre.

Pour éviter ce malentendu, il convient d'insérer, après le mot "condamné", les mots "**dans l'Union européenne**".

VOGGENHUBER + BOUMEDIENE

Herrn Bundespräsident a.D.
Prof. Dr. Roman Herzog
Präsident des EU-Grundrechtskonvents
e-mail: fundamental.right@consilium.eu.int

Herrn
Inigo Mendez de Vigo MdEP
Vorsitzender der Delegation des
Europäischen Parlaments im
EU-Grundrechtskonvents
e-mail: Jean-Paul.Jacque@consilium.eu.int

31. August 2000

Allgemeine Bemerkungen zum Entwurf der Charta der Grundrechte der Europäischen Union/CONVENT 45 vom 28.Juli 2000

Sehr geehrter Herr Professor Herzog,
Sehr geehrter Herr Kollege Mendez de Vigo,

Zu dem oben angeführten Vorentwurf möchte ich unter Beschränkung auf das Wesentliche folgende Anmerkungen machen und verweise darüberhinaus auf meine Unterstützung für die gemeinsame Stellungnahme von Herrn Prof. Meyer.

I Präambel.

Die Bürgerinnen und Bürger der Europäischen Union sind entschlossen, unter Wahrung ihrer kulturellen und staatlichen Eigenständigkeit eine immer engere Union zu errichten, sie auf die Unantastbarkeit der Würde des Menschen und die Prinzipien der Demokratie und der Rechtsstaatlichkeit zu gründen, darin frei unter Gleichen, solidarisch, in ökologischer Verantwortung, in äusserem und innerem Frieden zusammenzuleben und erklären die Achtung und den Schutz dieser Prinzipien zur Grundlage allen Handelns der Union in der Welt.

Artikel 2 Recht auf Leben

Die überragende Mehrheit des Konvents hat sich für eine Ächtung der Todesstrafe ohne die Einschränkungen der EMRK ausgesprochen. Dem wurde im Konvent 46 nicht Rechnung getragen.

Artikel 3 Recht auf Unversehrtheit

Der Artikel ist unvollständig, da er weder das Recht jeder Person auf Kenntnis aller Daten über ihre Gesundheit und ihr Erbgut noch das Verbot des Heranziehens von Gendiagnosen in Versicherungs- und Beschäftigungsverhältnissen enthält. Diese in einigen Ländern schon praktizierte Vorgehensweise verstösst gegen den Gleichheitsgrundsatz und die informationelle Selbstbestimmung und müsste in der Charta auf jedem Fall enthalten sein.

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Artikel 9 Recht eine Ehe einzugehen und eine Familie zu gründen

In Artikel 9 wird die gesellschaftliche Dynamik hin zu einer Vielfalt von Lebensformen nicht berücksichtigt. Dies entspricht nicht der Diskussion im Konvent, in der sich die Mehrheit für eine möglichst weite, moderne Auslegung des Familienbegriffes, der das Individualrecht auf die Wahl der Lebensform und Lebensgemeinschaft gewährleistet, ausgesprochen hat.

Artikel 15 Berufsfreiheit

Die Beschränkung des Anspruchs auf gleiche Arbeitsbedingungen wie Unionsbürger auf Staatsangehörige dritter Länder die sich legal in der Union aufhalten steht im Widerspruch zu Artikel 5 und bedeutet faktisch ein Ausbeutungsverbot nur bei legal ansässigen Drittstaatsangehörigen. Das Wort legal soll im Artikel 15, Abs.3 gestrichen werden.

Artikel 18 Asylrecht

Im Artikel 18 "Asylrecht" findet sich kein individuelles Recht und keine individuellen Rechtsgarantien für Asylsuchende in der Europäischen Union. Die Verankerung des Asylrechts als Individualrecht war von zahlreichen Konventsmitgliedern gefordert worden und die vorliegende Formulierung wird diesem Ansinnen nicht gerecht. Zusätzlich sollte das Recht auf Leben in der Familie aufgenommen werden, wie es ja auch schon Teil der Europäischen Menschenrechtskonvention ist. Die EU-Verträge können niemals den Wesensgehalt von Menschenrechten legitim einschränken, sondern haben sich Gegenteil an der Einhaltung der Grundrechte messen zu lassen. Die horizontale Bestimmung "gemäß dem Vertrag zur Gründung der Europäischen Gemeinschaft" ist daher systemwidrig.

Kapitel IV Solidarität

Das Kapitel Solidarität sollte umbenannt werden in Recht auf soziale Sicherheit.

Die sozialen Grundrechte sind im Chartaentwurf nur unzureichend gewährleistet. Weder ein Recht auf Arbeit, noch wesentliche Grundrechte bei der Arbeit, noch ein Recht zu arbeiten, nicht einmal das Recht auf Mindestlohn/Grundsicherung wie von zahlreichen Konventionsmitgliedern vorgeschlagen und wie in den ILO-Konventionen festgelegt und garantiert, fanden eine Aufnahme.

Die unzureichende Anerkennung geltender sozialer Grundrechte im Völkerrecht bzw. den gemeinsamen Verfassungstraditionen der Mitgliedsländer führt zu einer inakzeptablen Schiefelage der gesamten Charta.

Artikel 35 Umweltschutz

Die aktuelle Fassung des Artikels 35 verpflichtet lediglich die Union, Umweltschutznormen zu erlassen. Die Pflicht korrespondiert nicht mit einem individuellen Recht auf Umweltschutz. Es ist unverständlich, warum das Präsidium nicht den zahlreichen Änderungsanträgen einer Mehrheit der Konventsmitglieder Rechnung getragen hat, die die nachdrückliche Formulierung dieses Artikels im Sinne eines Rechtsanspruches einforderten. Zudem sollte das Recht jeder Person, allein oder gemeinsam mit anderen, an Entscheidungen die ihre unmittelbare Umwelt betreffen, mitzuwirken in den Artikel aufgenommen werden.

Ein Artikel zu den Rechten von Minderheiten, der von der Mehrheit der Konventsmitglieder gefordert wurde findet sich im Entwurf 45 der Charta nicht wieder.

Dazu möchte ich noch einmal auf den Änderungsantrag Voggenhuber/Buitenweg hinweisen der das Recht als Individualrecht formuliert und wie folgt lautet:

- (1) Jede Person, die einer Minderheit angehört, hat das Recht gemeinsam und öffentlich mit anderen Angehörigen ihrer Gruppe ihre eigene Sprache zu gebrauchen und ihre eigene Kultur zu pflegen.
- (2) Angehörige von Gruppen, die faktisch benachteiligt werden, haben Anrecht auf besondere Förderung.

Artikel 40 Recht auf Zugang zu Dokumenten

Der Artikel ist insofern unvollständig da er nur das Recht auf Zugang zu Dokument nicht aber das Recht auf Auskunft enthält und sollte dementsprechend geändert werden.

Zu Art 50 Tragweite der garantierten Rechte

Artikel 50, Absatz 1 ist rechtsstaatlich nicht tolerabel. Die Einschränkungen der Grundrechte auf Basis "anderer legitimen Interessen in einer demokratischen Gesellschaft" ist willkürlich und muss ersatzlos gestrichen werden. Zum zweitem fehlt die Formulierung des Gebots dass die Möglichkeit Grundrechte einzuschränken niemals ihren Wesensgehalt verletzen darf.

Mit freundlichen Grüßen

Johannes Voggenhuber
Alima Boumediene-Thiery

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Strasbourg, le 22 août 2000

Observations des représentants du Conseil de l'Europe sur le projet de Charte du Présidium (Convent 45)

Notre souci principal étant de veiller à ce que les droits que la Charte emprunte à la Convention européenne des droits de l'homme (CEDH) ne donnent pas lieu à des interprétations divergentes voire contradictoires, selon qu'ils sont interprétés par la Cour européenne des droits de l'homme ou la Cour de justice de Luxembourg, nous estimons que le texte proposé rencontre largement cette préoccupation, en attendant une décision définitive sur sa nature juridique. Le mérite en revient à la Convention et à son Présidium, qui se sont montrés sensibles aux remarques et propositions exprimées tout au long des travaux par les observateurs du Conseil de l'Europe et ont apporté au texte des modifications propres à assurer la cohérence et l'harmonie entre la Charte et la CEDH.

C'est vrai en particulier des dernières modifications proposées par le Présidium, tel le nouveau paragraphe 3 de l'article 50, qui a le mérite de dissiper, en principe, tout malentendu quant au sens et à la portée des droits de la Charte correspondant à des droits garantis par la CEDH.¹ Encore faudra-t-il identifier les cas où la Charte entend assurer une protection « plus élevée ou plus étendue ». C'est ici que les explications au texte, telles qu'elles sont proposées dans le document Convent 46, rendront de grands services. Il faudra donc veiller à les rendre aussi accessibles aux lecteurs que le texte lui-même.

De son côté, la référence du Préambule à la jurisprudence de la Cour européenne des droits de l'homme, en confirmant le principe selon lequel l'interprétation d'autorité s'incorpore au texte interprété, dissipera tout malentendu dans l'identification des « droits correspondant à des droits garantis par la CEDH ». Grâce à elle, il est clair que le renvoi à la CEDH couvre aussi les droits reconnus dans la jurisprudence. De la sorte, la Convention fait œuvre de prévoyance, en assurant dès maintenant la cohérence et l'harmonie entre les développements futurs de la CEDH et de la Charte, évitant ainsi de briser la dynamique commune de ces deux textes.

Le renvoi à la jurisprudence sera essentiel aussi pour l'application de l'article 51 de la Charte, qui fixe le niveau de protection minimum offert par la Charte, notamment par référence à la CEDH. Ici aussi, il importe en effet d'assurer que ce niveau minimum suive tout mouvement ascendant de la jurisprudence.

Cela étant, toutes les précautions de rédaction ne pourront pas empêcher que le débat sur la nature de la Charte soulève un certain nombre de problèmes qui, s'ils ne trouvent pas de solution satisfaisante, seront source potentielle de dérapages dans l'interprétation des droits consacrés à la fois par la Charte et la CEDH, en particulier dans l'hypothèse où la Cour

¹ L'article 50 § 3 parle toutefois de droits ayant un sens et une portée *similaires* à ceux conférés par la CEDH, ce qui semble indiquer que certaines divergences sont permises. Or l'article 50 § 3 ne permet que deux hypothèses : *la même* protection que la CEDH ou une protection *plus élevée*. Cette dernière étant couverte par l'article 50 § 3 *in fine*, la première doit se voir reflétée dans la première partie de la disposition, qui devrait par conséquent se lire ainsi : « (...) leur sens et leur portée sont *les mêmes* que ceux que leur confère la CEDH (...) ». Cela éviterait tout doute inutile en la matière.

de justice aurait à se prononcer sur des questions non encore soumises à Strasbourg. Pourquoi ?

Parce que la Charte, appliquée et interprétée dans le cadre de l'Union européenne, c'est-à-dire dans le cadre d'un Traité avec ses objectifs propres et englobant par ailleurs de nouvelles compétences dans les domaines de l'immigration, de l'asile et de la coopération judiciaire et policière, ne manquera pas d'engendrer une dynamique qui ne devrait pas rester sans conséquences sur l'interprétation harmonieuse et cohérente des droits fondamentaux. L'organe créant la fonction, il est hautement probable que la Charte générera un contentieux préjudiciel incomparablement plus élevé que celui qui est actuellement porté devant la Cour de justice. Cela augmentera dans la même mesure les risques de voir des décisions de la Cour de justice contredites ultérieurement par la Cour de Strasbourg, au titre de la responsabilité des Etats membres tenus par ailleurs de respecter et d'appliquer le droit communautaire. Dans quel pétrin risque-t-on alors de mettre un Etat appelé à appliquer un arrêt de la Cour de justice qui se trouve en porte-à-faux avec un arrêt ultérieur de la Cour de Strasbourg ?

C'est dire que, dans la perspective d'une intégration harmonieuse de la Charte parmi les autres systèmes internationaux de protection des droits fondamentaux, le débat sur la nature de la Charte remettra à l'ordre du jour la question de l'adhésion des Communautés européennes et/ou de l'Union à la CEDH, selon des modalités à convenir, ou du moins celle d'un mécanisme de consultation préalable entre les deux Cours, cautionné par les Etats membres.²

Tant que ces questions ne seront pas résolues, le Conseil européen, s'il ne veut courir le risque de favoriser l'insécurité juridique, ne sera guère en mesure de se prononcer définitivement sur la nature de la Charte. Certes, il n'entre pas dans le mandat de la Convention de s'exprimer sur cette question. Cela ne devrait pas pour autant la dispenser de voir et de signaler à l'adresse du Conseil européen, sous une forme appropriée, les problèmes tels qu'ils se posent.

Marc Fischbach
Hans-Christian Krüger

² Voir à cet égard notre contribution du 21 février 2000 (Contrib 29, Charte 4136/00).

Strasbourg, 22 August 2000

**Observations of the Council of Europe representatives
on the draft Charter proposed by the Praesidium (Convent 45)**

Our primary concern is to ensure that the rights taken by the Charter from the European Convention on Human Rights (ECHR) are not interpreted in inconsistent or even contradictory ways depending on whether it is the European Court of Human Rights or the Court of Justice in Luxembourg that is construing them. We consider that the proposed text amply deals with that concern, pending a final decision on its legal nature. The Convention and the Praesidium must take the credit for that. They have heeded the comments and proposals made throughout the preparatory work by the observers of the Council of Europe and made the necessary amendments to ensure consistency and harmony between the Charter and the ECHR.

That is true in particular of the latest amendments proposed by the Praesidium such as the new paragraph 3 of Article 50, which has the merit of dispelling, in principle, any doubt over the meaning and scope of the Charter rights corresponding to the rights guaranteed by the ECHR¹. It will, however, still be necessary to identify the instances in which it is intended that the protection afforded by the Charter will be “greater or more extensive”. It is in this sphere that the commentary on the text, as proposed in the Convent 46 document, will prove very useful. It should therefore be made as accessible to readers as the text itself.

By confirming the principle that authoritative interpretations of an instrument are incorporated into the instrument itself, the reference in the preamble to the case-law of the European Court of Human Rights will clear up any misapprehension regarding identification of the “rights which correspond to rights guaranteed by the [ECHR]”. That reference makes it clear that the ECHR rights also include rights recognised by the case-law. By including it, the Convention has shown the foresight to ensure at the outset that future developments regarding the ECHR and the Charter will be consistent and harmonious and has thus avoided destroying the common dynamic of these two instruments.

The reference to the case-law will also be vital for the application of Article 51 of the Charter, which sets the minimum level of protection provided by that instrument, notably by reference to the ECHR. Here too it is important to ensure that the minimum level rises to match any enhanced protection afforded by the case-law.

Nevertheless, no amount of careful drafting can prevent the debate on the nature of the Charter posing a number of problems which, unless satisfactorily resolved, will prove a potential source of error in the interpretation of the rights embodied in both the Charter and

¹ Article 50 § 3 refers, however, to rights that have a *similar* meaning and scope to those conferred by the ECHR, which seems to suggest that divergences are permitted. Yet Article 50 § 3 allows of only two possibilities: *the same* protection as that afforded by the ECHR, or *greater* protection. As the latter possibility is covered by Article 50 § 3 *in fine*, the former must be reflected in the first part of the provision, which, for the avoidance of any unnecessary doubt on the subject, should consequently read as follows: “... the meaning and scope of those rights shall be *the same* as those conferred on them by the [ECHR]...”.

the ECHR, in particular if the Court of Justice finds itself called upon to decide issues that have not previously been before the Court in Strasbourg. Why?

Because the Charter, when applied and interpreted within the context of the European Union, that is to say in the framework of a Treaty with its own objectives and including new powers in the fields of immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references for preliminary rulings than the Court of Justice receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will be at variance with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very awkward position.

As regards the Charter's being harmoniously combined with the other international systems of protection of fundamental rights, that point shows to what extent the debate about the nature of the Charter will restore to the agenda the question of accession by the European Communities and/or the Union to the ECHR, under arrangements to be agreed, or at least the idea of a preliminary consultation mechanism, recognised by the member States, between the two Courts.²

As long as these questions remain unanswered the European Council, if it wishes to avoid the risk of creating legal uncertainty, will scarcely be in a position to reach a final decision on the nature of the Charter. Admittedly, it is not part of the Convention's terms of reference to state its views on that question. However, that should not dispense it from identifying and pointing out to the European Council, in appropriate form, the problems as they exist.

Marc Fischbach
Hans-Christian Krüger

² See in this connection our contribution dated 21 February 2000 (Contrib 29, Charter 4136/00).

COMITE DES REGIONS

Monsieur Roman HERZOG
Président de la Convention de la Charte
des Droits fondamentaux de l'Union européenne
CONSEIL DE L'UNION EUROPEENNE
Rue de la Loi 170
1048 Bruxelles

Bruxelles, le
P/CAB D/110294/00

Monsieur le Président,

Je vous remercie de m'avoir fait parvenir le projet de Charte des droits fondamentaux de l'Union européenne tel que proposé par le Présidium et dont j'ai pris connaissance avec la plus grande attention.

Comme vous le savez, le Comité des régions a suivi en tant qu'observateur les travaux de la Convention et a assisté avec beaucoup d'intérêt à ses réunions informelles. Il a ainsi eu l'occasion d'apprécier la qualité des membres de la Convention et le niveau élevé de leurs discussions.

A la suite de son avis sur la Charte des droits fondamentaux de l'Union européenne examiné en session plénière les 16 et 17 février 2000, le Comité des régions s'est autorisé à présenter des amendements qui ont rejoint certains de ceux qui étaient proposés par les membres de la Convention et qui figurent dans le texte du projet.

Toutefois, et alors même qu'il a fait l'objet d'un avis très favorable lors de l'audition organisée par le Comité des régions le 4 juillet dernier à laquelle ont participé les associations nationales et européennes représentatives des collectivités locales, l'amendement présenté par le Comité sur la nécessité de mentionner les autorités régionales et locales parmi les collectivités qui mettent en oeuvre les politiques de l'Union n'a pas été retenu.

Cette proposition d'amendement consistait à modifier l'alinéa 1 de l'article 49 comme suit :

"Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité ainsi qu'aux Etats membres et à leurs autorités territoriales

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dans le cadre des règles institutionnelles de chaque Etat membre", le reste de l'article demeurant inchangé.

Il m'a été indiqué qu'il n'était pas possible qu'un texte émanant de l'Union prévoie une telle mention dès lors qu'il était fait état des Etats membres et ce, en se référant à l'article 230 (ancien article 173) du Traité sur l'Union européenne et à une décision de la Cour de Justice des Communautés européennes qui stipule dans son ordonnance du 21 mars 1997 :

"Il ressort de l'économie générale des traités que la notion d'Etat membre, au sens des dispositions institutionnelles et, en particulier, de celles portant sur les recours juridictionnels, ne vise que les seules autorités gouvernementales des Etats membres de communautés européennes et ne saurait être étendue aux gouvernements des régions ou de communautés autonomes et ce, quelle que soit l'étendue des compétences qui leur sont reconnues".

Je ne méconnaissais pas l'importance de cette ordonnance. Toutefois, je note que ces termes sont en partie contredits par une décision du Tribunal (5e alinéa Chambre élargie) du 30 avril 1998 qui stipule :

"S'il est vrai que les autorités régionales ne sont pas visées par la notion d'Etat membre au sens de l'article 173, 2e alinéa, elles doivent, en revanche, dès lors qu'elles jouissent de la personnalité juridique en vertu du droit national, être considérées comme des personnes morales au sens de l'article 173, 4e alinéa du Traité".

En l'occurrence, il me semble que le problème ne réside pas dans la reconnaissance de la capacité d'une autorité territoriale à former un recours devant la Cour de Justice des Communautés européennes mais de prendre acte de la réalité du rôle des autorités territoriales dans l'application des politiques relevant de la compétence de l'Union, rôle qui est reconnu dans la même ordonnance de la Cour du 27 mars 1997.

C'est le cas dans tous les Etats membres avec les différences inhérentes à leur organisation interne. Cette réalité qui ne peut être niée ne va pas à l'encontre du droit communautaire. Il apparaît dès lors normal et utile d'incorporer la mention de cette réalité dans l'un des articles d'application de la Charte. Elle rappelle aux autorités régionales et locales les obligations qui leur incomberont du fait de la Charte dès lors que celles-ci mettent en oeuvre les politiques de l'Union.

Je me permettrai d'ajouter qu'il m'apparaît important que ces mêmes autorités de proximité se mobilisent sur la mise en oeuvre de la Charte afin que les droits qu'elle formule pénètrent les esprits des citoyens de l'Union.

Je vous prie de bien vouloir examiner la proposition du Comité des régions soutenue par l'ensemble des associations des collectivités régionales et locales concernant cette modification à l'article 49 du projet de Charte.

Je vous prie de croire, Monsieur le Président, à l'assurance de ma haute considération.

J. CHABERT

Annexe

**NOTE DU COMITE DES REGIONS
SUR LA CHARTE DES DROITS FONDAMENTAUX DE L'UNION
EUROPEENNE
CONCERNANT LE ROLE DES AUTORITES REGIONALES ET LOCALES**

1 - EXPOSE DU PROBLEME

Le Comité des régions souhaite que les autorités régionales et locales soient mentionnées dans l'article d'application de la Charte des droits fondamentaux de l'Union européenne, dès lors qu'elles doivent mettre en oeuvre certaines politiques relevant de la compétence de l'Union.

Les rédacteurs de la Charte et notamment le Secrétariat général du Conseil de l'Union européenne considèrent qu'elles n'ont pas à être mentionnées dès lors que les Etats membres le sont. Pour ce faire, ils s'appuient sur l'article 230 (ancien article 173) du Traité sur l'Union européenne et sur une décision de la Cour de Justice des Communautés européennes qui stipule dans son ordonnance du 21 mars 1997¹ :

"Il ressort de l'économie générale des traités que la notion d'Etat membre au sens des dispositions institutionnelles et, en particulier de celles portant sur les recours juridictionnels, ne vise que les seules autorités gouvernementales des Etats membres de communautés européennes et ne saurait être étendue aux gouvernements des régions ou de communautés autonomes quelle que soit l'étendue des compétences qui leur sont reconnues. Admettre le contraire conduirait à porter atteinte à l'équilibre institutionnel prévu par les traités qui déterminent notamment les conditions suivant lesquelles les Etats membres, c'est-à-dire les Etats parties aux traités institutifs et aux traités des adhésions, participent au fonctionnement des institutions communautaires. Les communautés européennes ne peuvent, en effet, comprendre un nombre d'Etats membres supérieur à celui des Etats entre lesquels elles sont instituées."

2 - DISCUSSION

Dans ce problème, il ne s'agit pas de reconnaître la capacité d'une autorité territoriale à former un recours devant la Cour de Justice des Communautés européennes mais de prendre acte du fait que les autorités territoriales assurent le respect des règles du droit communautaire dans le cadre de l'application de certaines politiques relevant de la compétence de l'Union.

¹ affaire C95-97 : Région wallonne contre la Commission des Communautés européennes

A cet égard, il est à noter que cette faculté a été reconnue par l'arrêt du Tribunal (5e Chambre élargie) du 30 avril 1998² :

"S'il est vrai que les autorités régionales ne sont pas visées par la notion d'Etat membre au sein de l'article 173, 2e alinéa, elles doivent, en revanche, dès lors qu'elles jouissent de la personnalité juridique en vertu du droit national, être considérées comme des personnes morales au sens de l'article 173, 4e alinéa du Traité."

L'ordonnance de la Cour du 21 mars 1997 précise, en outre, que :

"S'il incombe à toutes les autorités des Etats membres qu'il s'agisse d'autorités du pouvoir central de l'Etat, d'autorités d'un Etat fédéré ou d'autres autorités territoriales, d'assurer le respect des règles du droit communautaire dans le cadre de leurs compétences, il n'appartient pas aux institutions communautaires de se prononcer sur la répartition des compétences par les règles institutionnelles de chaque Etat membre et sur les obligations qui peuvent incomber respectivement aux autorités de l'Etat fédéral et à celle de l'Etat fédéré."

De ces diverses jurisprudences, il résulte que la mention des autorités régionales et locales parmi les autorités compétentes pour l'application de la Charte dans le cadre de la mise en oeuvre des compétences de l'Union se justifie par la reconnaissance par l'Union de la capacité des autorités territoriales, dès lors qu'elle provient des règles institutionnelles de chaque Etat membre, d'assurer le respect des règles du droit communautaire et qu'elle n'apparaît pas incompatible avec les conditions mises à leur capacité de former un recours devant la Cour de justice des Communautés européennes.

Dans le cas où une personne physique formerait un recours devant la Cour de Justice des Communautés européennes contre une décision qui la concernerait directement au titre de la Charte des droits fondamentaux de l'Union européenne et qui résulterait de l'action d'une autorité territoriale infraétatique, il appartiendrait à la Cour de Justice des Communautés européennes de rappeler à l'Etat membre qu'il lui appartient de prendre les mesures pour faire respecter les termes de la Charte. En effet, en application de l'article 226 (anciennement 169) du Traité sur l'Union européenne, l'Etat ne peut invoquer le comportement de ses collectivités territoriales pour contester l'infraction qui lui serait reprochée.

Ainsi, la mention des autorités régionales et locales à l'article 49 de la Charte des droits fondamentaux de l'Union européenne ne va pas à l'encontre du droit communautaire. De

² affaire T214/95 : Région flamande contre la Commission des Communautés européennes

surcroît, elle présente l'avantage de rappeler aux dites autorités les obligations qui leur incombent du fait de la Charte, dès lors qu'elles mettent en oeuvre les politiques de l'Union.

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE
fundamental.rights@consilium.eu.int

Bruxelles, le 9 septembre 2000
Document multilingue

ADDENDUM A LA NOTE
A L'ATTENTION DES MEMBRES DE LA CONVENTION

OBSERVATIONS RECUES RELATIVES AU
DOCUMENT CHARTE 4422/00 CONVENT 45

Veillez trouver, pour information, la contribution de M. **OLSEN**, qui nous est parvenue seulement aujourd'hui, suite à un problème de transmission électronique.

Jean-Paul.Jaque@consilium.eu.int

Til hr. Braibant

København den 31. august 2000

Kære professor Braibant,

Må jeg indledningsvis complimentere præsidiets for det fremsendte charterudkast (Convent 45/46). Det har bragt os nærmere målet, men efter min mening er der endnu nogle skridt at tage. Derfor tillader jeg mig at fremsende tre generelle bemærkninger til udkastet samt i et bilag at nævne en række punkter, som jeg vil berøre under Konventets kommende gennemgang af udkastet.

Tre generelle bemærkninger.

1. Det bør klargøres, at de artikler, som kort udtrykker rettigheder, der følger af Den Europæiske Menneskerettighedskonvention, er identiske med disse rettigheder.

Her kunne man – som foreslået af mig i Contribution 281 – erstatte artikel 50 stk. 3 med følgende:

”Rettighederne i artiklerne ... skal forstås i overensstemmelse med de samme rettigheder garanteret af Den Europæiske Menneskerettighedskonvention som fortolket af Den Europæiske Menneskerettighedsdomstol.

Disse rettigheder finder udelukkende anvendelse over for en medlemsstat i det omfang den har tilsluttet sig Den Europæiske Menneskerettighedskonvention og dens tillægsprotokoller og under hensyn til de forbehold, som den pågældende medlemsstat har taget”.

Ved udtrykkeligt at henvise til hvilke artikler i charteret, der er de samme rettigheder, som de, der beskyttes i Den Europæiske Menneskerettighedskonvention, skabes der større (juridisk) klarhed over rækkevidden af bestemmelserne.

Man kunne også i artikel 50 stk. 3 fjerne ordene ”medmindre dette charter sikrer en højere eller mere omfattende beskyttelse” samt affatte den franske og engelske version (og muligvis de øvrige sprogversioner) af artikel 50, stk. 3, på følgende måde:

”I det omfang dette charter indeholder rettigheder svarende til dem, der er sikret ved den europæiske konvention til beskyttelse af menneskerettigheder og grundlæggende frihedsrettigheder, har de samme betydning og omfang som konventionens.”

I den franske tekst tales om, at: ”leurs sens et leur portée sont similaires...”. Dette kan give anledning til fortolkningstvivel, idet hensigten jo er at sikre, at de pågældende rettigheder har samme indhold som Den Europæiske Menneskerettighedskonvention. Det foreslås derfor at erstatte ”similaires” med ”identiques”. Tilsvarende i den engelske sprogversion tales om ”similar to those.”, der bør erstattes med ”same scope and meaning”.

Jeg forudsætter samtidigt, at den præambulære henvisning i nr. 5 til Den Europæiske Menneskerettighedskonvention og Menneskerettighedsdomstolens praksis opretholdes og jeg har med glæde noteret mig de forklaringer til artikel 50, der efterfølgende er udsendt i medfør af Convent 46.

2. ”Retten til Arbejde” og ”Retten til en Bolig” bør eksplicit nævnes i charteret under kapitel IV om solidaritet.

Retten til arbejde og retten til bolig genfindes i konventioner, som medlemsstaterne har tilsluttet sig i både FN- og Europarådsregi.

Jeg er i øvrigt enig i, at de økonomiske og sociale rettigheder er ligeværdige med de borgerlige og civile rettigheder.

De sociale og økonomiske rettigheder er ganske vist anderledes i deres karakter, idet de for hovedpartens vedkommende er udmøntet i national lovgivning, kollektive overenskomster eller ved tilslutning til FN's konvention om økonomiske, sociale og kulturelle rettigheder, og fordi de vanskeligt kan håndhæves ved domstolene. Det betyder imidlertid ikke, at de er af underordnet betydning.

Da charteret retter sig til EU's institutioner, indebærer de økonomiske og sociale rettigheder – som påpeget i Braibant-Meyer dokumentet – at institutionerne skal anerkende og respektere disse rettigheder og principper både i lovgivningsprocessen, og når der træffes konkrete afgørelse over for borgerne og virksomhederne.

3. Alle artikler i charteret skal formuleres i et kønsneutralt sprog.

Charteret bør formuleres i kønsneutral form og ikke - som det er tilfældet i flere artikler - henvide til han/ham.

A.

B.

C. BILAG

Bemærkninger jeg vil fremsætte under Konventets kommende møder.

Præambel:

Præambelens nr. 7 er ikke en præcis gengivelse af charterets indhold og bør derfor udgå eller omformuleres.

Til artikel 3:

Stk. 2 bør bringes i overensstemmelse med konventionen om menneskerettigheder og biomedicin.

Særligt pind. 2 om forbud mod racehygiejnisk praksis genfindes ikke præcist i den nævnte form i konventionen. Princippet's udformning i convent 45 efterlader således tvivl om rækkevidden af forbudet mod racehygiejnisk praksis.

Dette princip bør omformuleres i overensstemmelse med konventionen om menneskerettigheder og biomedicin.

Til artikel 5:

Jeg finder, jf. mit forslag i AMD 98 i convent 35, at det af forklaringerne til artiklen klart bør fremgå, at samfundstjeneste som et alternativ til frihedsstraf ikke er omfattet af begrebet ”tvangs- eller pligtarbejde”.

Til artikel 7:

Ordene ”fortroligheden af” bør udgå. I modsat fald kan bestemmelsen fortolkes som en ringere retsbeskyttelse end den, der følger af Den Europæiske Menneskerettighedskonventions artikel 8, stk. 1.

Til artikel 8:

Det foreslås at begrænse bestemmelsens ordlyd til følgende:

”Enhver har i overensstemmelse med fællesskabsretten ret til beskyttelse af personoplysninger, der vedrører den pågældende”.

Af forklaringerne bør det klart fremgå, at persondatadirektivet (Rådets og Parlamentets direktiv 95/46/EF) fastlægger de nærmere regler for beskyttelsens omfang.

Til artikel 11:

Stk. 2 bør udgå, da bestemmelsens rækkevidde er uklar.

Til artikel 12:

I stk. 1 bør sætningen efter kommaet (”navnlig når det gælder ...”) udgå, idet den skaber tvivl om, hvorvidt der er tilstræbt en forbedring i forhold til artikel 11 i Den Europæiske Menneskerettighedskonvention.

I øvrigt kunne stk. 2 udgå, da dette mere har karakter af en tilkendegivelse.

Til artikel 13:

Denne bestemmelse er højst uklar. Forskningen er ikke fri for begrænsninger. Det foreslås at lade bestemmelsen udgå. Rettigheden er allerede tildels omfattet af bestemmelsen om ytringsfrihed som fortolket af Den Europæiske Menneskerettighedsdomstol vedrørende Menneskerettighedskonventions artikel 10.

Til artikel 14:

I stk. 1 bør indsættes ”grundskoleundervisning” således, at bestemmelsen alene omfatter gratis obligatorisk grundskoleundervisning.

Ordet ”pædagogiske” bør udgå i stk. 2.

Forklaringen til stk. 2 om ”frihed til at oprette uddannelsesinstitutioner” kan opfattes som om der gælder et særligt etableringsfrihedsprincip på dette område. Jeg finder, at man bør begrænse omtalen af etableringsfriheder til artikel 16 om den generelle frihed til at oprette og drive virksomhed.

Til artikel 15:

Stk. 3 bør formuleres således:

”Tredjelandstatsborgere, der opholder sig lovligt på medlemsstaternes område, og som i overensstemmelse med de nationale regler har ret til at tage arbejde, har ret til samme arbejdsvilkår som unionsborgere”.

Baggrunden herfor er, at tredjelandstatsborgere skal have tilladelse efter national ret til at tage arbejde i medlemsstaten, førend de har ret til samme arbejdsvilkår som unionborgere.

Til artikel 17:

Som jeg tidligere har givet udtryk for, bør bestemmelsen nøje gengive ordlyden i artikel 1 i 1. tillægsprotokol til Den Europæiske Menneskerettighedskonvention.

Alternativt kunne bestemmelsen erstattes med følgende korte tekst:

”Enhver fysisk eller juridisk person har ret til respekt for sin ejendom”.

I forklaringerne til bestemmelsen bør der i så fald henvises til ordlyden i 1. tillægsprotokol.

Til artikel 19:

Jeg finder, at der i forklaringerne til stk. 2 bør henvises til Genève-konventionen af 28. juli 1951 med henblik på en opregning af de øvrige omstændigheder, hvorunder der ikke kan ske udvisning.

Til artikel 21:

Jeg finder det ønskeligt, at der i forklaringen til stk.1 gøres opmærksomt på, at bestemmelsen ikke er til hinder for positive særforanstaltninger med henblik på at rette op på en skævhed, når disse foranstaltninger er objektivt begrundet og respekterer princippet om proportionalitet.

Til artikel 24:

Det bør understreges, at integration af mennesker med handicap gælder deltagelse ”i alle dele af samfundslivet”.

Til artikel 32:

Stk.2 kan forekomme overflødig, idet rettigheden allerede følger af ligebehandlingsprincippet i artikel 21.

Bestemmelsen bør under alle omstændigheder omformuleres således, at rettigheden på samme måde som i stk. 1 og 3 gælder i overensstemmelse med ”de bestemmelser, der er fastsat ved EF-lovgivningen og medlemsstaternes lovgivning og praksis”.

Stk. 3 kan forekomme specifik og bør generaliseres, da også andre forhold end social bistand og boligstøtte kan bidrage til at sikre den enkelte en værdig tilværelse. Da retten til en bolig bør

indgår i charteret, som jeg har argumenteret for under mine generelle bemærkninger, kan den eksplicitte omtale af boligstøtte udgå.

II. Til artikel 34:

Bestemmelsen ser ud til at gå videre end EF-traktatens 16 og bør enten udgå eller bringes i overensstemmelse med sidstnævnte bestemmelse.

Til artikel 35:

Bestemmelsen bør iagttage og sikre, at kravet om "et højt beskyttelsesniveau" på miljøområdet, som findes i EF-traktatens artikel 2 og artikel 174 gengives. Hermed bør der tillige lægges vægt på artikel 6 i EF-traktaten. Dette sikrer også parallelitet vedr. kravet om "et højt beskyttelsesniveau" inden for miljøbeskyttelse og forbrugerbeskyttelse (artikel 36):

Bestemmelsen bør derfor omformuleres til:

"Der sikres et højt niveau for miljøbeskyttelse samt forbedring af miljøkvaliteten under iagttagelse af principperne om bæredygtig udvikling, forsigtighed, forebyggende indsats, fortrinsvis indsats ved kilden, forureneren betaler og proportionalitet".

Til artikel 43:

Bestemmelsen bør gengive TEF art. 18:

"Enhver unionsborger har ret til at færdes og opholde sig frit på medlemsstaternes område med de begrænsninger og på de betingelser, der er fastsat i fællesskabslovgivningen og i gennemførelsesbestemmelserne her til".

Til artikel 45:

Stk. 1 vil jeg foretrække omformuleret til:

” Enhver, hvis rettigheder og friheder er blevet krænket, skal have adgang til effektive retsmidler”.

Henvisningen til ”en domstol” bør udgå, da adgangen til effektive retsmidler ikke alene skal relateres til en domstol, men også andre myndigheder.

I stk. 3 bør det tilføjes, at retten til retshjælp også er betinget af, at søgsmålet ikke er åbenbart ugrundet. I forklaringerne til stk.3 bør det fremgå, at retshjælpsprincippet på dette punkt er i overensstemmelse med de regler, der gælder for meddelelse af fri proces, når borgerne anlægger sag ved De Europæiske Fællesskabers Ret i Første Instans (jf. artikel 94, stk. 2, i Rettens procesreglement).

Til artikel 48:

Det bør klart fremgå af bestemmelsen eller de ledsagende forklaringer, at rettigheden begrænses af de undtagelsesmuligheder, der følger af konventionen af 25. maj 1987 mellem De Europæiske Fællesskabers medlemsstater om forbud mod dobbelt strafforfølgning (ne bis in idem-konventionen), artikel 2.

Disse undtagelsesmuligheder gentages i øvrigt sædvanligvis i EU-retsakter, jf. f.eks. konventionen om beskyttelse af De Europæiske Fællesskabers finansielle interesser (svigskonventionen), artikel 7.

Til artikel 49:

Artikel 49, stk. 1, 2.pkt. bør ændres således, at ordene ”og fremmer anvendelsen heraf” (”et en prouvement l’application”) udgår.

Baggrunden herfor er, at det er uklart om der hermed skabes en positiv handlepligt for Unionens institutioner og/eller medlemsstaterne.

Til artikel 50:

Stk. 2 bør også indeholde en henvisning til afledt fællesskabsret. Det foreslås derfor, at bestemmelsen udformes således:

”De rettigheder, der anerkendes i dette charter, og som er baseret på fællesskabstraktaterne eller traktaten om Den Europæiske Union, udøves på de betingelser og med de begrænsninger, der er fastlagt i disse traktater og i gennemførelsesbestemmelser hertil.”

For en god ordens skyld henledes opmærksomheden på de ovenfor anførte bemærkninger til bestemmelsens stk. 3

Det bør i øvrigt for klarhedens skyld i forklaringerne til artikel 50 fremgå, at der er visse bestemmelser fra Den Europæiske Menneskerettighedskonvention, hvorfra fravigelser ikke kan ske. Dette drejer sig om charterets artikler 2 (undtagen ved død som følge af lovlige krigshandlinger) 4, 5, stk. 1 og 47.

Med venlig hilsen

Erling Olsen
(den danske statsministers personlige repræsentant)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 14 September 2000 (18.09)
(OR. fr)

CHARTE 4470/00

CONVENT 47

NOTE FROM THE PRAESIDIUM

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium following the meeting held from 11 to 13 September 2000 and based on CHARTE 4422/00 CONVENT 45¹

PREAMBLE

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

Taking inspiration from its cultural, humanist and religious heritage, the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. **It places the individual at the heart of its activities, establishing the citizenship of the Union and creating an area of freedom, security and justice.**

¹ Changes to the Articles are in bold.

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

In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.

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

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

Each person is therefore **recognised as having** the rights and freedoms set out hereafter.

CHAPTER I DIGNITY

Article 1 Human dignity

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

Article 2 Right to life

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

Article 3 Right to the integrity of the person

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

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

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

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

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

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

Everyone has the right to liberty and security of person.

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

Everyone has the right to respect for his private and family life, his home **and** [...] his communications.

Article 8 **Protection of personal data**

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

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

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

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

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

Article 11 **Freedom of expression and information**

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

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

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

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

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

Article 14 **Right to education**

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

Article 15 **Freedom to choose an occupation**

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

Article 16 **Freedom to conduct a business**

The freedom to conduct a business is recognised.

Article 17 **Right to property**

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

Article 18 **Right to asylum**

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

Article 19 **Protection in the event of removal, expulsion or extradition**

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

CHAPTER III EQUALITY**Article 20** **Equality before the law**

Everyone is equal before the law.

Article 21 **Non-discrimination**

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

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

The Union shall respect cultural, religious and linguistic diversity.

Article 23 **Equality between men and women**

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

The principle of equality shall not prevent the maintenance or adoption of measures **in favour of** the under-represented sex.

Article 24 **The rights of the child**

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

Article 25 **Integration of persons with disabilities**

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

CHAPTER IV SOLIDARITY

Article 26 **Workers' right to information and consultation within the undertaking**

Workers **or** their representatives must **at all levels** be guaranteed information and consultation in good time on matters **which concern them** within the undertaking, in **the cases and under the conditions provided for by** Community law and national laws and practices.

Article 27 **Right of collective bargaining and action**

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

Article 28 **Right of access to placement services**

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

Article 29 **Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal.

Article 30 **Fair and just working conditions**

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

Article 31 **Prohibition of child labour and protection of young people at work**

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

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

Article 32 **Family and professional life**

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

Article 33 **Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in such events as pregnancy, illness, industrial accidents, dependency or old age, **and in the case of** loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. **Every person residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.**

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

Article 34 **Health care**

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

Article 35 **Access to services of general economic interest**

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

Article 36 **Environmental protection**

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

Article 37 **Consumer Protection**

Union policies shall ensure a high level of **consumer** protection.

CHAPTER V CITIZENSHIP

Article 38 **Right to vote and to stand as a candidate in elections to the European Parliament**

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

Article 39 **Right to vote and to stand as a candidate at municipal elections**

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

Article 40 **Right to good administration**

1. Every person has the right to have his affairs handled impartially fairly, **in accordance with the principle of the neutrality of public action (policy?)**, and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality **and** of business secrecy;
 - the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of such institutions and **must** have an answer in the same language.

Article 41 **Right of access to documents**

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

Article 42 **Ombudsman**

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

Article 43 **Right to petition**

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

Article 44 **Freedom of movement and of residence**

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

Article 45 **Diplomatic and consular protection**

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

CHAPTER VI JUSTICE**Article 46** **Right to an effective remedy and to a fair trial**

1. Everyone whose rights and freedoms **guaranteed by the law of the Union** are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 47 **Presumption of innocence and right of defence**

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

Article 48 **Principles of legality and proportionality of criminal offences and penalties**

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

Article 49 **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

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

CHAPTER VII GENERAL PROVISIONS

Article 50 **Scope**

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

Article 51 **Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by **law and respect the essential content of those rights and freedoms**. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be **the same as** those laid down by the said Convention unless this Charter affords greater or more extensive protection.

Article 52 **Level of protection**

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

Article 53 **Prohibition of abuse of rights**

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

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 20 September 2000 (21.09)
(OR. fr)****CHARTE 4470/00 COR 1****CONVENT 47****CORRIGENDUM 1 TO THE NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium following the meeting held from 11 to 13 September 2000 and based on CHARTE 4422/00 CONVENT 45

The following corrections should be made to the text:

Preamble

Replace last sentence with:

"The European Union therefore recognises the rights and freedoms set out hereafter".

Article 33

The correction to the second line of paragraph 1 does not apply to the English text.

Add at the beginning of paragraph 3: **"To combat social exclusion and poverty, ..."**.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 September 2000
(OR. fr)****CHARTE 4470/1/00
REV 1****CONVENT 47****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter after being finalised by the Legal Linguistic Working Party

PREAMBLE

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

Taking inspiration from its cultural, humanist and religious heritage, the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

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

In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.

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

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

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

CHAPTER I

DIGNITY

Article 1

Human dignity

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

Article 2

Right to life

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

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
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Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 5

Prohibition of slavery and forced labour

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

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

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

Article 8

Protection of personal data

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

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Right to marry and right to found a family

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

Article 10

Freedom of thought, conscience and religion

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

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1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
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2. Political parties at European level contribute to expressing the political will of the citizens of the Union.

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

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

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Article 15

Freedom to choose an occupation

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

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

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

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Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
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The Union shall respect cultural, religious and linguistic diversity.

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

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The rights of the child

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

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

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SOLIDARITY

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

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1. The family shall enjoy legal, economic and social protection.
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Social security and social assistance

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

Article 34

Health care

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

Article 35

Access to services of general economic interest

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

Article 36

Environmental protection

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

Article 37

Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 38

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

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

Article 39

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

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

Article 40

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly, in accordance with the principle of the neutrality of acts by public authorities, and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 41

Right of access to documents

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

Article 42

Ombudsman

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

Article 43

Right to petition

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

Article 44

Freedom of movement and of residence

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

Article 45

Diplomatic and consular protection

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

CHAPTER VI

JUSTICE

Article 46

Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 47

Presumption of innocence and right of defence

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

Article 48

Principles of legality and proportionality of criminal offences and penalties

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

Article 49

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

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

CHAPTER VII

GENERAL PROVISIONS

Article 50

Scope

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

Article 51

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention unless this Charter affords greater or more extensive protection.

Article 52

Level of protection

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

Article 53

Prohibition of abuse of rights

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

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 25 September 2000 (26.09)
(OR. fr)

CHARTE 4470/1/00 REV 1 ADD 1

CONVENT 47

ADDENDUM 1 TO THE NOTE FROM THE PRAESIDIUM

Subject: Draft Charter of Fundamental Rights of the European Union
— Addendum to the version of the complete text of the Charter finalised by the Legal Linguistic Working Party: **Proposals from the Praesidium following the meetings of the four component parts of the Convention, 25 September 2000**

Preamble:

Second paragraph: *Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity*

Third paragraph: *The Union contributes to the preservation and to the development of these common values*

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

Fifth paragraph: *..... as they result, in particular, from the constitutional traditions and international obligations common to the Member States*

Seventh paragraph: *The Union therefore recognises the rights, freedoms and principles set out hereafter.*

Article 11:

Paragraph 2: Freedom of the media and its pluralism shall be *respected*.

Article 12:

Paragraph 1: in political, trade union and civic matters, *which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*

Paragraph 2: Political parties at *Union* level contribute

Article 14:

[not applicable to the English translation of the text]

Article 15:

Title: Freedom to choose an occupation *and right to engage in work.*

Article 16:

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

Article 17:

Paragraph 1:The use of property may be regulated *by law* insofar as is necessary

Article 24a (new):

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

Article 26:

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time (delete "on matters which concern them within the undertaking") in the cases and under the conditions provided ...

Article 27:

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

Article 29:

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

Article 40:

Paragraph 1: Every person has the right to have his or her affairs handled impartially, fairly (delete "in accordance with the principle of the neutrality of acts by public authorities,") and within a reasonable time ...

Article 46:

(Delete paragraph numbers)

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

Everyone is entitled ...

Legal aid ...

Article 51:

Paragraph 1, second sentence: ... objectives of general interest being pursued by the Union (delete "other legitimate interests in a democratic society") or the need to protect ...

Paragraph 2: unchanged

Paragraph 3: Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. *This provision shall not prevent Union law affording more extensive protection.*

Article 52:

First sentence: ... in their respective fields of application, by *Union law and* international law and *by* international agreements ...

Editors' note to CHARTE 4471/00,
**Praesidium note: Text of the Explanations relating
to the Complete Text of the Charter as set out
in CHARTE 4470/00 + COR 1:**

The document CHARTE 4471/00 COR 1 contains a corrigendum to the German version of CHARTE 4471/00, which adds to its first page as first two sentences “Die vorliegenden Erläuterungen sind vom Präsidium in eigener Verantwortung formuliert worden. Sie haben keine Rechtswirkung, sondern dienen lediglich dazu, die Bestimmungen der Charta im Lichte der Erörterungen, die der Konvent angestellt hat, zu verdeutlichen.” The English and all other language versions of CHARTE 4471/00 did already contain this disclaimer in their various languages.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 20 September 2000 (22.09)
(OR. fr)

CHARTE 4471/00

CONVENT 48

NOTE FROM THE PRAESIDIUM

Subject : Draft Charter of Fundamental Rights of the European Union
– Text of the explanations relating to the complete text of the Charter as set out
in CHARTE 4470/00 CONVENT 47 + COR 1

These explanations have been prepared at the instigation of the Praesidium. They have no legal value and are simply intended to clarify the provisions of the Charter in the light of the discussions conducted by the Convention.

PREAMBLE

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

Taking inspiration from its cultural, humanist and religious heritage, the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, establishing the citizenship of the Union and creating an area of freedom, security and justice.

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

In adopting this Charter, the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.

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

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

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

CHAPTER I. DIGNITY

Article 1. Human dignity

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

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. For that reason the 1948 Universal Declaration of Human Rights enshrined this principle in its preamble as follows: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Consequently, Article 1 produces the following effects, inter alia:

- 1. None of the rights laid down in this Charter may be used to harm the dignity of another person.*
- 2. The dignity of the human person is part of the actual substance of the rights laid down in this Charter and must therefore be respected, even where a right is restricted.*

Article 2. Right to life

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

Explanation

1. *The content of paragraph 1 corresponds to the first sentence of Article 2(1) of the European Convention on Human Rights, which reads as follows:*
"1. Everyone's right to life shall be protected by law..."
The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the European Convention on Human Rights, which reads as follows:
"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.
" Article 2(2) of the Charter is based on that provision.

2. *Under Article 51 of the Charter, the right to life is clearly defined and the "negative" definitions appearing in the Convention must be regarded as also forming part of the Charter pursuant to Article 51(3). This right is defined as follows in the Convention:*
 - (a) *Article 2(2) of the European Convention on Human Rights:*
"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection."*

 - (b) *Article 2 of Protocol No 6 to the European Convention on Human Rights:*
"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

The provisions of this Article correspond to those of the Articles of the European Convention on Human Rights quoted above in accordance with Article 51(3) of the Charter. They therefore have the same meaning and scope as the latter.

Article 3. Right to the integrity of the person

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

Explanation

The principles of this Article are already included in the Convention on Human Rights and Biomedicine. The Charter does not set out to depart from those principles. The fact that only reproductive cloning is prohibited does not prevent the legislature from prohibiting other forms of cloning. It neither authorises nor prohibits other forms of cloning. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court signed in Rome.

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

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

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the European Convention on Human Rights, which has the same wording. In accordance with Article 51(3), its meaning and scope are therefore the same as those of that Article, which reads as follows: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Article 5. Prohibition of slavery and forced labour

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

Explanation

The right in Article 5(1) and (2) is the right corresponding to Article 4(1) and (2) of the European Convention on Human Rights, which has the same wording.

In accordance with Article 51(3) of the Charter, its meaning and scope are therefore the same as those of Article 4 of the Convention. Consequently:

1. *paragraph 1 may not be limited at all;*
2. *in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the European Convention on Human Rights. That provision reads as follows:*

"For the purpose of this article the term "forced or compulsory labour" shall not include:

 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*

- (c) *any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) *any work or service which forms part of normal civic obligations."*

Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Schengen Convention, which has been integrated into the "acquis communautaire", in which the United Kingdom participates and Ireland has requested to participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens."

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the European Convention on Human Rights.

In accordance with Article 51(3) of the Charter, the meaning and scope of these rights are the same as those of Article 5. Consequently, limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the only limitations which are permissible are those in the context of Article 5 of the European Convention on Human Rights, which reads:

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

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

Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions for harmonisation in criminal matters.

Article 7. Respect for private and family life

Everyone has the right to respect for his private and family life, his home **and** [...] his communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the European Convention on Human Rights. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 51(3), the meaning and scope of this right are the same as those of the corresponding article of the Convention. Consequently, the limitations to this right which are permissible are those which result from the Convention. Article 8 of the Convention reads as follows:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8. Protection of personal data

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

Explanation

This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data which has been ratified by all the Member States. The right to protection of personal data may be limited under the conditions set out in Article 51 of the Charter.

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

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

Explanation

This Article is based on Article 12 of the European Convention on Human Rights, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." To take account of changes in society, the wording has been altered to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex.

Article 10. Freedom of thought, conscience and religion

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

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 51(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

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

Article 11. Freedom of expression and information

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

Explanation

This Article corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

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

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

Pursuant to Article 51(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the Convention and limitations may not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which Community law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR..

Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the press. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007). According to the Court of Justice, the pluralism requirement authorises inter alia the competent authorities to take the measures needed to guarantee diversity of sources of information.

Article 12. Freedom of assembly and of association

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

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the European Convention on Human Rights which reads as follows:

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

The meaning and scope of the provisions of paragraph 1 are the same as those of the European Convention on Human Rights, with the exception of their area of application since they apply at all levels including European level. In accordance with Article 51(3) of the Charter, limitations on that right may not exceed those provided for in Article 11(2) of the ECHR.. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.

Article 13. Freedom of the arts and sciences

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

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised within the framework of Article 1 and subject to the limitation clause in Article 51. It is subject to respect for the dignity of the person and all the fundamental rights, must be exercised having regard to Article 1 and may be restricted in order to guarantee respect for those rights.

Article 14. Right to education

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

Explanation

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the European Convention on Human Rights, which reads as follows:

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

It was considered useful to extend this right to vocational and continuing training and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

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

Article 15. Freedom to choose an occupation

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

Explanation

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

This paragraph also draws upon Article 1(2) of the European Social Charter which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989.

The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph is based on TEC Article 137(3), fourth indent, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Community law and national legislation and practice.

Article 16. Freedom to conduct a business

The freedom to conduct a business is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission [not yet published], paragraph 99 of the grounds) and TEC Article 4(1) and (2) which recognises free competition. Of course, this right is to be exercised with respect for Community law and national legislation. It may be subject to the limitations provided for in Article 51(1) of the Charter.

Article 17. Right to property

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

Explanation

This Article is based on Article 1 of the Protocol to the European Convention on Human Rights: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 51(3), the meaning and scope of the right are the same as those of the right guaranteed by the Convention and the limitations may not exceed those provided for in the Convention.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also patent and trademark rights and associated rights.

Article 18. Right to asylum

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

Explanation

The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. The provisions of Article 1 of Protocol No 7 to the European Convention on Human Rights concerning procedural safeguards in the event of expulsion have not been incorporated, as most Member States have not signed or ratified that Protocol. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaty of Amsterdam and to Denmark to determine the extent to which those Member States implement Community law in this area and are, in accordance with Article 50(1), bound by the present Article This Article is in line with the Protocol on Asylum annexed to the Treaty of Amsterdam.

Article 19. Protection in the event of removal, expulsion or extradition

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

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons who are nationals of a particular State.

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

CHAPTER III. EQUALITY

Article 20. Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a principle which has been included in all European constitutions since the 1789 Declaration of Human and Civil Rights and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).

Article 21. Non-discrimination

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

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the European Convention on Human Rights and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage.

Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.

Article 22. Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article is based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the TEC concerning culture. It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations.

Article 23. Equality between men and women

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

The principle of equality shall not prevent the maintenance or adoption of measures **in favour of** the under-represented sex.

Explanation

The first paragraph is based on Article 141 of the EC Treaty and draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

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

Paragraph 2 takes over in shorter form Article 141(4) of the EC Treaty which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 51(2), the present paragraph does not amend Article 141(4) EC.

Article 24. The rights of the child

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

Explanation

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

Article 25. Integration of persons with disabilities

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

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on Article 15 of the revised Social Charter and point 24 of the Community Charter on the rights of workers.

CHAPTER IV. SOLIDARITY

Article 26. Workers' right to information and consultation within the undertaking

Workers or their representatives must at all levels be guaranteed information and consultation in good time on matters which concern them within the undertaking, in the cases and under the conditions provided for by Community law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and the Community Charter on the rights of workers (points 17 and 18). There is a considerable Community acquis in this field: Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils). The phrase "at all levels" includes the European level.

Article 27. Right of collective bargaining and action

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

Explanation

This Article is based on Article 1 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the European Convention on Human Rights. The phrase "at all levels" includes the European level.

Article 28. Right of access to placement services

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

Explanation

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

Article 29. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Explanation

This Article draws on Article 24 of the revised Social Charter.

Article 30. Fair and just working conditions

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

Explanation

This Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers. The right to dignity at work in particular is proclaimed in Article 26 of the revised Social Charter.

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

Article 31. Prohibition of child labour and protection of young people at work

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

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

Explanation

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

Article 32. Family and professional life

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

Explanation

The first paragraph is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter.

Article 33. Social security and social assistance

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

Explanation

The principle set out in paragraph 1 is based on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community. The reference to social services relates to cases in which such services have been introduced for the management of certain social advantages. Where such services do not exist, this reference relates to the advantages allocated directly by public bodies.

The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter and sets out the rules arising from Regulation No 1408/71.

The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137(2) of the Treaty establishing the European Community, particularly the last paragraph.

Article 34. Health care

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

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter. The second sentence of the Article takes over Article 152(1).

Article 35. Access to services of general economic interest

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

Explanation

This Article fully respects Article 16 of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Community legislation.

Article 36. Environmental protection

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

Explanation

The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty.

Article 37. Consumer protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article are based on Article 153 of the EC Treaty.

CHAPTER V. CITIZENSHIP**Article 38. Right to vote and to stand as a candidate in elections to the European Parliament**

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

Explanation

Paragraph 1 of this Article corresponds to the right guaranteed by Article 19(2) of the EC Treaty. Paragraph 2 corresponds to Article 190(1) of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions set out in the Treaty. Paragraph 2 of this Article states the basic principles of the electoral system in a democratic State.

Article 39. Right to vote and to stand as a candidate at municipal elections

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

Explanation

This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 40. Right to good administration

1. Every person has the right to have his affairs handled impartially, fairly, **in accordance with the principle of the neutrality of public policy** and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:

- the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of professional **and** business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
 4. Every person may write to the institutions of the Union in one of the official languages of such institutions and **must** have an answer in the same language.

Explanation

This right is based on the existence of a Community based on the rule of law and was developed in the case law which enshrined the principle of good administration (see inter alia Court of Justice judgment of 31 March 1992, Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995, Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999, Case T-231/97 New Europe Consulting and others [not yet published]). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty.

Paragraph 3 reproduces the right guaranteed by Article 288 of the EC Treaty.

Paragraph 4 reproduces the right guaranteed by the third paragraph of Article 21 of the EC Treaty. In accordance with Article 51(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Article 41. Right of access to documents

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

Explanation

The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 42. Ombudsman

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

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 43. Right to petition

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

Explanation

The right guaranteed in this Article is the right guaranteed by Article 21 and 194 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 44. Freedom of movement and of residence

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

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty.

Paragraph 2 refers to the power granted to the Community by Article 62(3) and Article 63(4) of the EC Treaty. Consequently, the granting of this right depends on the institutions exercising that power.

Article 45. Diplomatic and consular protection

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

Explanation

The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

CHAPTER VI. JUSTICE

Article 46. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms **guaranteed by the law of the Union** are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

Paragraph 1 is based on Article 13 of the European Convention on Human Rights:

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

However, in Community law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined the principle in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties. It applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

Paragraph 2 corresponds to Article 6(1) of the European Convention on Human Rights which reads as follows:

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

In Community law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339); that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, [1986] ECR 1682, and the other cases cited above). Nevertheless, in all respects other than their scope, the guarantees afforded by the Convention apply in a similar way to the Union.

With regard to paragraph 3, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 47. Presumption of innocence and right of defence

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

Explanation

This Article is based on Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 51(3), this right has the same meaning and scope as the right guaranteed by the European Convention on Human Rights.

Article 48. Principles of legality and proportionality of criminal offences and penalties

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

Explanation

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

Article 7 of the European Convention on Human Rights is worded as follows:

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

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

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 51(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the European Convention.

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

Article 49. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

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

Explanation

Article 4 of Protocol No 7 to the European Convention on Human Rights reads as follows:

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

3. *No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission, not yet published). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 49, the "non bis in idem" principle applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" principle are covered by the horizontal clause in Article 51(1) of the Charter regarding limitations. The right guaranteed here has the same meaning as the corresponding right in the European Convention, but its scope is wider.*

CHAPTER VII. GENERAL PROVISIONS

Article 50. Scope

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

Explanation

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the EC Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) of the Treaty establishing the European Community).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). Paragraph 2 confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Community and the Union. Explicit mention is made here of the logical consequences of the principle by which the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaty.

Article 51. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law **and respect the essential content of those rights and freedoms.**
Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be **the same as** those laid down by the said Convention unless this Charter affords greater or more extensive protection.

Explanation

The purpose of this provision is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to other legitimate interests relates to possible situations in which the exercise of a right may adversely affect factors other than the public interest or the rights and freedoms of others: reputation, business secrecy, etc.

Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the principle that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR without thereby adversely affecting the autonomy of Community law and of that of the Court of Justice of the European Communities. The list of rights which may at the present stage, without precluding developments in the law, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR..

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the European Convention on Human Rights:

- *Article 2 corresponds to Article 2 of the ECHR*
- *Article 4 corresponds to Article 3 of the ECHR*
- *Article 5(1) and (2) correspond to Article 4 of the ECHR*
- *Article 6 corresponds to Article 5 of the ECHR*
- *Article 7 corresponds to Article 8 of the ECHR*
- *Article 10(1) corresponds to Article 9 of the ECHR*
- *Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Community law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR*
- *Article 17 corresponds to Article 1 of the Protocol to the ECHR*
- *Article 19(1) corresponds to Article 4 of Protocol No 4*
- *Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights*
- *Article 47 corresponds to Article 6(2) and(3) of the ECHR*
- *Article 48(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR*

2. *Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:*
- *Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level*
 - *Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training*
 - *Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents*
 - *Article 46(2) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation*
 - *Article 49 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.*
3. *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Community law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

Article 52. Level of protection

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

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Right. The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the Convention, with the result that the arrangements for limitations may not fall below the level provided for in the Convention.

Article 53. Prohibition of abuse of rights

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

Explanation

*This Article corresponds to Article 17 of the European Convention on Human Rights:
"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 11 October 2000 (18.10)
(OR. fr)**CHARTE 4473/00****CONVENT 49****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union

– Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4487/00 CONVENT 50

These explanations have been prepared at the instigation of the Praesidium. They have no legal value and are simply intended to clarify the provisions of the Charter.

PREAMBLE

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

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

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

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

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

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

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

CHAPTER I. DIGNITY

Article 1

Human dignity

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

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined this principle in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

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

Article 2

Right to life

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

Explanation

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

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

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

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

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

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

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

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

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

- (b) *Article 2 of Protocol No 6 to the ECHR:*

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

Article 3

Right to the integrity of the person

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

Explanation

The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.

2. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Explanation

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

Article 5

Prohibition of slavery and forced labour

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

Explanation

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:

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

"For the purpose of this article the term "forced or compulsory labour" shall not include:

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

2. *Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the "acquis communautaire", in which the United Kingdom participates*

and Ireland has requested to participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens."

CHAPTER II. FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

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

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions to define common minimum provisions as regards the categorisation of offences and punishments.

Article 7

Respect for private and family life

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

Explanation

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

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

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

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

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

Explanation

This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. The right to protection of personal data is to be exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.

Article 9

Right to marry and right to found a family

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

Explanation

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

Article 10

Freedom of thought, conscience and religion

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

Explanation

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

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

Article 11

Freedom of expression and information

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

Explanation

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

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

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

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

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

Article 12

Freedom of assembly and of association

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

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

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

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.*

Article 13

Freedom of the arts and sciences

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

Explanation

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

Article 14

Right to education

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

Explanation

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

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

It was considered useful to extend this right to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,

this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

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

Article 15

Freedom to choose an occupation and right to engage in work

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

Explanation

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

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article 140 of the EC Treaty.

The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph is based on TEC Article 137(3), fourth indent, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Community law and national legislation and practice.

Article 16

Freedom to conduct a business

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

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission [not yet published], paragraph 99 of

the grounds) and TEC Article 4(1) and (2), which recognises free competition. Of course, this right is to be exercised with respect for Community law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Article 17

Right to property

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

Explanation

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

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

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

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

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

Article 18

Right to asylum

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

Explanation

The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaty of Amsterdam and to Denmark to determine the extent to which those Member States implement Community law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the EC Treaty.

Article 19

Protection in the event of removal, expulsion or extradition

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

Explanation

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

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

CHAPTER III. EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a principle which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).

Article 21

Non-discrimination

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

Explanation

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

Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article is based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty concerning culture. It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations.

Article 23

Equality between men and women

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

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

Explanation

The first paragraph is based on Articles 2 and 3(2) of the EC Treaty, which impose the objective of promoting equality between men and women on the Community, and on Article 141(3) of the EC Treaty. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

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

Paragraph 2 takes over in shorter form Article 141(4) of the EC Treaty which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 51(2), the present paragraph does not amend Article 141(4) EC.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

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

Article 25

The rights of the elderly

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

Explanation

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

Article 26

Integration of persons with disabilities

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

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on Article 23 of the revised Social Charter and point 26 of the Community Charter of the Fundamental Social Rights of Workers.

CHAPTER IV. SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

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

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Community law and by national laws. The reference to appropriate levels refers to the levels laid down by Community law or by national laws and practices, which might include the European level when Community legislation so provides. There is a considerable Community acquis in this field: Articles 138 and 139 of the EC Treaty, and Directives 98/59/EC (collective redundancies), 77/187/EEC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28

Right of collective bargaining and action

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

Explanation

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

Article 29

Right of access to placement services

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

Explanation

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

Article 30

Protection in the event of unjustified dismissal

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

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 77/187/EEC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer.

Article 31

Fair and just working conditions

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

Explanation

1. *This Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article 140 of the EC Treaty.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

Article 32

Prohibition of child labour and protection of young people at work

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

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

Explanation

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

Article 33

Family and professional life

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

Explanation

Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also *based on Article 8 (protection of maternity)*

of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Article 34

Social security and social assistance

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

Explanation

The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that

such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

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

The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137(2) of the Treaty establishing the European Community, particularly the last subparagraph.

Article 35

Health care

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

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter. The second sentence of the Article takes over Article 152(1).

Article 36

Access to services of general economic interest

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

Explanation

This Article fully respects Article 16 of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Community legislation.

Article 37

Environmental protection

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

Explanation

The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty. It also draws on the provisions of some national constitutions.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article are based on Article 153 of the EC Treaty.

CHAPTER V. CITIZENS' RIGHTS

Article 39

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

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

Explanation

Article 39 applies under the conditions laid down by the Treaty, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article 19(2) of the EC Treaty and Article 39(2) corresponds to Article 190(1) of that Treaty. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Article 40

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

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

Explanation

This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Explanation

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

Paragraph 3 reproduces the right guaranteed by Article 288 of the EC Treaty.

Paragraph 4 reproduces the right guaranteed by the third paragraph of Article 21 of the EC Treaty. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

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

Article 42

Right of access to documents

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

Explanation

The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 43

Ombudsman

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

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 44

Right to petition

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

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 194 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 45

Freedom of movement and of residence

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

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty.

Paragraph 2 refers to the power granted to the Community by Article 62(1) and (3) and Article 63(4) of the EC Treaty. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46

Diplomatic and consular protection

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

Explanation

The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

CHAPTER VI. JUSTICE**Article 47****Right to an effective remedy and to a fair trial**

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

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

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

Explanation

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

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

However, in Community law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined the principle in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313. According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is therefore to be implemented according to the procedures laid down in the Treaties. It applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

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

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

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

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities.

Article 48

Presumption of innocence and right of defence

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

Explanation

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

- "2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) *to have adequate time and facilities for the preparation of his defence;*
 - (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

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

Article 49

Principles of legality and proportionality of criminal offences and penalties

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

Explanation

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

Article 7 of the ECHR is worded as follows:

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

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

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

Article 50

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

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

Explanation

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

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

The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

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

CHAPTER VII. GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Explanation

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the EC Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) of the Treaty establishing the European Community).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). Of course this principle, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2 confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Community and the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaty.

Article 52

Scope of guaranteed rights

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

Explanation

The purpose of Article 52 is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article 2 and other interests protected by specific Treaty provisions such as Articles 30 or 39(3) of the EC Treaty.

Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the principle that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR without thereby adversely affecting the autonomy of Community law and of that of the Court of Justice of the European Communities. The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Communities. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection.

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

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

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Community law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents

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

Article 53

Level of protection

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

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR. The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the ECHR, with the result that the arrangements for limitations may not fall below the level provided for in the ECHR.

Article 54

Prohibition of abuse of rights

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

Explanation

This Article corresponds to Article 17 of the ECHR:

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

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 octobre 2000**CHARTE 4473/1/00
REV 1 (fr)****CONVENT 49****NOTE DU PRESIDIUM**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

— Texte des explications relatives au texte complet de la Charte, tel que repris au
doc. CHARTE 4487/00 CONVENT 50

Les présentes explications ont été établies sous la responsabilité du Présidium. Elles n'ont pas de valeur juridique et sont simplement destinées à éclairer les dispositions de la Charte.

PRÉAMBULE

Les peuples de l'Europe, en établissant entre eux une union sans cesse plus étroite, ont décidé de partager un avenir pacifique fondé sur des valeurs communes.

Consciente de son patrimoine spirituel et moral, l'Union se fonde sur les valeurs indivisibles et universelles de dignité humaine, de liberté, d'égalité et de solidarité; elle repose sur le principe de la démocratie et le principe de l'État de droit. Elle place la personne au cœur de son action en instituant la citoyenneté de l'Union et en créant un espace de liberté, de sécurité et de justice.

L'Union contribue à la préservation et au développement de ces valeurs communes dans le respect de la diversité des cultures et des traditions des peuples de l'Europe, ainsi que de l'identité nationale des États membres et de l'organisation de leurs pouvoirs publics au niveau national, régional et local; elle cherche à promouvoir un développement équilibré et durable et assure la libre circulation des personnes, des biens, des services et des capitaux, ainsi que la liberté d'établissement.

A cette fin, il est nécessaire, en les rendant plus visibles dans une Charte, de renforcer la protection des droits fondamentaux à la lumière de l'évolution de la société, du progrès social et des développements scientifiques et technologiques.

La présente Charte réaffirme, dans le respect des compétences et des tâches de la Communauté et de l'Union, ainsi que du principe de subsidiarité, les droits qui résultent notamment des traditions constitutionnelles et des obligations internationales communes aux États membres, du traité sur l'Union européenne et des traités communautaires, de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, des Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe, ainsi que de la jurisprudence de la Cour de justice des Communautés européennes et de la Cour européenne des droits de l'homme.

La jouissance de ces droits entraîne des responsabilités et des devoirs tant à l'égard d'autrui qu'à l'égard de la communauté humaine et des générations futures.

En conséquence, l'Union reconnaît les droits, les libertés et les principes énoncés ci-après.

CHAPITRE I. DIGNITE

Article 1

Dignité humaine

La dignité humaine est inviolable. Elle doit être respectée et protégée.

Explication

La dignité de la personne humaine n'est pas seulement un droit fondamental en soi, mais constitue la base même des droits fondamentaux. La Déclaration universelle des droits de l'homme de 1948 établit ce principe dans son préambule : "... considérant que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde."

Il en résulte, notamment, qu'aucun des droits inscrits dans cette charte ne peut être utilisé pour porter atteinte à la dignité d'autrui et que la dignité de la personne humaine fait partie de la substance des droits inscrits dans cette charte. Il ne peut donc y être porté atteinte, même en cas de limitation d'un droit.

Article 2

Droit à la vie

1. Toute personne a droit à la vie.
2. Nul ne peut être condamné à la peine de mort, ni exécuté.

Explication

1. *Le paragraphe 1 de cet article est fondé sur l'article 2, paragraphe 1, première phrase, de la CEDH, dont le texte est le suivant :*

"1. Le droit de toute personne à la vie est protégé par la loi..."

2. *La deuxième phrase de cette disposition, qui concerne la peine de mort, a été rendue caduque par l'entrée en vigueur du protocole n° 6 annexé à la CEDH, dont l'article 1er est libellé comme suit :*

"La peine de mort est abolie. Nul ne peut être condamné à une telle peine ni exécuté."

C'est sur la base de cette disposition qu'est rédigé le paragraphe 2 de l'article 2 de la charte.

3. *Les dispositions de l'article 2 de la Charte correspondent à celles des articles précités de la CEDH et du protocole additionnel. Elles en ont le même sens et la même portée, conformément à l'article 52 § 3 de la Charte. Ainsi, les définitions "négatives" qui figurent dans la CEDH doivent être considérées comme figurant également dans la Charte:*

a) *l'article 2, paragraphe 2, de la CEDH :*

"La mort n'est pas considérée comme infligée en violation de cet article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

- a. *pour assurer la défense de toute personne contre la violence illégale ;*
- b. *pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;*
- c. *pour réprimer, conformément à la loi, une émeute ou une insurrection."*

b) *l'article 2 du protocole n° 6 annexé à la CEDH :*

"Un Etat peut prévoir dans sa législation la peine de mort pour des actes commis en temps de guerre ou de danger imminent de guerre; une telle peine ne sera appliquée que dans les cas prévus par cette législation et conformément à ses dispositions ...".

Article 3

Droit à l'intégrité de la personne

1. Toute personne a droit à son intégrité physique et mentale.
2. Dans le cadre de la médecine et de la biologie, doivent notamment être respectés:
 - le consentement libre et éclairé de la personne concernée, selon les modalités définies par la loi,
 - l'interdiction des pratiques eugéniques, notamment celles qui ont pour but la sélection des personnes,
 - l'interdiction de faire du corps humain et de ses parties, en tant que tels, une source de profit,
 - l'interdiction du clonage reproductif des êtres humains.

Explication

1. *Les principes contenus dans l'article 3 de la Charte figurent déjà dans la convention sur les droits de l'homme et la biomédecine, adoptée dans le cadre du Conseil de l'Europe (STE 164 et protocole additionnel STE 168). La présente charte ne vise pas à déroger à ces dispositions et ne prohibe en conséquence que le seul clonage reproductif. Elle n'autorise ni ne prohibe les autres formes de clonage. Elle n'empêche donc aucunement le législateur d'interdire les autres formes de clonages.*

2. *La référence aux pratiques eugéniques, notamment celles ayant pour but la sélection des personnes, vise les hypothèses dans lesquelles des programmes de sélection sont organisés et mis en œuvre, comportant par exemple des campagnes de stérilisation, de grossesses forcées, de mariages ethniques obligatoires... tous actes qui sont considérés comme des crimes internationaux par le statut de la Cour pénale internationale adopté à Rome le 17 juillet 1998 (voir article 7 § 1 g).*

Article 4

Interdiction de la torture et des peines ou traitements inhumains ou dégradants

Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants.

Explication

Le droit figurant à l'article 4 correspond à celui qui est garanti par l'article 3 de la CEDH, dont le libellé est identique: "Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants". En application de l'article 52 paragraphe 3 de la Charte, il a donc le même sens et la même portée que ce dernier article.

Article 5

Interdiction de l'esclavage et du travail forcé

1. Nul ne peut être tenu en esclavage ni en servitude.
2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.
3. La traite des êtres humains est interdite.

Explication

1. *Le droit inscrit à l'article 5, paragraphe 1 et 2 correspond à l'article 4, paragraphes 1 et 2, au libellé analogue, de la CEDH. Il a donc le même sens et la même portée que ce dernier article, conformément à l'article 52, paragraphe 3, de la Charte. Il en résulte que:*
 - ☞ *Aucune limitation ne peut affecter de manière légitime le droit prévu au paragraphe 1.*
 - ☞ *Au paragraphe 2, les notions de "travail forcé ou obligatoire" doivent être comprises en tenant compte des définitions "négatives" contenues à l'article 4, paragraphe 3, de la CEDH:*

"N'est pas considéré comme "travail forcé ou obligatoire" au sens du présent article:

 - a. *tout travail requis normalement d'une personne soumise à la détention dans les conditions prévues par l'article 5 de la présente Convention, ou durant sa mise en liberté conditionnelle;*
 - b. *tout service de caractère militaire ou, dans le cas d'objecteurs de conscience dans les pays où l'objection de conscience est reconnue comme légitime, à un autre service à la place du service militaire obligatoire;*
 - c. *tout service requis dans le cas de crises ou de calamités qui menacent la vie ou le bien-être de la communauté;*
 - d. *tout travail ou service formant partie des obligations civiques normales."*
2. *Le paragraphe 3 résulte directement du principe de la dignité de la personne humaine et tient compte des données récentes en matière de criminalité organisées, telles que l'organisation de filières lucratives d'immigration illégale ou d'exploitation sexuelle. La convention Europol contient en annexe la définition suivante qui vise la traite à des fins d'exploitation sexuelle: "Traite des êtres humains: le fait de soumettre une personne au pouvoir réel et illégal d'autres personnes en usant de violence et de menaces ou en abusant d'un rapport d'autorité ou de manœuvres en vue notamment de se livrer à l'exploitation de la prostitution d'autrui, à des formes d'exploitation et de violences sexuelles à l'égard des mineurs ou au commerce lié à l'abandon d'enfants" Le chapitre VI de la convention d'application de l'accord de Schengen qui a été intégré dans l'acquis communautaire, et auquel le Royaume-Uni participe, l'Irlande*

ayant demandé à participer, contient, à l'article 27 § 1, la formule suivante qui vise les filières d'immigration illégale : "Les Parties contractantes s'engagent à instaurer des sanctions appropriées à l'encontre de quiconque aide ou tente d'aider, à des fins lucratives, un étranger à pénétrer ou à séjourner sur le territoire d'une Partie contractante en violation de la législation de cette Partie contractante relative à l'entrée et au séjour des étrangers".

CHAPITRE II. LIBERTES

Article 6

Droit à la liberté et à la sûreté

Toute personne a droit à la liberté et à la sûreté.

Explication

Les droits prévus à l'article 6 correspondent à ceux qui sont garantis par l'article 5 de la CEDH, dont ils ont, conformément à l'article 52, paragraphe 3 de la charte, le même sens et la même portée. Il en résulte que les limitations qui peuvent légitimement leur être apportées ne peuvent excéder les limites permises par la CEDH dans le libellé même de l'article 5:

- "1 Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :*
- a s'il est détenu régulièrement après condamnation par un tribunal compétent;*
 - b s'il a fait l'objet d'une arrestation ou d'une détention régulières pour insoumission à une ordonnance rendue, conformément à la loi, par un tribunal ou en vue de garantir l'exécution d'une obligation prescrite par la loi;*

- c s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente, lorsqu'il y a des raisons plausibles de soupçonner qu'il a commis une infraction ou qu'il y a des motifs raisonnables de croire à la nécessité de l'empêcher de commettre une infraction ou de s'enfuir après l'accomplissement de celle-ci;*
 - d s'il s'agit de la détention régulière d'un mineur, décidée pour son éducation surveillée ou de sa détention régulière, afin de le traduire devant l'autorité compétente;*
 - e s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond;*
 - f s'il s'agit de l'arrestation ou de la détention régulières d'une personne pour l'empêcher de pénétrer irrégulièrement dans le territoire, ou contre laquelle une procédure d'expulsion ou d'extradition est en cours.*
- 2 Toute personne arrêtée doit être informée, dans le plus court délai et dans une langue qu'elle comprend, des raisons de son arrestation et de toute accusation portée contre elle.*
- 3 Toute personne arrêtée ou détenue, dans les conditions prévues au paragraphe 1.c du présent article, doit être aussitôt traduite devant un juge ou un autre magistrat habilité par la loi à exercer des fonctions judiciaires et a le droit d'être jugée dans un délai raisonnable, ou libérée pendant la procédure. La mise en liberté peut être subordonnée à une garantie assurant la comparution de l'intéressé à l'audience.*
- 4 Toute personne privée de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal, afin qu'il statue à bref délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale.*
- 5 Toute personne victime d'une arrestation ou d'une détention dans des conditions contraires aux dispositions de cet article a droit à réparation."*

La Charte devant s'appliquer dans le cadre de l'Union, les droits inscrits à l'article 6 doivent être respectés tout particulièrement lorsque l'Union adopte, conformément au titre VI du traité sur l'Union européenne, des décisions-cadre pour la définition de dispositions communes minimales en ce qui concerne la qualification des infractions et les peines.

Article 7

Respect de la vie privée et familiale

Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de ses communications.

Explication

Les droits garantis à l'article 7 correspondent à ceux garantis par l'article 8 de la CEDH. Pour tenir compte de l'évolution technique le mot "communications" a été substitué à celui de correspondance.

Conformément à l'article 52, paragraphe 3, ce droit a le même sens et la même portée que celle de l'article correspondant de la CEDH. Il en résulte que les limitations susceptibles de leur être légitimement apportées sont les mêmes que celles tolérées dans le cadre de l'article 8 en question:

- "1 Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.*
- 2 Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui."*

Article 8

Protection des données à caractère personnel

1. Toute personne a droit à la protection des données à caractère personnel la concernant.

2. Ces données doivent être traitées loyalement, à des fins déterminées et sur la base du consentement de la personne concernée ou en vertu d'un autre fondement légitime prévu par la loi. Toute personne a le droit d'accéder aux données collectées la concernant et d'en obtenir la rectification.
3. Le respect de ces règles est soumis au contrôle d'une autorité indépendante.

Explication

Cet article se fonde sur l'article 286 du traité instituant la Communauté européenne et sur la directive 95/46/CE du Parlement européen et du Conseil relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données (JO n° L 281 du 23.11.95), ainsi que sur l'article 8 de la CEDH et sur la Convention du Conseil de l'Europe pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel du 28 janvier 1981, ratifiée par tous les Etats membres. Le droit à la protection des données à caractère personnel s'exerce dans les conditions prévues par la directive susvisée et peut être limité dans les conditions prévues par l'article 52 de la Charte.

Article 9

Droit de se marier et droit de fonder une famille

Le droit de se marier et le droit de fonder une famille sont garantis selon les lois nationales qui en régissent l'exercice.

Explication

Cet article se fonde sur l'article 12 de la CEDH qui se lit ainsi : " A partir de l'âge nubile, l'homme et la femme ont le droit de se marier et de fonder une famille selon les lois nationales régissant l'exercice de ce droit." La rédaction de ce droit a été modernisée afin de recouvrir les cas dans lesquels les législations nationales reconnaissent d'autres voies que le mariage pour fonder une famille. Cet article n'interdit, ni n'impose l'octroi du statut du mariage à des unions entre personnes du même sexe. Ce droit est donc semblable à celui prévu par la CEDH, mais sa portée peut être plus étendue lorsque la législation nationale le prévoit.

Article 10

Liberté de pensée, de conscience et de religion

1. Toute personne a droit à la liberté de pensée, de conscience et de religion. Ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.
2. Le droit à l'objection de conscience est reconnu selon les lois nationales qui en régissent l'exercice.

Explication

Le droit garanti au paragraphe 1 correspond au droit garanti à l'article 9 de la CEDH et, conformément à l'article 52, paragraphe 3, il a le même sens et la même portée que celui-ci. Les limitations doivent de ce fait respecter le paragraphe 2 de cet article 9 qui se lit ainsi : "La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui."

Le droit garanti au paragraphe 2 correspond aux traditions constitutionnelles nationales et à l'évolution des législations nationales sur ce point.

Article 11

Liberté d'expression et d'information

1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontières.
2. La liberté des médias et leur pluralisme sont respectés.

Explication

1. *L'article 11 correspond à l'article 10 de la CEDH qui se lit ainsi :*
 - "1 *Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.*
 - 2 *L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire."*

En application de l'article 52, paragraphe 3, ce droit à le même sens et la même portée que celui garanti par la CEDH. Les limitations qui peuvent être apportées à ce droit ne peuvent donc excéder celles prévues dans le paragraphe 2 de l'article 10, sans préjudice des restrictions que le droit communautaire de la concurrence peut apporter à la faculté des Etats membres d'instaurer les régimes d'autorisation visés à l'article 10 § 1, troisième phrase de la CEDH.

2. *Le paragraphe 2 de cet article explicite les conséquences du paragraphe 1 en ce qui concerne la liberté des médias. Il est notamment fondé sur la jurisprudence de la Cour relative à la télévision notamment dans l'affaire C-288/89 (arrêt du 25 juillet 1991, Stichting Collectieve Antennevoorziening Gouda e.a.; Rec. I-4007) et sur le protocole sur le système de radiodiffusion publique dans les Etats membres, annexé au traité CE ainsi que sur la directive 89/552/CE du Conseil (voir notamment son 17e considérant).*

Article 12

Liberté de réunion et d'association

1. Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association à tous les niveaux, notamment dans les domaines politique, syndical et civique, ce qui implique le droit de toute personne de fonder avec d'autres des syndicats et de s'y affilier pour la défense de ses intérêts.
2. Les partis politiques au niveau de l'Union contribuent à l'expression de la volonté politique des citoyens de l'Union.

Explication

1. *Les dispositions du paragraphe 1 de cet article correspondent aux dispositions de l'article 11 de la CEDH qui se lit ainsi:*

"1 Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.

- 2 *L'exercice de ces droits ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale ou à la protection des droits et libertés d'autrui. Le présent article n'interdit pas que des restrictions légitimes soient imposées à l'exercice de ces droits par les membres des forces armées, de la police ou de l'administration de l'Etat."*

Les dispositions du paragraphe 1 du présent article 12 ont le même sens que celles de la CEDH, mais leur portée est plus étendue étant donné qu'elles peuvent s'appliquer à tous les niveaux, ce qui inclut le niveau européen. Conformément à l'article 52 § 3 de la Charte, les limitations à ce droit ne peuvent excéder celles considérées comme pouvant être légitimes en vertu du paragraphe 2 de l'article 11 de la CEDH.

2. *Ce droit se fonde également sur l'article 11 de la Charte communautaire de droits sociaux fondamentaux des travailleurs.*
3. *Le paragraphe 2 de cet article correspond à l'article 191 du traité instituant la Communauté européenne.*

Article 13

Liberté des arts et des sciences

Les arts et la recherche scientifique sont libres. La liberté académique est respectée.

Explication

Ce droit est déduit en premier lieu des libertés de pensée et d'expression. Il s'exerce dans le respect de l'article 1er et peut être soumis aux limitations autorisées par l'article 10 de la CEDH.

Article 14

Droit à l'éducation

1. Toute personne a droit à l'éducation, ainsi qu'à l'accès à la formation professionnelle et continue.
2. Ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire.
3. La liberté de créer des établissements d'enseignement dans le respect des principes démocratiques, ainsi que le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses, philosophiques et pédagogiques, sont respectés selon les lois nationales qui en régissent l'exercice.

Explication

1. *Cet article est inspiré tant des traditions constitutionnelles communes aux Etats membres que de l'article 2 du protocole additionnel à la CEDH qui se lit ainsi :*
"Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques."
Il a été jugé utile d'étendre ce droit à la formation professionnelle et continue (voir point 15 de la charte communautaire des droits sociaux fondamentaux des travailleurs et article 10 de la charte sociale) ainsi que d'ajouter le principe de gratuité de l'enseignement obligatoire. Tel qu'il est formulé, ce dernier principe implique seulement que pour l'enseignement obligatoire, chaque enfant ait la possibilité d'accéder à un établissement qui pratique la gratuité. Il n'impose pas que tous les établissements, notamment privés, qui dispensent cet enseignement soient gratuits. Il n'interdit pas non plus que certaines formes spécifiques d'enseignement puissent être payantes dès lors que l'Etat prend des mesures destinées à octroyer une compensation financière. Dans la mesure où la Charte s'applique à l'Union,

ceci signifie que dans le cadre de ses politiques de formation, l'Union doit respecter la gratuité de l'enseignement obligatoire, mais cela ne crée bien entendu pas de nouvelles compétences. En ce qui concerne le droit des parents, il doit être interprété en relation avec les dispositions de l'article 24.

- 2. La liberté de création d'établissements, publics ou privés, d'enseignement est garantie comme un des aspects de la liberté d'entreprendre, mais elle est limitée par le respect des principes démocratiques et s'exerce selon les modalités définies par les législations nationales.*

Article 15

Liberté professionnelle et droit de travailler

1. Toute personne a le droit de travailler et d'exercer une profession librement choisie ou acceptée.
2. Tout citoyen ou toute citoyenne de l'Union a la liberté de chercher un emploi, de travailler, de s'établir ou de fournir des services dans tout État membre.
3. Les ressortissants des pays tiers qui sont autorisés à travailler sur le territoire des États membres ont droit à des conditions de travail équivalentes à celles dont bénéficient les citoyens ou citoyennes de l'Union.

Explication

La liberté professionnelle, consacrée au premier paragraphe de l'article 15, est reconnue dans la jurisprudence de la Cour de justice (voir, i.a., les arrêts du 14 mai 1974, aff. 4/73, Nold, Rec. 1974, 491, no. 12 - 14; du 13 décembre 1979, aff. 44/79, Hauer, Rec. 1979 p. 3727; du 8 octobre 1986, aff. 234/85, Keller, Rec. 1986, 2897, no. 8). Ce paragraphe s'inspire également de l'article 1

paragraphe 2 de la Charte sociale européenne signée le 18 octobre 1961, ratifiée par tous les Etats membres, et du point 4 de la Charte communautaire des droits sociaux fondamentaux des travailleurs du 9 décembre 1989. L'expression "conditions de travail" doit être entendue au sens de l'article 140 du traité CE.

Le deuxième paragraphe reprend les trois libertés garanties par les articles 39, 43 et 49 et svts. du traité CE, à savoir la libre circulation des travailleurs, la liberté d'établissement et la libre prestation des services.

Le troisième paragraphe se fonde sur l'article 137 (3), quatrième tiret TCE, ainsi que sur l'article 19 No. 4 de la Charte sociale européenne, signée le 18 octobre 1961, ratifiée par tous les Etats membres. L'article 52 § 2 de la Charte est donc applicable. La question du recrutement de marins ayant la nationalité d'Etats tiers dans les équipages de navires battant pavillon d'un Etat membre de l'Union est réglée par le droit communautaire et les législations et pratiques nationales.

Article 16

Liberté d'entreprise

La liberté d'entreprise est reconnue conformément au droit communautaire et aux législations et pratiques nationales.

Explication

Cet article se fonde sur la jurisprudence de la Cour de justice qui a reconnu la liberté d'exercer une activité économique ou commerciale (voir les arrêts du 14 mai 1974, aff. 4/73, Nold, Rec. 1974, 491, no. 14; et du 27 septembre 1979, aff. 230-78, SPA Eridania et a., Rec. 1979, 2749, no. 20 et 31) et la liberté contractuelle (voir, i.a., les arrêts "Sukkerfabriken Nykoebing", aff. 151/78, Rec. 1979, 1, no. 19; 5 octobre 1999, Espagne c. Commission, C-240/97 [non encore publié] no. 99), ainsi que

sur l'article 4 (1) et (2) TCE qui reconnaît la liberté de concurrence. Ce droit s'exerce bien entendu dans le respect du droit communautaire et des législations nationales. Il peut être soumis aux limitations prévues à l'article 52 § 1 de la Charte.

Article 17

Droit de propriété

1. Toute personne a le droit de jouir de la propriété des biens qu'elle a acquis légalement, de les utiliser, d'en disposer et de les léguer. Nul ne peut être privé de sa propriété, si ce n'est pour cause d'utilité publique, dans des cas et conditions prévus par une loi et moyennant en temps utile une juste indemnité pour sa perte. L'usage des biens peut être réglementé par la loi dans la mesure nécessaire à l'intérêt général.
2. La propriété intellectuelle est protégée.

Explication

Cet article correspond à l'article 1er du protocole additionnel à la CEDH :

"Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.

Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes."

Il s'agit d'un droit fondamental commun à toutes les constitutions nationales. Il a été consacré à des maintes reprises par la jurisprudence de la Cour de justice et en premier lieu dans l'arrêt Hauer (13 décembre 1979, Rec. p. 3727). La rédaction a été modernisée, mais, conformément à l'article 52 § 3, ce droit a le même sens et la même portée que celui garanti par CEDH et les limitations prévues par celle-ci ne peuvent être excédées.

La protection de la propriété intellectuelle, qui est un des aspects du droit de propriété, fait l'objet d'une mention explicite au paragraphe 2 en raison de son importance croissante et du droit communautaire dérivé. La propriété intellectuelle couvre, outre la propriété littéraire et artistique, le droit des brevets et des marques ainsi que les droits voisins. Les garanties prévues au paragraphe 1 s'appliquent de façon appropriée à la propriété intellectuelle.

Article 18

Droit d'asile

Le droit d'asile est garanti dans le respect des règles de la convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1967 relatifs au statut des réfugiés et conformément au traité instituant la Communauté européenne.

Explication

Le texte de l'article se fonde sur l'article 63 CE qui impose à l'Union de respecter la convention de Genève sur les réfugiés. Il convient de se référer aux dispositions des protocoles relatifs au Royaume-Uni et à l'Irlande annexés au traité d'Amsterdam ainsi qu'au Danemark afin de déterminer dans quelle mesure ces Etats membres mettent en œuvre le droit communautaire en la matière et dans quelle mesure cet article leur est applicable. Cet article respecte le protocole relatif à l'asile annexé au traité CE.

Article 19

Protection en cas d'éloignement, d'expulsion et d'extradition

1. Les expulsions collectives sont interdites.
2. Nul ne peut être éloigné, expulsé ou extradé vers un État où il existe un risque sérieux qu'il soit soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants.

Explication

Le paragraphe 1 de cet article a le même sens et la même portée que l'article 4 du protocole additionnel n° 4 à la CEDH en ce qui concerne les expulsions collectives. Il vise à garantir que chaque décision fasse l'objet d'un examen spécifique et que l'on ne puisse décider par une mesure unique d'expulser toutes les personnes ayant la nationalité d'un Etat déterminé (voir aussi l'article 13 du Pacte sur les droits civils et politiques).

*Le paragraphe 2 incorpore la jurisprudence de la Cour européenne des droits de l'homme relative à l'article 3 de la CEDH (voir *Ahmed c. Autriche*, arrêt du 17 décembre 1996, Rec.1996, VI-.2206 et *Soering*, arrêt du 7 Juillet 1989).*

CHAPITRE III. EGALITE

Article 20

Égalité en droit

Toutes les personnes sont égales en droit.

Explication

Cet article correspond au principe qui est inscrit dans toutes les constitutions européennes et que la Cour a jugé être un principe fondamental du droit communautaire (arrêt du 13 novembre 1984, Racke, affaire 283/83, rec. 1984, p. 3791, arrêt du 17 avril 1997, c-15/95, EARL, rec.1997, I-1961 et arrêt du 13 avril 2000, C-292/97, Karlsson, non encore publié).

Article 21

Non-discrimination

1. Est interdite, toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine d'application du traité instituant la Communauté européenne et du traité sur l'Union européenne, et sans préjudice des dispositions particulières desdits traités, toute discrimination fondée sur la nationalité est interdite.

Explication

Le paragraphe premier s'inspire de l'article 13 du traité CE et de l'article 14 de la CEDH ainsi que de l'article 11 de la convention sur les droits de l'homme et la biomédecine en ce qui concerne le patrimoine génétique. Pour autant qu'il coïncide avec l'article 14 de la CEDH, il s'applique conformément à celui-ci.

Le paragraphe 2 correspond à l'article 12 du Traité CE et doit s'appliquer conformément à celui-ci.

Article 22**Diversité culturelle, religieuse et linguistique**

L'Union respecte la diversité culturelle, religieuse et linguistique.

Explication

Cet article se fonde sur l'article 6 du traité sur l'Union européenne et sur l'article 151 paragraphes 1 et 4 du traité CE relatif à la culture. Il s'inspire également de la déclaration n° 11 à l'acte final du traité d'Amsterdam sur le statut des Eglises et des organisations non confessionnelles.

Article 23**Égalité entre hommes et femmes**

L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines, y compris en matière d'emploi, de travail et de rémunération.

Le principe de l'égalité n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques en faveur du sexe sous-représenté.

Explication

L'alinéa 1 de cet article se fonde sur les articles 2 et 3, paragraphe 2, du traité CE qui imposent comme objectif à la Communauté de promouvoir l'égalité entre les hommes et les femmes et sur l'article 141 § 3 du traité CE. Il s'inspire de l'article 20 de la Charte sociale européenne révisée du 3.5.1996 et du point 16 de la Charte communautaire des droits des travailleurs.

Il se fonde également sur l'article 141 § 3 du traité CE et sur l'article 2 § 4 de la directive 76/207/CEE du Conseil relative à la mise en œuvre du principe de l'égalité de traitement entre hommes et femmes en ce qui concerne l'accès à l'emploi, à la formation et à la promotion professionnelles, et les conditions de travail.

L'alinéa 2 reprend, dans une formule plus courte, l'article 141 § 4 du traité CE selon lequel le principe d'égalité de traitement n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques destinés à faciliter l'exercice d'une activité professionnelle par le sexe sous-représenté ou à prévenir ou compenser des désavantages dans la carrière professionnelle. Conformément à l'article 51 § 2, le présent paragraphe ne modifie pas l'article 141 § 4 CE.

Article 24

Droits de l'enfant

1. Les enfants ont droit à la protection et aux soins nécessaires à leur bien-être. Ils peuvent exprimer leur opinion librement. Celle-ci est prise en considération pour les sujets qui les concernent, en fonction de leur âge et de leur maturité.

2. Dans tous les actes relatifs aux enfants, qu'ils soient accomplis par des autorités publiques ou des institutions privées, l'intérêt supérieur de l'enfant doit être une considération primordiale.
3. Tout enfant a le droit d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à son intérêt.

Explication

Cet article se fonde sur la Convention de New York sur les Droits de l'enfant, signée le 20 novembre 1989, ratifiée par tous les Etats membres, et notamment sur les articles 3, 9, 12 et 13 de ladite Convention.

Article 25

Droits des personnes âgées

L'Union reconnaît et respecte le droit des personnes âgées à mener une vie digne et indépendante et à participer à la vie sociale et culturelle.

Explication

Cet article est inspiré de l'article 23 de la Charte sociale européenne révisée et des articles 24 et 25 de la Charte communautaire des droits sociaux fondamentaux des travailleurs. La participation à la vie sociale et culturelle recouvre bien entendu la participation à la vie politique.

Article 26

Intégration des personnes handicapées

L'Union reconnaît et respecte le droit des personnes handicapées à bénéficier de mesures visant à assurer leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté.

Explication

Le principe contenu dans cet article se fonde sur l'article 15 de la charte sociale européenne et s'inspire également de l'article 23 de la Charte sociale révisée et du point 26 de la Charte communautaire des droits sociaux fondamentaux des travailleurs.

CHAPITRE IV. SOLIDARITE

Article 27

Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

Les travailleurs ou leurs représentants doivent se voir garantir, aux niveaux appropriés, une information et une consultation en temps utile, dans les cas et conditions prévus par le droit communautaire et les législations et pratiques nationales.

Explication

Cet article figure dans la Charte sociale européenne révisée (article 21) et la Charte communautaire des droits des travailleurs (points 17 et 18). Il s'applique dans les conditions prévues par le droit communautaire et les droits nationaux. La référence aux niveaux appropriés renvoie aux niveaux prévus par le droit communautaire ou par le droit et les pratiques nationales, ce qui peut inclure le niveau européen lorsque la législation communautaire le prévoit. L'acquis communautaire dans ce domaine est important : article 138 et 139 du traité CE, directives 98/59/CE (licenciements collectifs), 77/187/CEE (transferts d'entreprises) et 94/45/CE (comités d'entreprise européens).

Article 28

Droit de négociation et d'actions collectives

Les travailleurs et les employeurs, ou leurs organisations respectives, ont, conformément au droit communautaire et aux législations et pratiques nationales, le droit de négocier et de conclure des conventions collectives aux niveaux appropriés et de recourir, en cas de conflits d'intérêts, à des actions collectives pour la défense de leurs intérêts, y compris la grève.

Explication

Cet article se fonde sur l'article 6 de la Charte sociale européenne, ainsi que sur la Charte communautaire des droits sociaux fondamentaux des travailleurs (points 12 à 14). Le droit à l'action collective a été reconnu par la Cour européenne des droits de l'homme comme l'un des éléments du droit syndical posé par l'article 11 de la CEDH. En ce qui concerne les niveaux appropriés auxquels peut avoir lieu la négociation collective, voir les explications données sous l'article précédent. Les actions collectives, parmi lesquelles la grève, relèvent des législations et des pratiques nationales, y compris la question de savoir si elles peuvent être menées de façon parallèle dans plusieurs Etats membres.

Article 29

Droit d'accès aux services de placement

Toute personne a le droit d'accéder à un service gratuit de placement.

Explication

Cet article se fonde sur l'article 1 § 3 de la Charte sociale européenne, ainsi que sur le point 13 de la Charte communautaire des droits sociaux fondamentaux des travailleurs.

Article 30

Protection en cas de licenciement injustifié

Tout travailleur a droit à une protection contre tout licenciement injustifié, conformément au droit communautaire et aux législations et pratiques nationales.

Explication

Cet article s'inspire de l'article 24 de la Charte sociale révisée. Voir aussi les directives 77/187 sur la protection des droits des travailleurs en cas de transferts d'entreprises, 80/987 sur la protection des travailleurs en cas d'insolvabilité.

Article 31

Conditions de travail justes et équitables

1. Tout travailleur a droit à des conditions de travail qui respectent sa santé, sa sécurité et sa dignité.
2. Tout travailleur a droit à une limitation de la durée maximale du travail et à des périodes de repos journalier et hebdomadaire, ainsi qu'à une période annuelle de congés payés.

Explication

1. *L'article 31 se fonde sur la directive 89/391/CEE concernant la mise en œuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des travailleurs au travail. Il s'inspire également de l'article 3 de la Charte sociale et du point 19 de la Charte communautaire des droits des travailleurs ainsi que, pour ce qui concerne le droit à la dignité dans le travail, de l'article 26 de la Charte sociale révisée. L'expression "conditions de travail" doit être entendue au sens de l'article 140 du traité CE.*
2. *Le paragraphe 2 se fonde sur la directive 93/104/CE concernant certains aspects de l'aménagement du temps de travail, ainsi que sur de l'article 2 de la Charte sociale européenne et sur le point 8 de la Charte communautaire des droits des travailleurs.*

Article 32

Interdiction du travail des enfants et protection des jeunes au travail

Le travail des enfants est interdit. L'âge minimal d'admission au travail ne peut être inférieur à l'âge auquel cesse la période de scolarité obligatoire, sans préjudice des règles plus favorables aux jeunes et sauf dérogations limitées.

Les jeunes admis au travail doivent bénéficier de conditions de travail adaptées à leur âge et être protégés contre l'exploitation économique ou contre tout travail susceptible de nuire à leur sécurité, à leur santé, à leur développement physique, mental, moral ou social ou de compromettre leur éducation.

Explication

Cet article se fonde sur la directive 94/33/CE relative à la protection des jeunes au travail, ainsi que sur l'article 7 de la Charte sociale européenne et sur les points 20 à 23 de la Charte communautaire des droits sociaux fondamentaux des travailleurs.

Article 33

Vie familiale et vie professionnelle

1. La protection de la famille est assurée sur le plan juridique, économique et social.
2. Afin de pouvoir concilier vie familiale et vie professionnelle, toute personne a le droit d'être protégée contre tout licenciement pour un motif lié à la maternité, ainsi que le droit à un congé de maternité payé et à un congé parental à la suite de la naissance ou de l'adoption d'un enfant.

Explication

Le premier paragraphe de l'article 33 est fondé sur l'article 16 de la Charte sociale européenne. Le deuxième paragraphe est inspiré de la directive 92/85/CEE du Conseil concernant la mise en œuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des travailleuses enceintes, accouchées ou allaitantes au travail et de la directive 96/34/CE concernant l'accord-cadre sur le congé parental conclu par l'UNICE, le CEEP et la CES. Il se fonde également sur

l'article 8 (protection de la maternité) de la Charte sociale européenne et s'inspire de l'article 27 (droit des travailleurs ayant des responsabilités familiales à l'égalité des chances et de traitement) de la Charte sociale révisée. Le terme de maternité recouvre la période allant de la conception à l'allaitement.

Article 34

Sécurité sociale et aide sociale

1. L'Union reconnaît et respecte le droit d'accès aux prestations de sécurité sociale et aux services sociaux assurant une protection dans des cas tels que la maternité, la maladie, les accidents du travail, la dépendance ou la vieillesse, ainsi qu'en cas de perte d'emploi, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.
2. Toute personne qui réside et se déplace légalement à l'intérieur de l'Union a droit aux prestations de sécurité sociale et aux avantages sociaux, conformément au droit communautaire et aux législations et pratiques nationales.
3. Afin de lutter contre l'exclusion sociale et la pauvreté, l'Union reconnaît et respecte le droit à une aide sociale et à une aide au logement destinées à assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.

Explication

Le principe énoncé au premier paragraphe de l'article 34 se fonde sur les articles 137 et 140 du traité CE ainsi que sur l'article 12 de la Charte sociale européenne et sur le point 10 de la Charte communautaire des droits des travailleurs. Il doit être respecté par l'Union lorsqu'elle met en œuvre les compétences que lui confère l'article 140 du traité instituant la Communauté européenne. La référence à des services sociaux vise les cas dans lesquels de tels services ont été instaurés pour

assurer certaines prestations mais n'implique aucunement que de tels services doivent être créés quand il n'en existent pas. L'expression "maternité" doit être entendue dans le même sens que dans l'article précédent.

Le deuxième paragraphe se fonde sur l'article 13 § 4 de la Charte sociale européenne, ainsi que sur le point 2 de la Charte communautaire des droits sociaux fondamentaux des travailleurs et reflète les règles qui découlent du règlement 1408/71 et du règlement 1612/68.

Le troisième paragraphe s'inspire des articles 30 et 31 de la Charte sociale révisée, ainsi que du point 10 de la Charte communautaire. Il doit être respecté par l'Union dans le cadre des politiques fondées sur l'article 137 § 2 du traité instituant la Communauté européenne et notamment son dernier alinéa.

Article 35

Protection de la santé

Toute personne a le droit d'accéder à la prévention en matière de santé et de bénéficier de soins médicaux dans les conditions établies par les législations et pratiques nationales. Un niveau élevé de protection de la santé humaine est assuré dans la définition et la mise en oeuvre de toutes les politiques et actions de l'Union.

Explication

Les principes contenus dans cet article se fondent sur l'article 152 du traité CE, ainsi que sur l'article 11 de la Charte sociale européenne. La seconde phrase de l'article reproduit le paragraphe 1 de l'article 152.

Article 36

Accès aux services d'intérêt économique général

L'Union reconnaît et respecte l'accès aux services d'intérêt économique général tel qu'il est prévu par les législations et pratiques nationales, conformément au traité instituant la Communauté européenne, afin de promouvoir la cohésion sociale et territoriale de l'Union.

Explication

Cet article respecte pleinement l'article 16 du traité instituant la Communauté européenne et ne crée pas de droit nouveau. Il pose seulement le principe du respect par l'Union de l'accès aux services d'intérêt économique général tel qu'il est prévu par les dispositions nationales, dès lors que ces dispositions sont compatibles avec le droit communautaire.

Article 37

Protection de l'environnement

Un niveau élevé de protection de l'environnement et l'amélioration de sa qualité doivent être intégrés dans les politiques de l'Union et assurés conformément au principe du développement durable.

Explication

Le principe contenu dans cet article se fonde sur les articles 2, 6 et 174 du traité CE. Il s'inspire également des dispositions de certaines constitutions nationales.

Article 38

Protection des consommateurs

Un niveau élevé de protection des consommateurs est assuré dans les politiques de l'Union.

Explication

Le principe contenu dans cet article se fonde sur l'article 153 du traité CE.

CHAPITRE V. CITOYENNETE

Article 39

Droit de vote et d'éligibilité aux élections au Parlement européen

1. Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections au Parlement européen dans l'État membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet État.
2. Les membres du Parlement européen sont élus au suffrage universel direct, libre et secret.

Explication

L'article 39 s'applique dans les conditions prévues par le traité, conformément à l'article 52 § 2 de la Charte. En effet, le paragraphe 1 de l'article 39 correspond au droit garanti à l'article 19, paragraphe 2, du traité CE et le paragraphe 2 de cet article à l'article 190, paragraphe 1. Ce dernier reprend les principes de base du régime électoral dans un système démocratique.

Article 40**Droit de vote et d'éligibilité aux élections municipales**

Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections municipales dans l'État membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet État.

Explication

Cet article correspond au droit garanti à l'article 19, paragraphe 1, du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 41**Droit à une bonne administration**

1. Toute personne a le droit de voir ses affaires traitées impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.

2. Ce droit comporte notamment :

- le droit de toute personne d'être entendue avant qu'une mesure individuelle qui l'affecterait défavorablement ne soit prise à son encontre ;
- le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret professionnel et des affaires ;
- l'obligation pour l'administration de motiver ses décisions.

3. Toute personne a droit à la réparation par la Communauté des dommages causés par les institutions, ou par leurs agents dans l'exercice de leurs fonctions, conformément aux principes généraux communs aux droits des États membres.

4. Toute personne peut s'adresser aux institutions de l'Union dans une des langues des traités et doit recevoir une réponse dans la même langue.

Explication

L'article 41 est fondé sur l'existence d'une Communauté de droit dont les caractéristiques ont été développées par la jurisprudence qui a consacré notamment le principe de la bonne administration (voir i.a., l'arrêt de la Cour du 31 mars 1992, C-255/90 P, Burban, Rec. 1992, I-2253; ainsi que les arrêts du tribunal de première instance du 18 septembre 1995, T-167/94, Nölle, Rec. 1995, II-2589; 9 juillet 1999, T-231/97, New Europe Consulting e.a., Rec.II-2403). Les expressions de ce droit énoncées dans les deux premiers paragraphes résultent de la jurisprudence (arrêts de la Cour du 15 octobre 1987, aff. 222/86, Heylens, Rec. 1987, 4097, no. 15; du 18 octobre 1989, aff. 374/87, Orkem, Rec. 1989, 3283; du 21 novembre 1991, C-269/90, TU München, Rec. 1991, I-5469; et les arrêts du tribunal de première instance du 6 décembre 1994, T-450/93, Lisrestal, Rec. 1994, II-1177; 18 septembre 1995, T-167/94, Nölle, Rec.1995, II-258) et, en ce qui concerne l'obligation de motiver, de l'article 253 du traité CE.

Le paragraphe 3 reproduit le droit garanti à l'article 288 du traité CE.

Le paragraphe 4 reproduit le droit garanti à l'article 21, troisième alinéa, du traité CE. Conformément à l'article 52, paragraphe 2, ces droits s'appliquent dans les conditions et limites définies par les traités.

Le droit à un recours effectif qui constitue un aspect important de cette question est garanti à l'article 47 de la présente Charte.

Article 42

Droit d'accès aux documents

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a un droit d'accès aux documents du Parlement européen, du Conseil et de la Commission.

Explication

Le droit garanti à cet article est le droit garanti à l'article 255 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 43

Médiateur

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a le droit de saisir le médiateur de l'Union en cas de mauvaise administration dans l'action des institutions ou organes communautaires, à l'exclusion de la Cour de justice et du Tribunal de première instance dans l'exercice de leurs fonctions juridictionnelles.

Explication

Le droit garanti à cet article est le droit garanti aux articles 21 et 195 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 44

Droit de pétition

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a le droit de pétition devant le Parlement européen.

Explication

Le droit garanti à cet article est le droit garanti par les articles 21 et 194 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 45

Liberté de circulation et de séjour

1. Tout citoyen ou toute citoyenne de l'Union a le droit de circuler et de séjourner librement sur le territoire des États membres.
2. La liberté de circulation et de séjour peut être accordée, conformément au traité instituant la Communauté européenne, aux ressortissants de pays tiers résidant légalement sur le territoire d'un État membre.

Explication

Le droit garanti par le premier paragraphe est le droit garanti par l'article 18 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions et limites prévues par le traité.

Le deuxième paragraphe rappelle la compétence accordée à la Communauté par l'article 62, paragraphes 1 et 3, et 63, paragraphe 4 du traité CE. Il en résulte que l'octroi de ce droit dépend de l'exercice de cette compétence par les institutions.

Article 46

Protection diplomatique et consulaire

Tout citoyen de l'Union bénéficie, sur le territoire d'un pays tiers où l'État membre dont il est ressortissant n'est pas représenté, de la protection des autorités diplomatiques et consulaires de tout État membre dans les mêmes conditions que les nationaux de cet État.

Explication

Le droit garanti par cet article est le droit garanti par l'article 20 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

CHAPITRE VI. JUSTICE**Article 47**

Droit à un recours effectif et à accéder à un tribunal impartial

Toute personne dont les droits et libertés garantis par le droit de l'Union ont été violés a droit à un recours effectif devant un tribunal dans le respect des conditions prévues au présent article.

Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable par un tribunal indépendant et impartial, établi préalablement par la loi. Toute personne a la possibilité de se faire conseiller, défendre et représenter.

Une aide juridictionnelle est accordée à ceux qui ne disposent pas de ressources suffisantes, dans la mesure où cette aide serait nécessaire pour assurer l'effectivité de l'accès à la justice.

Explication

Le premier alinéa se fonde sur l'article 13 de la CEDH:

"Toute personne dont les droits et libertés reconnus dans la présente Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles".

Cependant, en droit communautaire, la protection est plus étendue puisqu'elle garantit un droit à un recours effectif devant un juge. La Cour de justice a consacré ce principe dans son arrêt du 15 mai 1986, Johnston, aff. 222/84, Rec. p.1651; voir aussi les arrêts du 15 octobre 1987, aff. 222/86, Heylens, Rec. 1987, 4097, et 3 décembre 1992, C-97/91, Borelli, Rec. 1992, I-6313. Selon la Cour, ce principe s'applique également aux Etats membres lorsqu'ils appliquent le droit communautaire. L'inscription de cette jurisprudence dans la charte n'a pas pour objet de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité. Ce principe est donc mis en œuvre selon les voies procédurales prévues dans les traités. Il s'applique à l'égard des institutions de l'Union et des Etats membres lorsqu'ils mettent en œuvre le droit de l'Union et ce pour tous les droits garantis par le droit de l'Union.

Le deuxième alinéa correspond à l'article 6 § 1 de la CEDH qui se lit ainsi :

"Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. Le jugement doit être rendu publiquement, mais l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice."

En droit communautaire, le droit à un tribunal ne s'applique pas seulement à des contestations relatives à des droits et obligations de caractère civil. C'est l'une des conséquences du fait que la Communauté est une communauté de droit comme l'a Cour l'a constaté dans l'affaire 194/83, Les Verts contre Parlement européen (arrêt du 23 avril 1986, rec. p.1339. Cependant, à l'exception de leur champ d'application, les garanties offertes par la CEDH s'appliquent de manière similaire dans l'Union.

En ce qui concerne le troisième alinéa, il convient de noter que d'après la jurisprudence de la Cour européenne des droits de l'homme, une aide judiciaire doit être accordée lorsque l'absence d'une telle aide rendrait inefficace la garantie d'un recours effectif (Arrêt CEDH du 9.10.1979, Airey, Série A, Volume.32, 11). Il existe également un système d'assistance judiciaire devant la Cour de justice des Communautés européennes.

Article 48

Présomption d'innocence et droits de la défense

1. Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie.
2. Le respect des droits de la défense est garanti à tout accusé.

Explication

L'article 48 est le même que l'article 6 § 2 et 3 de la CEDH qui se lit ainsi :

- "2 Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.*
- 3 Tout accusé a droit notamment à :*
- a être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui;*
 - b disposer du temps et des facilités nécessaires à la préparation de sa défense;*
 - c se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent;*
 - d interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge;*
 - e se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience."*

Conformément à l'article 52 § 3, ce droit a le même sens et la même portée que le droit garanti par la CEDH.

Article 49

Principes de légalité et de proportionnalité des délits et des peines

1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise. Si, postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.
2. Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux reconnus par l'ensemble des nations.
3. L'intensité des peines ne doit pas être disproportionnée par rapport à l'infraction.

Explication

Cet article reprend le principe classique de la non-rétroactivité des lois et des peines en matière pénale. Il a été ajouté le principe de la rétroactivité de la loi pénale plus douce qui existe dans de nombreux Etats membres et qui figure à l'article 15 du Pacte sur les droits civils et politiques.

L'article 7 de la CEDH est rédigé comme suit:

- "1 Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.*
- 2 Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées."*

On a simplement supprimé au paragraphe 2 le terme "civilisées" ce qui n'implique aucun changement dans le sens de ce paragraphe qui vise notamment les crimes contre l'humanité. Conformément à l'article 52 § 3, le droit garanti a donc le même sens et la même portée que le droit garanti par la CEDH.

Le paragraphe 3 reprend le principe général de proportionnalité des délits et des peines consacré par les traditions constitutionnelles communes aux Etats membres et la jurisprudence de la Cour de justice des Communautés.

Article 50

Droit à ne pas être jugé ou puni pénalement deux fois pour une même infraction

Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans l'Union par un jugement pénal définitif conformément à la loi.

Explication

L'article 4 du protocole n° 7 à la CEDH se lit ainsi:

- "1 Nul ne peut être poursuivi ou puni pénalement par les juridictions du même Etat en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet Etat.*
- 2) Les dispositions du paragraphe précédent n'empêchent pas la réouverture du procès, conformément à la loi et à la procédure pénale de l'Etat concerné, si des faits nouveaux ou nouvellement révélés ou un vice fondamental dans la procédure précédente sont de nature à affecter le jugement intervenu.*
- 3 Aucune dérogation n'est autorisée au présent article au titre de l'article 15 de la Convention."*

Le principe «non bis in idem» s'applique en droit communautaire (voir, parmi une importante jurisprudence, arrêt du 5 mai 1966, Gutmann c/Commission, aff. 18/65 et 35/65, Rec 1966, p.150 et pour une affaire récente arrêt du Tribunal du 20 avril 1999, aff. jointes T-305/94 et autres, Limburgse Vinyl Maatschappij NV c/Commission Rec. II-931). Il est précisé que la règle du non cumul vise le cumul de deux sanctions de même nature, en l'espèce pénales.

Conformément à l'article 50, le principe "non bis in idem" ne s'applique pas seulement à l'intérieur de la juridiction d'un même Etat, mais aussi entre les juridictions de plusieurs Etats membres. Ceci correspond à l'acquis du droit de l'Union; voir les articles 54 - 58 de la Convention d'application de l'accord de Schengen, l'article 7 de la Convention relative à la protection des intérêts financiers de la Communauté; l'article 10 de la Convention relative à la lutte contre la corruption. Les exceptions bien limitées par lesquelles ces conventions permettent aux Etats membres de déroger au principe "non bis in idem" sont couvertes par la clause horizontale de l'article 52, paragraphe 1, sur les limitations. En ce qui concerne les situations visées par l'article 4 du protocole n° 7, à savoir l'application du principe à l'intérieur d'un même Etat membre, le droit garanti a le même sens et la même portée que le droit correspondant de la CEDH.

CHAPITRE VII. DISPOSITIONS GÉNÉRALES

Article 51

Champ d'application

1. Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux États membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et en promeuvent l'application, conformément à leurs compétences respectives.

2. La présente Charte ne crée aucune compétence ni aucune tâche nouvelles pour la Communauté et pour l'Union et ne modifie pas les compétences et tâches définies par les traités.

Explication

L'objet de l'article 51 est de déterminer le champ d'application de la Charte. Elle vise à établir clairement que la Charte s'applique d'abord aux institutions et organes de l'Union dans le respect du principe de subsidiarité. Cette disposition est fidèle à l'article 6 § 2 du traité sur l'Union européenne qui impose à l'Union de respecter les droits fondamentaux ainsi qu'au mandat donné par le Conseil européen de Cologne. Le terme "institutions" est consacré par le traité CE qui énumère les institutions dans son article 7. Le terme "organe" est couramment employé pour viser toutes les instances établies par les traités ou par des actes de droit dérivé (voir l'article 286, paragraphe 1, du traité instituant la Communauté européenne).

En ce qui concerne, les Etats membres, il résulte sans ambiguïté de la jurisprudence de la Cour que l'obligation de respecter les droits fondamentaux définis dans le cadre de l'Union ne s'impose aux Etats membres que lorsqu'ils agissent dans le cadre du droit communautaire (Arrêt du 13 juillet 1989, Wachauf, affaire 5/88, rec. p.2609; arrêt du 18 juin 1991, ERT, rec.1991, I-2925). Tout récemment, la Cour de justice a confirmé cette jurisprudence dans les termes suivants: "De plus, il y a lieu de rappeler que les exigences découlant de la protection des droits fondamentaux dans l'ordre juridique communautaire lient également les Etats membres lorsqu'ils mettent en œuvre des réglementations communautaires ..." (Arrêt du 13 avril 2000, aff. C-292/97, attendu 37, non encore publié). Bien entendu, ce principe, tel que consacré dans la présente charte, s'applique aussi bien aux autorités centrales qu'aux instances régionales ou locales ainsi qu'aux organismes publics lorsqu'ils mettent en œuvre le droit de l'Union.

Le second paragraphe confirme que la charte ne peut avoir pour effet d'étendre les compétences et tâches conférées par les traités à la Communauté et à l'Union. Il s'agit de mentionner de façon explicite ce qui découle logiquement du principe de subsidiarité et du fait que l'Union ne dispose que de compétences d'attribution. Les droits fondamentaux tels qu'ils sont garantis dans l'Union ne produisent d'effets que dans le cadre de ces compétences déterminées par le traité.

Article 52

Portée des droits garantis

1. Toute limitation de l'exercice des droits et libertés reconnus par la présente Charte doit être prévue par la loi et respecter le contenu essentiel desdits droits et libertés. Dans le respect du principe de proportionnalité, des limitations ne peuvent être apportées que si elles sont nécessaires et répondent effectivement à des objectifs d'intérêt général reconnus par l'Union ou au besoin de protection des droits et libertés d'autrui.
2. Les droits reconnus par la présente Charte qui trouvent leur fondement dans les traités communautaires ou dans le traité sur l'Union européenne s'exercent dans les conditions et limites définies par ceux-ci.
3. Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont les mêmes que ceux que leur confère ladite convention. Cette disposition ne fait pas obstacle à ce que le droit de l'Union accorde une protection plus étendue.

Explication

L'objet de l'article 52 est de fixer la portée des droits garantis. Le paragraphe 1 traite du régime de limitations. La formule utilisée s'inspire de la jurisprudence de la Cour de justice: "... selon une jurisprudence bien établie, des restrictions peuvent être apportées à l'exercice des droits fondamentaux, notamment dans le cadre d'une organisation commune de marché, à condition que ces restrictions répondent effectivement à des objectifs d'intérêt général poursuivis par la Communauté et ne constituent pas, par rapport au but poursuivi, une intervention démesurée et intolérable, qui porterait atteinte à la substance même de ces droits" (arrêt du 13 avril 2000, aff. C-292/97, considérant 45). La mention des intérêts généraux reconnus par l'Union couvre aussi bien les objectifs mentionnés à l'article 2 que d'autres intérêts protégés par des dispositions spécifiques du traité comme l'article 30 ou 39 (3) CE.

Le paragraphe 2 précise que lorsqu'un droit résulte des traités, il est soumis aux conditions et limites prévues par ceux-ci. La Charte ne modifie pas le régime des droits conférés par les traités.

Le paragraphe 3 vise à assurer la cohérence nécessaire entre la Charte et la CEDH en posant le principe que, dans la mesure où les droits de la présente Charte correspondent également à des droits garantis par la CEDH, leur sens et leur portée, y compris les limitations admises, sont les mêmes que ceux que prévoit la CEDH. Il en résulte en particulier que le législateur, en fixant des limitations à ces droits doit respecter les mêmes standards que ceux fixés par le régime détaillé des limitations prévu dans la CEDH, sans que ceci porte atteinte à l'autonomie du droit communautaire et de la Cour de justice des Communautés européennes. La référence à la CEDH vise à la fois la Convention et ses protocoles. Le sens et la portée des droits garantis sont déterminés non seulement par le texte de ces instruments, mais aussi par la jurisprudence de la Cour européenne des droits de l'homme et par la Cour de justice des Communautés européennes. La dernière phrase du paragraphe vise à permettre au droit de l'Union d'assurer une protection plus étendue.

La liste des droits qui peuvent au stade actuel et sans que cela exclue l'évolution du droit, de la législation et des traités, être considérés comme correspondant à des droits de la CEDH au sens du présent paragraphe est reproduite ci-dessous. Ne sont pas reproduits les droits qui s'ajoutent à ceux de la CEDH.

1. Articles de la Charte dont le sens et la portée sont les mêmes que les articles correspondants de la CEDH:

- l'article 2 correspond à l'article 2 CEDH
- l'article 4 correspond à l'article 3 CEDH
- l'article 5 § 1 et 2 correspond à l'article 4 CEDH
- l'article 6 correspond à l'article 5 CEDH
- l'article 7 correspond à l'article 8 CEDH
- l'article 10 § 1 correspond à l'article 9 CEDH
- l'article 11 correspond à l'article 10 CEDH sans préjudice des restrictions que le droit communautaire peut apporter à la faculté des Etats membres d'instaurer les régimes d'autorisation visés à l'article 10 § 1, troisième phrase de la CEDH.
- l'article 17 correspond à l'article 1 du protocole additionnel à la CEDH
- l'article 19 § 1 correspond à l'article 4 du protocole additionnel N° 4
- l'article 19 § 2 correspond à l'article 3 CEDH tel qu'interprété par la Cour européenne des droits de l'homme
- l'article 48 correspond à l'article 6 § 2 et 3 CEDH
- l'article 49 § 1 (à l'exception de la dernière phrase) et 2 correspond à l'article 7 CEDH.

2. Articles dont le sens est le même que les articles correspondant de la CEDH, mais dont la portée est plus étendue :

- l'article 9 couvre le champ de l'article 12 CEDH, mais son champ d'application peut être étendu à d'autres formes de mariages dès lors que la législation nationale les institue
- l'article 12 § 1 correspond à l'article 11 CEDH, mais son champ d'application est étendu au niveau de l'Union européenne
- l'article 14 § 1 correspond à l'article 2 du protocole additionnel CEDH, mais son champ d'application est étendu à l'accès à la formation professionnelle et continue
- L'article 14 § 3 correspond à l'article 2 du protocole additionnel à la CEDH, en ce qui concerne les droits des parents

- *l'article 47 § 2 et 3 correspond à l'article 6 § 1 CEDH, mais la limitation aux contestations sur des droits et obligations de caractère civil ou sur des accusations en matière pénale ne joue pas en ce qui concerne le droit de l'Union et sa mise en œuvre*
- *l'article 50 correspond à l'article 4 du protocole n° 7 CEDH, mais sa portée est étendue au niveau de l'Union européenne entre les juridictions des Etats membres*
- *Enfin, les citoyens de l'Union européenne ne peuvent, dans le champ d'application du droit communautaire, être considérés comme des étrangers en raison de l'interdiction de toute discrimination sur la base de la nationalité. Les limitations prévues par l'article 16 CEDH en ce qui concerne les droits des étrangers ne leur sont donc pas applicables dans ce cadre.*

Article 53

Niveau de protection

Aucune disposition de la présente Charte ne doit être interprétée comme limitant ou portant atteinte aux droits de l'homme et libertés fondamentales reconnus, dans leur champ d'application respectif, par le droit de l'Union, le droit international et les conventions internationales auxquelles sont parties l'Union, la Communauté ou tous les États membres, et notamment la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, ainsi que par les constitutions des États membres.

Explication

Cette disposition vise à préserver le niveau de protection offert actuellement dans leur champ d'application respectif par le droit de l'Union, le droit des Etats membres et le droit international. En raison de son importance, mention est faite de la CEDH. En aucun cas le niveau de protection offert par la charte ne pourra être inférieur à celui garanti par la CEDH, ce qui a pour conséquence que le régime de limitations prévu dans la charte ne peut descendre en dessous du niveau prévu par la CEDH.

Article 54

Interdiction de l'abus de droit

Aucune des dispositions de la présente Charte ne doit être interprétée comme impliquant un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ou à des limitations plus amples des droits et libertés que celles qui sont prévues par la présente Charte.

Explication

Cet article correspond à l'article 17 de la CEDH :

"Aucune des dispositions de la présente Convention ne peut être interprétée comme impliquant pour un Etat, un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Convention ou à des limitations plus amples de ces droits et libertés que celles prévues à ladite Convention."

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 September 2000**CHARTE 4475/00****CONTRIB 326****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the Council of Europe's observations on document CHARTE 4422/00
CONVENT 45.¹

¹ This text has been submitted in French and English languages.

Strasbourg, 22 August 2000

**Observations of the Council of Europe representatives
on the draft Charter proposed by the Praesidium (Convent 45)**

Our primary concern is to ensure that the rights taken by the Charter from the European Convention on Human Rights (ECHR) are not interpreted in inconsistent or even contradictory ways depending on whether it is the European Court of Human Rights or the Court of Justice in Luxembourg that is construing them. We consider that the proposed text amply deals with that concern, pending a final decision on its legal nature. The Convention and the Praesidium must take the credit for that. They have heeded the comments and proposals made throughout the preparatory work by the observers of the Council of Europe and made the necessary amendments to ensure consistency and harmony between the Charter and the ECHR.

That is true in particular of the latest amendments proposed by the Praesidium such as the new paragraph 3 of Article 50, which has the merit of dispelling, in principle, any doubt over the meaning and scope of the Charter rights corresponding to the rights guaranteed by the ECHR¹. It will, however, still be necessary to identify the instances in which it is intended that the protection afforded by the Charter will be “greater or more extensive”. It is in this sphere that the commentary on the text, as proposed in the Convent 46 document, will prove very useful. It should therefore be made as accessible to readers as the text itself.

By confirming the principle that authoritative interpretations of an instrument are incorporated into the instrument itself, the reference in the preamble to the case-law of the European Court of Human Rights will clear up any misapprehension regarding identification of the “rights which correspond to rights guaranteed by the [ECHR]”. That reference makes it clear that the ECHR rights also include rights recognised by the case-law. By including it, the Convention has shown the foresight to ensure at the outset that future developments regarding the ECHR and the Charter will be consistent and harmonious and has thus avoided destroying the common dynamic of these two instruments.

The reference to the case-law will also be vital for the application of Article 51 of the Charter, which sets the minimum level of protection provided by that instrument, notably by reference to the ECHR. Here too it is important to ensure that the minimum level rises to match any enhanced protection afforded by the case-law.

Nevertheless, no amount of careful drafting can prevent the debate on the nature of the Charter posing a number of problems which, unless satisfactorily resolved, will prove a potential source of error in the interpretation of the rights embodied in both the Charter and the ECHR, in particular if the Court of Justice finds itself called upon to decide issues that have not previously been before the Court in Strasbourg. Why?

¹ Article 50 § 3 refers, however, to rights that have a *similar* meaning and scope to those conferred by the ECHR, which seems to suggest that divergences are permitted. Yet Article 50 § 3 allows of only two possibilities: *the same* protection as that afforded by the ECHR, or *greater* protection. As the latter possibility is covered by Article 50 § 3 *in fine*, the former must be reflected in the first part of the provision, which, for the avoidance of any unnecessary doubt on the subject, should consequently read as follows: “... the meaning and scope of those rights shall be *the same* as those conferred on them by the [ECHR]...”.

Because the Charter, when applied and interpreted within the context of the European Union, that is to say in the framework of a Treaty with its own objectives and including new powers in the fields of immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references for preliminary rulings than the Court of Justice receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will be at variance with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very awkward position.

As regards the Charter's being harmoniously combined with the other international systems of protection of fundamental rights, that point shows to what extent the debate about the nature of the Charter will restore to the agenda the question of accession by the European Communities and/or the Union to the ECHR, under arrangements to be agreed, or at least the idea of a preliminary consultation mechanism, recognised by the member States, between the two Courts.²

As long as these questions remain unanswered the European Council, if it wishes to avoid the risk of creating legal uncertainty, will scarcely be in a position to reach a final decision on the nature of the Charter. Admittedly, it is not part of the Convention's terms of reference to state its views on that question. However, that should not dispense it from identifying and pointing out to the European Council, in appropriate form, the problems as they exist.

Marc Fischbach
Hans-Christian Krüger

¹ See in this connection our contribution dated 21 February 2000 (Contrib 29, Charter 4136/00).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 September 2000**CHARTE 4477/00****CONTRIB 328****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the Communication (COM(2000) 559 final) by the Commission of the European Communities, on the Charter of Fundamental Rights.

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.9.2000
COM(2000) 559 final

COMMISSION COMMUNICATION

on the Charter of Fundamental Rights of the European Union

COMMISSION COMMUNICATION

on the Charter of Fundamental Rights of the European Union

1. INTRODUCTION

1. The preparation of the draft Charter of Fundamental Rights is now at a crucial stage. The Feira European Council concluded that:

"The Convention is urged to continue its work in accordance with the timetable laid down in the mandate from the Cologne European Council so that a draft document is presented in advance of the European Council in October 2000"

2. After months of intensive work the Convention has produced a new preliminary draft of the Charter.¹
3. The preliminary draft has been drawn up using the approach adopted by the Convention when it began its work, which involved preparing the draft for submission to the European Council **as if it was subsequently to be incorporated into the Community Treaties** with mandatory legal force. At the instigation of its President, Roman Herzog, the Convention concluded that this was the only approach that could leave the European Council the choice it will have to make in due course, in accordance with the Cologne mandate, about whether the Charter should take the form of a declaration or be incorporated in the Treaties with mandatory legal force.
4. The work done by the Convention in the last few months involved giving each member of the Convention the possibility of submitting **written amendments** to previous texts. Over a thousand amendments were submitted, reflecting the full range of feelings within the Convention. The preliminary draft is a compromise drawn up by the Praesidium. It is intended to take account of all the points of view and feelings expressed by the Convention.
5. **With a view to concluding the Convention's work and forwarding the draft Charter to the Biarritz European Council**, the Praesidium asked the members of the Convention to submit any comments on the preliminary draft text they considered helpful by 1 September. It also established the agenda for the Convention's two final meetings:

- 11 - 12 September the members of the Convention will meet in groups and on 13 September they will inform the Convention of their positions regarding the preliminary draft;
- the meeting of 25 - 26 September is intended to pull together the group's points of view and to enable the President of the Convention, in line with the Cologne conclusions, to establish a consensus within the Convention and forward the draft to the Heads of State or Government.

¹ The draft is contained in the document CHARTE 4422/00, CONVENT 45 of 28 July 2000: *Complete text of the Charter proposed by the Praesidium* » .

6. **The purpose of this communication is therefore:**

- **to set out the Commission's position concerning the content of the preliminary draft, with the aim of furthering the development of consensus within the Convention, and**
- **to highlight the political and institutional questions the Commission believes to be of particular importance, especially with regard to the nature of the Charter.**

2. **THE OBJECTIVES OF THE CHARTER**

7. The Cologne European Council set the main objective of the Charter of Fundamental Rights of the Union: **to make their overriding importance and relevance more visible to the Union's citizens.**

Consequently, the European Council mandated the Convention to draw up the Charter, a task of revelation rather than creation, of compilation rather than innovation.

8. However, the Cologne conclusions were reached at a historic time for European integration. There is a need for a Charter of Fundamental Rights because the European Union has entered a new, more resolutely political phase of integration. The Charter is a major milestone for Europe as a political force, which is evolving into an integrated area of freedom, security and justice, simply as a consequence of citizenship. It is an indispensable instrument of political and moral legitimacy, both for the citizens of Europe in relation to politicians, administrations and national powers and for economic and social operators. It is an expression of the common values that are at the very core of our democratic societies.

9. The Charter should be the best possible combination of pragmatism and ambition. It should **add real value** to the abundance of existing legal or political texts dealing with human rights in Europe.

The Charter is **pragmatic**, in that it must not give way to the temptation to innovate at all costs and must remain within the framework of the Cologne mandate.

Nevertheless, its added value is **ambitious**. It has been produced by:

- codifying material from various sources of inspiration: the European Convention on Human Rights, common constitutional traditions, the European Social Charter, the Community Charter of the Fundamental Social Rights of Workers, primary and secondary Community legislation, international conventions (Council of Europe, UN, ILO) and rulings by the Court of Justice and the European Court of Human Rights;

- incorporating in the Charter, alongside the classic civil and political rights and the rights of citizens deriving from the Treaties, fundamental economic and social rights, "*insofar as they do not merely establish objectives for action by the Union*";
- enshrining certain "new" rights which already exist but have not yet been explicitly protected as fundamental rights, notwithstanding the values they are intended to protect, such as the protection of personal data and the principles of bioethics or the right to good administration.

10. As well as raising the profile of fundamental rights, it must be pointed out that the Charter provides significant **legal certainty**. This will make it possible to improve the current level of protection of fundamental rights in the Union, by moving beyond the current system, which is basically in the hands of the courts.

In the current Treaties, Article 6 of the Treaty on European Union is the point of reference for questions related to fundamental rights. Its first paragraph sets out the general principles on which the Union is based and which, if seriously and persistently breached, can lead to the imposition of the penalties set out in Article 7 of the Union Treaty. Paragraph 2 lists the sources of fundamental rights respected by the Union, at least one of which (constitutional traditions common to the Member States) it is difficult to challenge by way of legal action. Leaving aside its ultimate legal nature, the adoption of the Charter sets out clearly and concisely the fundamental rights covered by Article 6(2). This could also clarify the principles set out under Article 6(1) and the provisions referring to it (Articles 7 and 49 of the Union Treaty).

11. **The Charter applies to the institutions and bodies of the Union, and to the Member States solely where they implement Union law.** It will therefore be possible to assess all measures taken in this field on the basis of the rights and freedoms set out in the Charter. This means that, in terms of the protection of fundamental rights, the Charter is an instrument for controlling the exercise of powers devolved by the Treaties to the Union's institutions and bodies
12. With the Union now developing a real common foreign and security policy, in which respect for fundamental rights will play a key role, the adoption of a catalogue of rights will make it possible to give **a clear response** to those who accuse the Union of employing **one set of standards at external level and another internally**. The Charter will provide the Union with a clear catalogue of rights that it will have to respect when implementing both internal and external policies.
13. There is no way to avoid addressing the possible repercussions of the adoption of the Charter on the enlargement of the Union. **First and foremost, it will be necessary to dispel all fears about the impact of the Charter on enlargement.** The Charter imposes no additional conditions on applicant countries. The acceptance of the established body of

EU law, for example, on the protection of personal data, already involves the acceptance of and respect for the rules and principles contained in the Charter. In fact, the Charter sets out clear rules regarding fundamental rights, thereby providing the applicant countries and citizens in general with legal certainty. In doing so, it demonstrates that it is an extremely important milestone in the development of Europe as a political force.

14. To ensure that the Charter is a success, it is advisable not simply to highlight its objectives and added value, but also to point out clearly that it will not have certain effects which may have caused alarm in some quarters:

- a) **The Charter will not be a vehicle to extend or reduce the powers of the Union and the Community**, as established by the Union Treaty and EC Treaty. The Charter is neutral with regard to the division of powers. Changes in any powers would be a matter for the Intergovernmental Conference, not for the Convention.

The Charter's neutrality on the subject of the powers of the Union and the Community is also a consequence of the very nature of fundamental rights. As they protect the individual from abuses of public power, the main purpose of fundamental rights is to allow for the control of existing powers at a given political level, whatever level that may be.

Since fundamental rights are also the values which guide the actions of the Community and the Union, it is clear that such action must be carried out within the framework of the powers of the Community and the Union and with respect for the principle of subsidiarity. This applies particularly to rights requiring implementing measures, such as social rights and principles.

- b) **The Charter will not require, as has been shown by the discussions within the Convention, any amendments to the Member States' constitutions.** As regards the respect for fundamental rights at national level, in its field of application it will clearly not replace national constitutions; in fact, it will basically group together rights already existing in different documents and in the Treaties.
- c) **The Charter will have no impact on forms of court action or the court structure put in place by the Treaties**, as it does not provide for new channels of access to Community courts. The right to a court hearing, be it a national or Community court, will be exercised using existing legal channels:
- by bringing an action before the Court of Justice, on the basis of Articles 230, 232 and 235/288 of the EC Treaty, as long as the conditions of admissibility are duly satisfied, or
 - by bringing an action before a national court which may give rise to a request for a preliminary ruling under Article 234 of the EC Treaty.

- d) **The Charter neither requires nor precludes accession to the European Convention on Human Rights.** The development of the Charter has once again highlighted the question of the Community or the Union signing up to the ECHR. In view of the mandate given to the Convention by the Cologne European Council, the Convention has admitted ever since its work began that this matter does not concern it.

However, the existence of a Charter does not diminish the interest in joining, as accession would effectively establish external supervision of fundamental rights at Union level. Moreover, accession to the ECHR would in no way lessen the importance of drawing up a European Union Charter. The question has also become topical following a recent ruling by the European Court of Human Rights in Strasbourg on a piece of primary Community legislation (Application No 24 833/94, *Matthews v United Kingdom*, judgment on 18 February 1999).

3. THE CONTENT OF THE PRELIMINARY DRAFT

15. The preliminary draft has given rise to a number of observations, which are set out below.

3.1. Structure

16. The preliminary draft consists of 52 Articles and an introductory preamble. Apart from the general provisions at the end of the document (Articles 49 to 52), the Articles are grouped around six fundamental values: dignity (Articles 1 to 5), freedoms (Articles 6 to 19); equality (Articles 20 to 24); solidarity (Articles 25 to 36); citizenship (Articles 37 to 44) and justice (Articles 45 to 48).
17. The preliminary draft is accompanied by an explanatory memorandum (CONVENT 46, annexed to this Communication), which lists the sources that provide the basis for the Charter's Articles (including Community Treaties, the Rome Convention on the Protection of Human Rights and Fundamental Freedoms, other international conventions and rulings by the Court of Justice). The Commission believes that this explanatory memorandum could be of help with further interpretation of the Charter.

3.2. Form

18. In keeping with the spirit of the Cologne Conclusions, which called for a Charter of Fundamental Rights of the Union to be drawn up to make their overriding importance and relevance more visible to the Union's citizens, the drafting has been characterised by a desire for conciseness and clarity.

3.3. The list of rights

19. In line with the Cologne conclusions and taking account of the principle of the indivisibility of fundamental rights, the preliminary draft includes the rights of liberty and equality, together with the procedural rights guaranteed by the Rome Convention and by

the constitutional traditions of the Member States, the fundamental rights of citizens of the European Union and fundamental economic and social rights, grouping them on the basis of the abovementioned structure.

20. The Convention's work has resulted in the explicit inclusion of rights not on the list drawn up by the Praesidium of the Convention as a basis for discussion (CHARTE 4112/00): freedom of scientific research (Article 13); freedom to conduct a business (Article 16); the protection of intellectual property (Article 17); the right to good administration (Article 39); children's rights (Article 23); access to services of general economic interest (Article 34); protection in the event of unjustified dismissal (Article 28). Equality, which found a place in the Praesidium's draft solely in connection with bans on discrimination, is the subject of two specific Articles: one establishing the rule of equality before the law (Article 20) and the other dealing with the equality of men and women (Article 22). Reference is also made in the preamble to duties with regard to other persons.
21. Conversely, certain rights envisaged at the beginning have not been included:
- either because they were seen as simply setting policy objectives, which the Cologne conclusions prevent from being included in the Charter; this is the case as regards the right to work or right to an equitable wage; or
 - because, without being excluded from the list, they were already implicit in other provisions in the preliminary draft; this is the case, for example, of the right to strike, which is covered by Article 26 concerning the right of collective bargaining and action, or the right to a minimum income, which is covered by Article 32 dealing with social assistance.
22. Clearly, the most difficult task for the Convention was to decide which economic and social rights to include in the preliminary draft. This concerns Chapter IV Solidarity (Articles 25 to 36) and Articles 15 (freedom to choose an occupation and to seek work), 22 (equality between men and women) and 24 (integration of persons with disabilities). It is likely to be difficult to reach a consensus within the Convention on these rights.
23. For its part, the Commission believes that the rights contained in the preliminary draft, be they civic and political rights, rights of citizens and economic and social rights, do strike a good balance. True, it would have preferred some rights to be expressed more explicitly (such as the right to strike covered by Article 26 on the right of collective bargaining and action and freedom in trade union matters in Article 12 or the European dimension of the exercise of these rights) or more forcefully (in particular for the protection of the environment in Article 35). But the Commission still considers that the preliminary draft provides an adequate basis for securing a consensus within the Convention.
- 3.4. Holders of rights**
24. This initially appeared to be a complex question but was resolved pragmatically: a response was provided for each right contained in the preliminary draft. There is a broad consensus for this approach, which is fully supported by the Commission.

25. In accordance with the principle of the universality of rights, most of the rights listed in the preliminary draft are granted to everyone.

However, certain rights are granted to specific groups of people:

- children (Article 23);
- workers, in relation to some of the social rights;
- Union citizens: freedom to work, to seek work, to settle or provide services in any Member State (Article 15(2)); right to the same access to social security benefits and welfare assistance in another Member State (Article 32(2)); right to take part in elections to the European Parliament (Article 37) and municipal elections (Article 38); right to move and reside freely within the territory of the Member States (Article 43(1)) and diplomatic and consular protection (Article 44),
- Citizens of the Union and persons residing in the Union: right of access to institution documents (Article 40); right to refer cases to the Ombudsman (Article 41) and right to petition the European Parliament (Article 42).

It should be added that certain rights granted to Union citizens may also be accorded to nationals of third countries, such as freedom of movement (Article 43(2)).

Some provisions do not establish subjective rights that can be invoked by the individual directly but set out principles which can be enforced against Community or national authorities in the performance of their legislative or executive functions. This applies to entitlement to social security benefits and social services (Article 32(1)), access to services of general economic interest (Article 34), environmental protection (Article 35) and consumer protection (Article 36).

3.5. Scope and limits of the rights guaranteed

26. With certain exceptions, exercise of the rights may be restricted where other legitimate interests must be respected, either the public interest, for example in the fight against crime, or private interests where the rights or freedoms of others are involved.

The Commission supports the insertion of a horizontal article applicable to almost all rights (Article 50(1)), an approach that has found widespread support within the Convention. Chosen in preference to the approach of explaining possible restrictions on each right, this strategy avoids cumbersome repetitions while giving all the guarantees needed to protect these rights effectively. The restrictions may affect only the exercise of

the right; they do not challenge its substance. The appropriate national or Community legislative authorities must make provision for them, and they must be necessary to achieve objectives of general interest that are pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others. They must also be subject to the principle of proportionality.

27. Provision has been made for rights based on the Community Treaties to be exercised under the conditions and within the limits defined by those Treaties (Article 50(2)).

3.6. Level of protection

28. The Commission fully shares the desire expressed in Article 51 of the preliminary draft to prevent the interpretation of the Charter restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by the various laws and agreements in force in the Union.

29. The Commission also fully shares the desire to ensure that differing conceptions of fundamental rights do not develop in Europe, if, contrary to the frequently expressed hope of the Commission, the Union is not eventually allowed to accede to the Rome Convention. For this reason, it supports Article 50(3) of the preliminary draft, which is intended to ensure consistency in the interpretations of the provisions contained in the Rome Convention and the corresponding provisions in the Charter, while respecting the principle of the autonomy of Community law.

3.7. The authorities required to respect the Charter

30. The Commission fully supports the solution chosen in the preliminary draft (Article 49(1)) addressing the provisions of the Charter to the institutions and bodies of the Union and to the Member States only when they are implementing Union law. This means that the Charter would apply uniformly to all the activities carried out by the institutions and bodies of the Union and by the national authorities under the three pillars of the Union. Of course, this would include the particularly sensitive areas of maintaining and developing the area of freedom, security and justice.

From a legal point of view, this solution is in line with the consistent case-law of the Court of Justice, which has pointed out on numerous occasions that Member States are required to respect fundamental rights when implementing Community law.

31. As pointed out above, the drawing up of the Charter in no way calls into question the powers of the Union or the principle of subsidiarity. The provisions on the subject in the preliminary draft (Article 49) and its preamble have a declaratory value which will help to clarify any misunderstandings on this point. Far from extending the powers of the Union, the Charter, as the sum of the common values recognised in the Union, will in fact be the instrument which explicitly ensures that these powers are exercised in the manner established by the Treaties.

4. THE LEGAL NATURE OF THE CHARTER

32. At current stage in the proceedings, attention should continue to be focused as a matter of priority on the content of the Charter until such time as the draft Charter has been finalised, for only if the Charter is sure to be an ambitious document will the question of its legal nature and its incorporation in the Treaty be a matter of any importance.

33. This question was raised by the Heads of State or Government themselves. The Cologne conclusions clearly state that, after the European Parliament, the Council and the Commission have jointly proclaimed the Charter:

"It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties."

It was for this reason that the line taken by the Convention from the outset of its work was to produce a draft Charter with a content that would allow it to be incorporated in the Treaties.

34. The Commission also notes that the European Parliament stated its clear support for the idea of incorporating the Charter in the Treaties in its resolution adopted in March 2000, a view shared by the Governments of several Member States. The same is true of numerous non-governmental organisations.

35. For its part, the Commission believes that, as the drawing up of the Charter involves the national and Union legislative and executive powers as represented in the Convention, and as long as it remains ambitious, the Charter will have the effect of a proclamation, irrespective of the legal value formally conferred on it.

However, in view of the preliminary draft, the Commission believes that incorporating the Charter in the Treaties would remedy some of the shortcomings in the existing system of protection of fundamental rights in the Union. This system is characterised by indirect protection by means of general principles of Community law, this protection being basically in the hands of the courts, established by judgments on cases brought before them, and by protection which is not immediately evident to its direct beneficiaries.

36. As stated above, the conclusions of the Cologne European Council also raise the question of how the Charter should be incorporated into the Treaties. If the European Council were inclined to give the Charter mandatory force and incorporate it into the Treaties, this would obviously have serious repercussions on the present political dynamics of the Union. Thought would have to be given to the technical arrangements for incorporating the Charter into the Treaties in the future using the methods for the revision of the Treaties

37. For this reason, as soon as the draft Charter has been finalised and depending on the what it has developed into, the Commission will present a communication on the question of its legal nature.

5. CONCLUSIONS

38. In conclusion:

- a) in principle, the Commission supports the preliminary draft Charter as set out in document CONVENT 45 of 28 July; it realises, however, that, in view of the comments made by the members of the Convention, the preliminary draft may still be amended and therefore reserves the right to re-examine the text at a later stage;
 - b) the Commission will present a communication on the legal nature of the Charter once the draft has been finalised by the Convention.
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 25 September 2000**CHARTE 4479/00****CONTRIB 330****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed a contribution by the Council of Europe's observers, on the draft appendix to the explanatory notes regarding the Article 51 § 3 of the Charter. ¹

¹ This text has been submitted in French and English languages.

19.9.2000

**Note by the Council of Europe Observers
for the attention of the members of the Convention**

We have the following observations on the document of 15 September 2000 containing a draft appendix to the explanatory notes on Article 51 § 3 of the Charter (Convent 47).

1. On the basis of the current draft of the Charter, the following amendments to the two lists would appear necessary:

- ❑ Article 9 (right to marry and to found a family), which is not mentioned, should appear in the second list.
- ❑ In the second list, the passage relating to Article 12 (freedom of assembly and of association) should read: “Article 12 § 1 corresponds to Article 11 of the ECHR, but its scope is extended, by paragraph 2, to the European Union level”.
- ❑ Article 14 § 3 (the part concerning the right of parents to ensure the education of their children) should appear in the first list.
- ❑ Article 21 § 1 (non-discrimination), which is not mentioned, should appear in the second list.

2. However, care should be taken to avoid these lists acting to prevent the case-law on the European Convention on Human Rights being taken into account in the application of the Charter. The same applies, *mutatis mutandis*, to future additional Protocols to the ECHR.

So as to avoid any confusion, it would be appropriate to ensure that the minimum level of protection rule set out in Articles 51 § 3 and 52 of the Charter is valid also for those Charter rights for which, at this point, the equivalent is to be found in the case-law of the European Court of Human Rights, not in the text of the ECHR¹. Indeed, Article 51 § 3 speaks of “rights” guaranteed by the ECHR, not by the Articles of that Convention, and the Charter itself contains rights that are based on the Court’s case-law rather than the text of the ECHR. Examples are provided by Article 19 § 2 (prohibition on removal entailing a risk of ill-treatment) and Article 46 § 3 (right to legal aid; see the explanatory notes on these provisions in Convent 46).

Here are some further examples of Charter provisions (Convent 47) that are covered – at least in part – by the case-law of the European Court of Human Rights:

- ❑ Article 8 (protection of personal data) – see, among other authorities, the following judgments *Leander v. Sweden*, 26 March 1987; *Amman v. Switzerland*, 16 February 2000; and *Rotaru v. Romania*, 4 May 2000;
- ❑ Article 13 (protection of art) – see, in particular, the *Müller and Others v. Switzerland* judgment of 24 May 1988 and the *Karatas v. Turkey* judgment of 8 July 1999
- ❑ Article 13 (protection of research): see the *Hertel v. Switzerland* judgment of 25 August 1998
- ❑ Article 22 (protection of cultural, religious and linguistic diversity): decision of 25 May 2000 in the case of *Noack and Others v. Germany* (no. 46346/99)

¹ See on this point our contribution of 30 June 2000 (Contrib 268, Charte 4411/00).

- ❑ Article 24 (rights of the child): see, in particular, the T. and V. v. the United Kingdom judgment of 16 December 1999; and the Scozzari and Giunta v. Italy judgment of 13 July 2000
- ❑ Article 25 (integration of persons with disabilities): see the Botta v. Italy judgment of 24 February 1998
- ❑ Article 36 (environmental protection): see, in particular, the following judgments: Lopez Ostra v. Spain, 9 December 1994; Guerra and Others v. Italy, 19 February 1998; L.C.B. v. the United Kingdom, 9 June 1998
- ❑ Article 48 § 3 (proportionality of criminal penalties): in the context of the examination of the necessity for certain measures of interference (see, for example, the Constantinescu v. Romania judgment of 27 June 2000).

Indeed, it is for that reason that the wise precaution has been taken in the explanatory notes (Convent 46) on Article 50 § 3 (currently 51 § 3) to indicate : “It goes without saying that the term “convention” covers both the Convention and its Protocols and that the meaning and scope of its rights are determined not only by the text of the Convention but also by the case-law of the European Court of Human Rights”. For the same reason, the Council of Europe stressed the importance of having a reference to the case-law in the text of the Charter, (the reference is to be found in the Preamble).

The proposed lists should therefore reflect that state of affairs. This could be done by adding a clause explaining that the lists “*have been drawn up without prejudice to the application of Article 51 § 3 to rights of the Charter for which there is an equivalent in the case-law of the European Court of Human Rights or in the additional Protocols to the European Convention on Human Rights*”.

Marc Fischbach
Hans-Christian Krüger

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 September 2000
(OR. fr)****CHARTE 4487/00****CONVENT 50****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

PREAMBLE

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

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

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

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

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

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

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

CHAPTER I

DIGNITY

Article 1

Human dignity

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

Article 2

Right to life

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

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
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1. Everyone has the right to the protection of personal data concerning him or her.
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3. Compliance with these rules shall be subject to control by an independent authority.

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

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1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
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1. Everyone has the right to education and to have access to vocational and continuing training.
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3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

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1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
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The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

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

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Prohibition of child labour and protection of young people at work

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

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

Article 33

Family and professional life

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

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Social security and social assistance

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

Article 35

Health care

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

Article 36

Access to services of general economic interest

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

Article 37

Environmental protection

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

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Consumer Protection

Union policies shall ensure a high level of consumer protection.

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CITIZENS' RIGHTS

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

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

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

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

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

Article 42

Right of access to documents

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

Article 43

Ombudsman

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

Article 44

Right to petition

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

Article 45

Freedom of movement and of residence

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

Article 46

Diplomatic and consular protection

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

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

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

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

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

Article 48

Presumption of innocence and right of defence

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

Article 49

Principles of legality and proportionality of criminal offences and penalties

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

Article 50

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

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

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

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

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

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

Article 54

Prohibition of abuse of rights

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

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 10 October 2000
(OR. fr)****CHARTE 4487/1/00
REV 1 (el,en,fr,it,sv)****CONVENT 50****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

PREAMBLE

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

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

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

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

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

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

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

CHAPTER I

DIGNITY

Article 1

Human dignity

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

Article 2

Right to life

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

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,

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

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JUSTICE

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Right to an effective remedy and to a fair trial

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

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

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

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Presumption of innocence and right of defence

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

Article 49

Principles of legality and proportionality of criminal offences and penalties

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

Article 50

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

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

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

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

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

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

Article 54

Prohibition of abuse of rights

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

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 11 October 2000 (12.10)
(OR. fr)**CHARTE 4487/1/00**
REV 1 COR 1 (en)**CONVENT 50****NOTE: CORRIGENDUM**

Subject : Draft Charter of Fundamental Rights of the European Union

Page 15, Article 34(a) In paragraph 1, third line

For: "in accordance with the modalities laid down by ..."

Read: "in accordance with the rules laid down by ...".(b) In paragraph 3; third line

For: "in accordance with the procedures laid down by ..."

Read: "in accordance with the rules laid down by ...".

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 9 November 2000
(OR. fr)****CHARTE 4487/2/00
REV 2 (en)****CONVENT 50****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

PREAMBLE

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

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

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

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

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

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

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

CHAPTER I

DIGNITY

Article 1

Human dignity

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

Article 2

Right to life

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

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 5

Prohibition of slavery and forced labour

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

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

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

Article 8

Protection of personal data

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

Article 9

Right to marry and right to found a family

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

Article 10

Freedom of thought, conscience and religion

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

Article 11

Freedom of expression and information

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

Article 12

Freedom of assembly and of association

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

Article 13

Freedom of the arts and sciences

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

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.

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

Article 15

Freedom to choose an occupation and right to engage in work

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

Article 16

Freedom to conduct a business

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

Article 17

Right to property

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

Article 18

Right to asylum

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

Article 19

Protection in the event of removal, expulsion or extradition

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

CHAPTER III

E●QUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

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

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

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

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

Article 24

The rights of the child

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

Article 25

The rights of the elderly

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

Article 26

Integration of persons with disabilities

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

CHAPTER IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

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

Article 28

Right of collective bargaining and action

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

Article 29

Right of access to placement services

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

Article 30

Protection in the event of unjustified dismissal

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

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

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

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

Article 33

Family and professional life

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

Article 34

Social security and social assistance

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

Article 35

Health care

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

Article 36

Access to services of general economic interest

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

Article 37

Environmental protection

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

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 39

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

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

Article 40

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

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

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

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

Article 43

Ombudsman

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

Article 44

Right to petition

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

Article 45

Freedom of movement and of residence

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

Article 46

Diplomatic and consular protection

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

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

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

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

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

Article 48

Presumption of innocence and right of defence

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

Article 49

Principles of legality and proportionality of criminal offences and penalties

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

Article 50

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

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

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

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

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

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

Article 54

Prohibition of abuse of rights

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

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 octobre 2000**CHARTE 4952/00****CONTRIB 352****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de M. Jean-Luc Dehaene, représentant personnel du gouvernement belge.^{1 2}

¹ Ce texte nous est parvenu en langue française uniquement.

² La contribution date du 28 septembre, elle nous est parvenue le 3 octobre, suite à des problèmes de transmission électronique.

Monsieur le Président,

1. A lecture des deux derniers documents qui nous ont été transmis par le Présidium, je crois pouvoir dire que nous avons répondu de manière adéquate au mandat qui nous avait été confié par le Conseil européen de Cologne. Je tiens tout particulièrement à féliciter le Présidium d'avoir pu élaborer un projet de Charte équilibré à l'issue de débats menés au sein de la Convention mais aussi de ses composantes qui ont reflété l'expression de sensibilités parfois difficilement conciliables.

Le projet de Charte se présente sous une structure qui a l'immense mérite de ne pas opérer un clivage entre les droits dits « traditionnels » et les droits économiques et sociaux mais celui-ci consacre également des droits qui bien qu'existant n'avaient pas encore été reconnus en qualité de droits fondamentaux nonobstant les valeurs importantes qu'ils visent à protéger, comme les principes bioéthiques, le droit à une bonne administration ou encore l'accès aux services d'intérêt économique général.

Comme je viens de le préciser, nous avons rempli notre mission et répondu à l'objectif fixé, il s'agissait non pas d'innover, de créer des droits nouveaux mais de se livrer à une compilation des droits existants à l'effet de les rendre plus visibles pour le citoyen.

Il faut par ailleurs se féliciter de ce que le texte proposé respecte le vœu exprimé par le Président Herzog au début de nos travaux. La rédaction d'un texte sous forme juridique devrait permettre le cas échéant, son intégration future dans les traités.

2. En vue de répondre à certaines critiques qui évoquent le caractère trop peu ambitieux de nos travaux, j'observe que la Charte renforcera la sécurité juridique.

Comme le précise, sans ambiguïté la Charte, celle-ci s'adressera aux institutions de l'Union et aux Etats membres quant ils agissent dans la sphère d'application du droit communautaire.

Dorénavant, toutes les mesures qui seront prises par ces acteurs importants de la mise en œuvre des droits fondamentaux, seront appréciées au regard des principes énoncés par la Charte.

L'Union s'est dotée d'un catalogue de droits qui s'impose à elle dans l'exercice des compétences qui lui sont conférées par les traités et je songe plus précisément au secteur particulièrement sensible d'un espace de liberté, de sécurité, et de justice, mais également dans la mise en œuvre de ses politiques externes comme l'a souligné judicieusement la Commission dans sa dernière contribution.

3. Je souhaite par ailleurs vous exprimer mon opinion au sujet des deux difficultés essentielles sur lesquelles ont buté nos travaux : les rapports entre la Charte et la CEDH et l'épineuse question de la définition des droits sociaux.

3.1. Certes on ne peut sous estimer les craintes exprimées par certains qui prédisent que la Charte va favoriser le développement de conceptions divergentes des droits fondamentaux selon que leur interprétation sera faite par la Cour de Luxembourg au regard d'objectifs propres au droit communautaire ou par la Cour de Strasbourg, gardienne de la CEDH.

A cet égard, le nouveau texte de l'article 51 § 3 permet de dissiper grandement les malentendus quant à la portée des droits énoncés par la Charte et correspondant à des droits garantis par la CEDH. Il serait cependant préférable qu'il y soit explicitement prévu une référence à la jurisprudence de la Cour de Strasbourg.

J'estime toutefois pouvoir me référer à la contribution des représentants du Conseil de l'Europe, selon lesquels la référence dans le préambule à la jurisprudence de la Cour de Strasbourg permet de considérer que le renvoi à la CEDH couvre également les droits reconnus par la jurisprudence de cette Cour. (cfr. observations des représentants du Conseil de l'Europe relatives au doc. 4422/00 Convent 45).

Par ailleurs, la Belgique comme elle a déjà maintes fois eu l'occasion de le plaider reste persuadée qu'une interprétation harmonieuse des droits fondamentaux serait favorisée par une adhésion de l'Union à la CEDH.

3.2. J'en viens maintenant à la définition des droits sociaux.

Nous l'avons constaté tous les EM ne sont pas parties aux mêmes conventions en matière de droits sociaux et le système de protection sociale connaît des développements différents selon les Etats membres.

L'approche minimaliste de certains qui prétendirent que la Charte devait se contenter d'énoncer exclusivement les droits que le citoyen pouvait réclamer en justice aurait conduit à un instrument d'une extrême pauvreté, le droit à la santé, la protection de l'environnement ne sont pas toujours concrétisés par des droits directement justiciables mais il n'en demeure pas moins qu'ils constituent des principes essentiels qui doivent être mis en œuvre par les autorités publiques dans leurs politiques.

Il est heureux qu'un consensus paraisse se dégager même si, personnellement je regrette que certains droits soient énoncés de façon fort peu volontariste ainsi le droit à un revenu minimum garanti est couvert implicitement par l'article 33 qui prévoit que l'Union reconnaît et respecte une aide sociale à l'effet d'assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes.

En vue de répondre aux critiques de ceux qui considèrent la Charte comme un instrument de régression sociale, il est primordial de préciser que celle-ci ne portera pas atteinte aux droits sociaux fondamentaux garantis par d'autres instruments internationaux ou par les législations nationales.

En vue de dissiper certaines craintes à ce sujet, il conviendrait à l'article 52 de faire une référence explicite à la Charte sociale européenne.

Un travail important d'explication de la Charte, de ses objectifs de son mécanisme et notamment de ses clauses horizontales devra être mené.

Les explications élaborées par le Présidium s'avèrent un instrument précieux qu'il faudra rendre accessible au lecteur en même temps que le texte de la Charte.

4. La nature juridique de la Charte est également un sujet qui alimente la réflexion des diverses sphères politiques et associatives qui s'interrogent quant à la valeur ajoutée de l'instrument que nous préparons.

Les conclusions de Cologne prévoient une proclamation conjointe de la Charte par le Parlement européen, le Conseil et la Commission. Toutefois, il ne faut pas perdre de vue qu'après cette proclamation il faudra examiner si et, le cas échéant, de quelle façon intégrer la Charte aux traités.

Conférer à la Charte un caractère contraignant et l'insérer dans les traités renforcerait à mon sens la légitimité de l'Union. La Charte est un jalon important de cette Europe politique qui est en train de se constituer. Le développement d'une politique étrangère et de sécurité commune impose l'adoption d'un instrument de référence en matière de droits de l'homme, que l'Union devra respecter dans la mise en œuvre de ses politiques tant internes qu'externes.

En septembre 1999, le Président de la Commission européenne m'avait invité ainsi que Monsieur Richard Von Weizsäcker, ancien Président de la République Fédérale d'Allemagne et Lord Simon of Highbury, à lui remettre un rapport sur les implications institutionnelles de l'élargissement.

Nous avons insisté à l'époque sur la nécessité de rapprocher le citoyen des institutions européennes. Parmi les propositions que nous formulions à cet effet figurait la restructuration des traités européens. Les traités pourraient ainsi être séparés en deux parties. Un traité de base pourrait fixer les objectifs, les principes et le cadre institutionnel de l'Union ainsi que les droits fondamentaux des citoyens européens. Un texte séparé contiendrait les autres dispositions des traités actuels et leurs modifications. L'institut européen de Florence a remis un rapport qui propose dans un sens similaire une réorganisation des traités et l'adoption d'un traité fondamental.

Il va de soi que la Charte des droits fondamentaux s'inscrirait, dans une telle perspective, parfaitement dans un Traité de base de l'Union dont elle pourrait constituer un chapitre introductif. L'Union serait ainsi dotée d'un texte fondateur comparable aux constitutions des Etats. La légitimité de ses institutions et la conscience européenne ne pourraient qu'en tirer avantage.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 October 2000**CHARTE 4953/00****CONTRIB 353****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution sent on 20 September 2000 by Mrs. VAN DER BURG. Mrs. VAN DER BURG (Member of the European Parliament) asked for publication of this contribution.¹

¹ This text has been submitted in English language only.

Note to the attention of the Presidium of the Convention (for its meeting on 20 September), and to the members of the Convention

Improvement of the Draft EU Charter of Fundamental Rights (convent 47) with the objective to bring it in line with the Revised European Social Charter of the Council of Europe

1. The last draft of the Charter text, Convent 47, is still lacking a clear reference to the Revised European Social Charter (as was proposed a.o. by the PSE members, and by the Dutch and Belgium government representatives Korthals Altes and Dehaene). This is the more striking, now the Presidium has elaborated a detailed annex with an explanation as to the correspondence of articles in the EU Charter with specific articles in the ECHR. A similar exercise is necessary for the articles that correspond with the content of the Council of Europe's instruments on social rights. With this note I would like to give some background information to underpin the urgent appeal to make the relationship of the EU Charter with the Revised European Social Charter clear, in the interest both of those who presently criticize the draft EU Charter as a step backwards compared to the Revised, and even the 1961 Social Charter, as to those who fear that an open formulation of particularly social and economic rights may give rise to misinterpretations and undue pressures on Member States, if they lack a clear context of interpretation and case law. Particularly for the countries, that prepare for accession tot the EU, it is imperative to bring in line the demands from the Council of Europe in which they are actively working already and the EU-'acquis' on fundamental rights in draft EU charter.
2. Both the criticisms and the misunderstandings may be largely taken away by including a clear reference to the Revised European Social Charter of the Council of Europe, not only in the preamble, but also in the (horizontal) articles 51(3) and 52. Such a reference does not put any direct or indirect obligations to Member States vis-a-vis this Revised Social Charter of the Council of Europe ¹. With full respect for the individual national responsibilities and choices of Member States with respect to the ratification process and the selection of articles to be ratified ², it is possible and from the point of view of these Member States desirable to have a joint reference framework for the interpretation of the articles in the draft EU Charter that correspond with articles in the (R)ESC. As is formulated in the former horizontal article 49, now art. 50, this interpretation and reference exclusively deals with the obligations of the EU institutions and bodies (and to the Member States where they implement Union law) to respect, observe and promote the rights and principles in this Charter. So a reference to the RESC in art's 51 and 52, in addition to that to the ECHR, and a detailed reference to the ESC and RESC and its case law, as well as to ILO Conventions, UN conventions and other sources of inspiration and interpretation in the explanatory text of Convent 46, is not in any way binding or committing Member States in their individual relation to the Council of Europe (or these other international organisations), but only providing them with a joint reference framework for the EU Charter.

¹ All the 15 Member States have ratified the European Social Charter of 1961 and decided to and participated in the revision of that Charter, that led to the Revised European Social Charter of 1996. Three Member States have already ratified the Revised Charter; the others are in the process of ratification. Also the accession countries are actively involved in implementing the Social Charter's provisions. See [annex 1](#) for a more precise description on the basis of information of the Council of Europe.

² In the structure of the European Social Charter it is possible not to ratify all the individual articles. Nevertheless reporting and monitoring activities take place throughout the Council of Europe members with respect to all the elements.

3. Analyzing the parallelity of Convent 47 with the Revised European Social Charter³, some omissions are clearly striking, and have alarmed both legal experts⁴ the European Trade Union Confederation and organisations of NGO's⁵. Taking into account that not the complete text of the RESC can be included, and that some articles of the draft EU Charter have been formulated that broad that they may include elements of several RESC articles, three substantial elements of the RESC are most obviously missing in the present draft text: 1) fair remuneration (which as the most evident element of working conditions may be added to the present article 30), 2) housing and the protection against poverty and social exclusion (which may be included in art. 33(3) and the rights of elderly persons (which may be added in the Equality chapter as an article about the (respect for) "the rights of the elderly to an independent and decent existence and to take full part in political, social and cultural life" (which is more than non-discrimination on the basis of age). Taking into account that the substance of these articles as such is not controversial in the careful formulation of the texts as they are now drafted, the addition of them may make the Charter more complete and corresponding to the (R)ESC. Additionally in the context of all the activities with respect to Employment Guidelines and employment policies in the EU, it would be also an inexplicable omission if not (in line with the - formulation of the - articles 34, 36 and 37) the ensuring of a high level of employment would be included as a separate article, in line with the Treaty⁶.
4. In Convent 47 the Presidium has followed up the suggestion to include the clause in 51(1) that limitations may never infringe upon the very substance of the fundamental rights. Nevertheless the EP delegation's demand to also delete the clause "other legitimate interests in a democratic society" has not been followed. The text of this article would be improved by deleting this clause, and by adding a sentence that was contained in previous drafts, making clear that restrictions and limitations may not exceed those of the ECHR and RESC. This also serves the objective of parallelity with the ECHR and RESC.
5. Horizontal article 51, para 2 is still formulated in a way that is interpreted by several legal experts as implying that the fundamental rights included in the Treaty might be overruled and subordinated by changes in the Treaties. This is not in line with the explanatory text in Convent 46 that explains that this paragraph is meant to say that where a right results from the Treaties it is subject to the conditions and limits laid down by these Treaties. Since in several cases the rights that are indicated here (a precise list of these would also be useful) also exist in the ECHR and/or the (R)ESC, it is necessary to at least add a clause saying that this reference to the Treaties (and the possibility to change these in future) cannot undermine the guarantees given in the other two paragraphs of this article. (the start of the sentence could read: " Without prejudice

³ See annex 2 for a (provisional) comparison, drafted with the assistance of the Council of Europe's services. This comparison shows that 16 rights (mainly in chapter IV) are more or less corresponding with rights in the 1961 ESC and the 1996 RESC. The vast majority of these are contained both in the 1961 ESC and in the Revised ESC, so all member states are bound to these rights. Only one did not exist yet in the 1961 ESC (dismissal protection), one existed only in the preamble (non-discrimination), and 2 rights were part of the protocol of 1988 (equality men/women; information and consultation of workers). Of the 7 "missing" rights that are not (yet) included in Convent 47, one forms part of both Charters (fair remuneration), two (elderly persons, and the participation of workers in working conditions and environment decisions) were already in the 1988 protocol, and 4 exist only in the RESC.

⁴ See for instance the Executive Summary of the International Conference "The Challenge of the EU Charter" of Leiden University in Noordwijk 4-5 september 2000.

⁵ See press releases and comments of the last weeks.

⁶ Both article 2 TEU and art. 1 of the 1961 and of the Revised European Social Charter speak about a high level of employment

to the other two paragraphs of this article"). From the point of view of logic and readability, it would further be preferable to start with para 3 of this article, followed by 1, and then end with the para referring to the Treaties as amended.

6. In (horizontal) article 52 (level of protection) the Revised European Social Charter should be mentioned explicitly, and the word "all" in front of Member States should be deleted. As argued under 2 above, this does not imply that this affects the position of individual Member States who may happen not to be bound by particular international conventions. In fact it is exactly the same situation as with the reference to the Member States' Constitutions in the same provision. Here also Member State A is not via the EU Charter bound to the provisions of Member State B's Constitution. The article is precisely meant to guarantee that the interpretation of the EU Charter will not undermine the substance of rights and freedoms provided for in the international or national fundamental rights that the Member States are bound to. It should prevent Member States from having to deal with conflicting interpretations and demands, also with respect to those international obligations that do not have the signature of all other EU countries.

Text proposals:

Summarizing, the following changes in Convent 47 are proposed (in the sequence of the draft text) :

Chapter III:

Add a new article (before or after art. 25), dealing with the rights of the elderly:

"The Union recognizes and respects the right of elderly persons to an independent and decent existence and full participation in political, social and cultural life."

Chapter IV:

Add a new article (right at the start of the chapter before art. 26), dealing with the employment objective:

"A high level of employment is ensured in the policies of the Union"

Add a paragraph (preferably the first) on fair remuneration in article 30:

"Every worker has the right to fair remuneration"

Add to article 33(3) a reference to the fight against social exclusion and poverty, and change "housing benefit" into "housing":

"With a view to fighting social exclusion and poverty, the Union recognizes and respects the right to social assistance and to housing, in order to ensure a decent existence for all those lacking sufficient resources, in accordance with.. etc "

Chapter VII:

Article 51.

(NB change the order of paragraphs: 3,1,2)

1. (previously 3):

"Insofar as this charter contains rights which correspond to rights guaranteed by the ECHR and the Revised European Social Charter, the meaning and scope of those rights shall be the same as those conferred on them by the said Council of Europe instruments and their case law, unless this Charter affords greater or more extensive protection."

2. (previously 1):

delete: "other legitimate interests in a democratic society"

and add: "Restrictions may not exceed the restrictions permitted by the ECHR and RESC in the corresponding articles"

3. (previously 2):

"Without prejudice to the paragraphs 1 and 2 of this article, rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

Article 52:

Delete "all" in front of Member States

And add after ECHR: "and the Revised European Social Charter"

Ieke van den Burg, 20 september 2000

Annex 1

Information about the European Social Charter and the Revised European Social Charter of the Council of Europe

- 1) The Council of Europe is founded in 1949, and presently has 41 Member States, of which all the EU member states and all accession countries. In 1961 the Council of Europe adopted the European Social Charter. This has consequently been signed and ratified by all EU member states. In 1988, 1991, and 1995 additional protocols were concluded. In 1991 the Ministerial Conference decided (unanimously) to make a Revised European Social Charter, with the purpose of updating and replacing the old charter and the protocols.
- 2) In 1996 this Revised European Social Charter was unanimously adopted, first in the so-called CHARTE-REL Committee that drafted the text in a long intensive process; and consequently in the Committee of Ministers. The Revised European Social Charter is due to progressively replace the old one and the protocols, which means that those Member States ratifying the Revised Charter are no longer bound by the 1961 Charter and that in the transitional period different situations of ratification exist.
- 3) The Revised European Social Charter is presently ratified by the EU member states France, Italy, and Sweden, (and by Romania, Slovenia, Cyprus, Bulgaria, and Estonia). The other 12 are still bound by their ratification of the 1961 Charter. EU member states Austria, Belgium, Finland, Ireland and Portugal, and non-EU states Albania, Croatia, Latvia, Liechtenstein, Moldova, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Georgia, Lithuania, and the Russian Federation are engaged now actively in the process of ratification.
- 4) A Committee of 9 independent experts, called the European Committee of Social Rights, monitors reports that Member States (after consultation of social partners) must submit; their conclusions and recommendations go to the Governmental Committee, composed of representatives of Member States, and - in cases of serious infringements, to the Committee of Ministers, that may make recommendations to Member States. Trade unions, employers' organisations and NGO's may also raise complaints with the ECSR, which after investigation may bring these to the Committee of Ministers. This complaint procedure is an optional one which has been accepted to date by Cyprus, Finland, France, Greece, Italy, Norway, Portugal, Slovenia and Sweden.
- 5) The structure of the Charter and its ratification is such that there is room for optional selection of articles, under clear conditions of a minimum number in certain clusters of articles.
- 6) In the first article of the "Social Chapter" (art 136, TEC) a reference is made to the 1961 Charter (at the time of the negotiations on the Amsterdam Treaty, the Revised Charter was not yet adopted); the Cologne mandate for the EU Charter also refers to the European Social Charter.
- 7) In the Council of Europe the Parliamentary Assembly recently pleaded for an integration of fundamental social rights in the European Convention on Human Rights (Recommendation 1415, adopted on 23 June 1999). The Ministerial Committee has not yet taken a position on this.
- 8) In its Recommendation 1439 and Resolution 1210 of January 2000 on the drafting of an EU Charter of Fundamental Rights, the Parliamentary Assembly of the Council of Europe expressed its clear recommendation that the EU charter should take into account the revised European Social Charter when referring to social rights.

Presently a new resolution is prepared for the Plenary Assembly of 25/26 september. Both the Legal Affairs Committee, the Political Affairs Committee and the Social Affairs Committee contribute to that resolution. The text that has been distributed to the Convention Members is that of the Legal Affairs Committee (rapporteur Magnusson); the Social Affairs Committee text is under preparation

(rapporteur Evan) and will undoubtedly again contain the recommendation to include a reference to the RESC in the EU Charter.

Annex 2

Table with a provisional comparison of the Draft EU charter articles corresponding with the 1961 European Social charter and/or the 1996 revised European Social Charter

Art.	Eu charter Convent 47	1961 ESC	1996 RESC
12	Freedom of assembly and of association	Art. 5	Art. 5
14	Right to education		
14.1	Vocational training	Art. 1.4, Art. 9 + 10	Art. 1.4, Art. 9 + 10
14.2	Free compulsory education		Art 17.2
15	Right to work		
15.1		Art. 1	Art. 1
15.2		Art. 18	Art. 18
15.3		Art. 19	Art. 19
21	Non-discrimination	Preamble	
23	Equality between men and women	4.3 + add. Protocol 1988 art. 1	Art. 20
24	Children's rights	Art. 7	Art. 7
25	Integration of persons with disabilities	Art. 15	Art. 15
26	Information and consultation	Protocol 1988 art. 2	Art. 21 + 29
27	Collective bargaining and action	Art. 6	Art. 6
28	Placement services	Art. 1.3	Art. 1.3
29	Dismissal protection	-	Art. 24
30	Fair and just working conditions		
30.1	Health, safety and dignity	Art. 3	Art. 3 + 26 (dignity)
30.2	Working hours	Art. 2	Art. 2
31	Child labour /young persons	Art. 7	Art. 7 + 17
32	Family and professional life		
32.1	Prot. Family	Art. 16	Art- 16
32.2	Combination work-family	Art. 8	Art. 8
33	Social security and social assistance		
33.1		Art. 12	Art. 12
33.2		Art. 12.4	Art. 12.4
33.3		Art. 13	Art. 13 (art. 30/31)
34	Health care	Art. 11 + 13	Art. 11 + 13

Missing articles			
Add to art. 30	Fair remuneration	Art. 4	Art. 4
	Determination and improvement working conditions and environment	Protocol 1988 art. 3	Art. 22
Add as a new art. Inch II	Elderly persons	Protocol 1988 art. 4	Art. 23
	Insolvency claims		Art. 25
	Protection workers representatives		Art. 28
	Protection against poverty an social exclusion		Art. 30
	Right to housing		Art. 31

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 26 October 2000 (31.10)
(OR. de)****CHARTE 4960/00****CONVENT 55****SECRETARIAT NOTE****Subject : Draft Charter of Fundamental Rights of the European Union**

Please find attached, for your information, a translation of the letter sent to President CHIRAC by former President HERZOG upon completion of the Convention's proceedings.

Brussels, 5 October 2000

President CHIRAC
President of the European Council
General Secretariat of the Council of the European Union
Rue de la Loi 175
B-1048 Brussels

Sir,

In accordance with the conclusions of the European Council (meeting in Tampere), may I hereby submit to you a draft Charter of Fundamental Rights of the European Union, which received the almost unanimous agreement of the Convention's members at their meeting on 26 September 2000. I have therefore concluded, in close consultation with the Vice-Chairmen of the Convention to draw up the Charter, that the draft can be agreed to on all sides.

(Complimentary close)

Roman HERZOG
former President of the Federal Republic of Germany
Chairman of the Convention

Enclosure: draft Charter (CHARTE 4487/00 CONVENT 50)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 November 2000 (13.11)**CHARTE 4961/00****CONTRIB 356****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter the Comments of the Council of Europe observers on the draft Charter. ¹

¹ This text has been transmitted in English and French languages.

Strasbourg, 9 November 2000

**Comments of the Council of Europe observers
on the draft Charter of Fundamental Rights of the European Union**

The Council of Europe observers wish to express their satisfaction with the draft Charter of Fundamental Rights of the European Union, as approved by the Heads of State and Governments of the member States of the European Union at the European Council's informal session at Biarritz on 14 October 2000 (Convent 50).

Firstly, the Charter draws to a significant degree on certain Council of Europe conventions, namely the European Convention on Human Rights (ECHR), the revised Social Charter and the Convention on Human Rights and Biomedicine. At the same time, in certain spheres, the Charter extends their scope or level of protection and even establishes new rights. That is a noteworthy development, particularly as it is consistent with the aforementioned instruments, thus answering a major concern voiced by the Council of Europe observers throughout the duration of the works on the Convention, since, in the domain of fundamental rights, inconsistencies not only undermine legal certainty, but above all entail a risk that the rights will be weakened rather than strengthened.

That is particularly true of the links between the Charter and the ECHR. Harmony between the two instruments is essential, as when implementing Community law the member States of the European Union will be bound by both the ECHR and the Charter, once it is in force. Thus, the slightest discrepancy between the two instruments would place the member States in a difficult position, one that must accordingly be avoided at all cost. It is to that end that the Charter expressly relies on the ECHR and, thus, constitutes a sort of extension to it in Community law.

That this is so is clearly apparent from Articles 52 § 3 and 53 of the Charter, whose effect, in substance, is to ensure an identity of scope and meaning between the rights contained in the two instruments, without preventing Union law from affording wider protection than that provided under the ECHR. The ECHR is thus recognised as a minimum standard for the interpretation and application of the Charter. That solution is entirely compatible with the ECHR, Article 53 of which indicates that the ECHR is not intended to impose a uniform level of protection of human rights throughout Europe, but solely to ensure a minimum standard, which the Contracting Parties to the ECHR are free to raise, either individually or by agreement with other States. It is the latter situation which will be brought about by the Charter, if it is given binding force.

Of course, for these principles to be implemented correctly the case-law of the European Court of Human Rights will need to be taken into account. It is the European Court of Human Rights which, through its interpretation of the ECHR, has continually determined and increased the level of protection afforded by the ECHR, a level which is today recognised by the Charter as a minimum standard. Furthermore, certain rights set out in the Charter have no equivalent in the ECHR, but are echoed in the case-law of the European Court of Human Rights. Examples of this are the protection of personal data (Article 8 of the Charter) and of

children (Article 24). Certain provisions of the Charter – Articles 19 § 2 and 47 § 3 – even expressly adopt parts of that case-law. It is in order to reflect the role and importance of the case-law that a reference is made to it in the Preamble to the Charter and in the accompanying explanations. By thus establishing at the outset that future case-law developments regarding the ECHR and the Charter may be taken into account, the danger that the common dynamic which these two instruments have the potential to produce will be destroyed has been avoided.

The coherence established between the Charter and the ECHR serves not only to preserve – even enhance – with legal certainty, the level of protection of fundamental rights already attained in Europe, but also to respect the universality of human rights, a notion which reflects the European conception of the value of every human being. The fact that human rights are universal does not prevent the member States of the European Union from reinforcing the protection of fundamental rights through the Charter. However, that protection would be totally undermined if the Charter was designed not to complete or to reinforce the ECHR, but to replace it by establishing a new minimum standard applicable only in the member States of the European Union. The Committee of Ministers (press release on the 106th session, 10-11 May 2000) and the Parliamentary Assembly of the Council of Europe (Resolutions 1210 (2000) of 25 January 2000 and 1228 (2000) of 29 September 2000) have each warned against such a development, since it would create a new dividing line in Europe and lend credence to the notion that the content of human rights may be adjusted to fit the economic situation of the States called upon to protect them. That would be counter to European tradition and deprive Europe of all credibility on the international scene when asserting the universality of human rights, since it would find itself accused of using different standards.

Mutatis mutandis, each of these considerations also applies to the relations between the Charter of Fundamental Rights of the European Union and the (revised) Social Charter of the Council of Europe. Even if the Charter of Fundamental Rights contains only some of the rights set out in the Social Charters, their inclusion, alongside the so-called “classic” rights, in an international instrument intended to be enforceable through the courts, represents real progress which is worthy of note.

Nevertheless, although the principles are clear and satisfactory, there will be many recurring practical difficulties in their implementation. Thus, for example, the application of the Charter rights borrowed from the ECHR presupposes the determination of the exact level of protection of that right afforded by the European Court of Human Rights, that being the minimum level recognised by Article 52 § 3 of the Charter.

In other words and *a fortiori*, no amount of careful drafting can prevent the debate on the final nature of the Charter from posing a number of problems which, unless satisfactorily resolved, will prove a potential source of error in the interpretation of the rights embodied in both the Charter and the ECHR, in particular if the Court of Justice finds itself called upon to decide issues that have not previously been before the Court in Strasbourg. Why?

Because the Charter, when applied and interpreted within the context of the European Union, that is to say in the framework of a Treaty with its own objectives and including new powers in such sensitive fields as immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references for preliminary rulings than the Court of Justice receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will be at variance with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with

and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very awkward position.

As regards the Charter's being harmoniously combined with the other systems of protection of fundamental rights, that point shows to what extent the debate about the nature of the Charter will restore to the agenda the question of accession by the European Communities and/or the Union to the ECHR, under suitable arrangements to be agreed by all those concerned. By entrusting a single court, the European Court of Human Rights, with the task of interpreting those ECHR rights which are also contained in the Charter, this solution would guarantee perfect harmony between the two instruments. In addition, it would have the advantage of enabling the Community Institutions to play a full role in proceedings before the European Court of Human Rights that concern Community law, so avoiding the risk that member States may find themselves obliged to bear sole responsibility under the ECHR while in certain cases being unable to take the action which a judgment may require at the Community level.

Marc Fischbach
Hans Christian Krüger



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 17 November 2000 (28.11)
(OR. fr)**

13534/00

LIMITE

INST 72

NOTE

from : Presidency
 dated : 17 November 2000
 to : Permanent Representatives Committee

Subject : Charter of Fundamental Rights of the European Union – Solemn proclamation,
 Nice, 7 December 2000

1. The Convention charged with elaborating a draft Charter of Fundamental Rights of the European Union reached agreement on 2 October 2000 on a text within the terms set out in the Presidency conclusions of the European Council, meeting in Tampere on 15 and 16 October 1999, Annex, point B(v).
2. The Presidency conclusions at the European Council, meeting in Cologne on 15 and 16 October 1999, Annex IV, fourth paragraph, provide that "*the European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights*". Mr Jacques CHIRAC, as President of the European Council, has written to the European Parliament and to the Commission to that effect.
3. The Presidency proposes that the Council sign the solemn proclamation in parallel with the European Council at Nice on 7 December 2000. The text to be signed will be the most recent revised version of the draft, preceded by the following text:

"The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of Fundamental Rights of the European Union."
 Done at Nice, 7 December 2000.
4. The Presidency requests that Coreper recommend that the Council approve this procedure as an "A" item and consider that, by so doing, it authorises the Presidency to sign the solemn proclamation on its behalf.



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**CONSEIL DE
L'UNION EUROPÉENNE**

Bruxelles, 21 février 2001

13891/00

LIMITE

CRS/CRP 47

COMPTE RENDU SOMMAIRE

**Objet : 1898ème réunion du COMITE DES REPRESENTANTS PERMANENTS
tenue à Bruxelles, les 29 novembre et 1er décembre 2000**

76. Préparation de la proclamation solennelle du Conseil, du Parlement européen et de la Commission relative à la Charte des droits fondamentaux de l'Union européenne - Nice 7/8 décembre 2000
doc. 13534/00 INST 72

Le Comité marque son accord unanime sur la procédure relative à la proclamation solennelle de la Charte des droits fondamentaux de l'Union européenne à Nice, le 7 décembre 2000, telle qu'elle est reprise dans le document 13534/00 INST 72 et invite le Conseil dans sa formation "Affaires générales" à l'adopter en point A lors de sa 2316ème réunion, les 4/5 décembre 2000.

77. Elargissement du Mandat du Groupe "Affaires Consulaires" (*)

Le Comité examine les suggestions de la Présidence concernant l'élargissement du mandat du Groupe de travail "Affaires consulaires" (cf. doc. 13950/00). Il invite le Service juridique du Conseil à rendre un avis à cet égard.

78. Sûreté nucléaire dans le contexte de l'élargissement
= Rapport au Coreper du Groupe des questions atomiques (*)
doc. 13789/00 ATO 74 ELARG 210
+ ADD 1

La contribution qui concerne le point susvisé fera l'objet d'un doc. Addendum au présent document.

79. Points à examiner à la suite de la session du Conseil (Budget) des 23/24 novembre 2000

Le Comité procède à un échange de vues en vue de préparer la réunion informelle du Parlement européen, du Conseil et de la Commission, prévue dans le relevé des conclusions de la concertation du 23 novembre 2000, afin de préciser le contenu du rapport d'étape que la Commission devrait soumettre à l'autorité budgétaire avant le 30 juin 2001.



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 30 November 2000 (01.12)
(OR. fr)**

14101/00

LIMITE

INST 74

"A" ITEM NOTE

from-:	Permanent Representatives Committee
on:	29 November 2000
to:	Council
No prev. doc.:	13534/00 INST 72
Subject:	Charter of Fundamental Rights of the European Union – Solemn proclamation, Nice, 7 December 2000

1. The Presidency conclusions at the European Council meeting in Cologne on 3 and 4 June 1999, Annex IV, fourth paragraph, provide that "*the European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights*". Mr Jacques CHIRAC, as President of the European Council, has written to the European Parliament and to the Commission to that effect.
2. The Presidency proposes that the Council sign the solemn proclamation in parallel with the European Council meeting in Nice on 7 December 2000. The text to be signed will be the most recent revised version of the draft, preceded by the following form of words:

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

Done at Nice, 7 December 2000.
3. At its meeting on 29 November 2000, the Permanent Representatives Committee reached unanimous agreement on this form of words and on authorising the Presidency to sign the solemn proclamation on behalf of the Council.
4. It therefore requests the Council to approve the procedure set out in the Presidency note in 13534/00 INST 72, as an "A" item, with a view to the solemn proclamation in Nice on 7 December 2000.