DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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CONTRIB 165

COVER NOTE

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the position paper from Eurolink Age on occasion of the public hearing on 27 April 2000. 

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\[1\] This text has been submitted in French and English languages.

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European Union proposals for a draft Charter of fundamental rights of the EU

Eurolink Age position paper

Introduction

Eurolink Age is a network of organisations and individuals throughout the European Union that promotes good policy and practice on ageing in the interests of the 121.4 million older people (defined as 50+) in the EU. It has been in operation since 1981. As a non-governmental organisation we are delighted to respond to the invitation to contribute to the drafting process for a Charter of fundamental rights for the EU.

This position paper, based on the Presidency note of 27 January 2000, has been drawn up in consultation with c.140 Eurolink Age members across Europe who are concerned to ensure that older people’s interests are fully taken into account by the Charter drafted by the Convention.

Comments on `Draft list of fundamental rights’ circulated by the Portuguese Presidency on 27 January 2000

List of rights

Eurolink Age draws to the attention of the Convention some specific rights which are particularly sensitive for older people, aspects of which should, in our opinion, be addressed as detailed drafting work continues. The following comments are numbered in accordance with the Portuguese Presidency list.

Dignity

1. This right should incorporate the relevant United Nations Principle for Older Persons: ‘Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse’.
Right to life
2. This right must take account of the sensitive issue of end of life rights, relating to access to medical treatment, to health-related choices in later life, and in relation to euthanasia. This is an emotive matter which must be treated with great respect.

Liberty and security
3. The European Convention on Human Rights and Fundamental Freedoms sets out exceptions to the general right to protection in the event of deprivation of liberty. These include: ‘the lawful detention of persons .......of unsound mind, .....’ (Article 5(e)). In view of the higher incidence of mental frailty among older people, Eurolink Age believes it is important that ‘persons of unsound mind’ be defined in such a way that adequate protection is ensured for individuals, such as Alzheimer’s disease sufferers, whose liberty may be infringed while they are still capable of – and can benefit from – taking some responsibility for their own affairs.

Respect for private and family life: right to privacy, home, correspondence
8. In practice today, this right is often infringed in the case of frail older people. The Charter should follow the United Nations Principles which address these issues, particularly in relation to supporting the continuing independence of older people and also concerning their ‘human rights and fundamental freedoms when residing in any shelter, care or treatment facility’.

Due regard should be given to those older people who find themselves victim to family abuse.

Article 23 of the Revised European Social Charter, on the right of elderly people to social protection, guarantees the respect of older people living in institutions. Eurolink Age calls on the Convention to incorporate Article 23 in its entirety into the draft Charter.

Right to education and vocational training, freedom of choice of method of education
13. The drafting of this right should take account of life-long learning, and the need to tailor education and vocational training to individual requirements. Research by Eurolink Age suggests that within the workplace older workers are often unable to benefit from training due to inappropriate delivery aimed at younger people.

Freedom of movement
17. The EC affords limited rights for those above retirement age to reside in another Member State. We believe that this right should be expressed in such a way that individuals will be able to rely on it when the implementing provisions are not applied in the spirit of the Treaties by all Member States, as is often the case today.

Right to property
18. Eurolink Age believes that the term ‘property’ should be defined to include social security rights and benefits which apply and which are accrued by the individual in the course of their life.
Non-discrimination
21. Age as a basis for discrimination is included in Article 13 of the EC Treaties but not \textit{per se} in the ECHR (Article 14). Eurolink Age believes that all persons of whatever age should enjoy the right of freedom from discrimination in all aspects of their lives, including the workplace, health and other services.

Economic and social rights/objectives

2,3 and 4. \textbf{Working conditions}
Eurolink Age welcomes the basic rights put forward for the benefit of all workers. It is important that those with informal employment status are also taken into account, including volunteers and informal family carers.

5. \textbf{Pensions}
Eurolink Age argues that there should be a right to an adequate pension for all older people, in line with Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems. Older people currently make up the highest proportion of Europe’s socially excluded people - 35% of those living below the poverty line in the EU are age 50 and over (ECHP, 1995 wave). They are among the most vulnerable, and least able to change their situation.

11, 12 and 15. \textbf{Social protection}
Eurolink Age believes that everyone covered by the Charter should enjoy a right to a minimum level of healthcare, to social security, social and medical assistance, and – if affected by a disabling condition – to positive measures towards integration in society.

Implementing the Charter

\textbf{Accessible for all}
2. The EU Council has stated that the protection of fundamental rights is a founding principle of the EU, and that there is a need to make these fundamental rights more visible to the Union’s citizens.\textsuperscript{1} Eurolink Age believes that these rights will only be visible to individuals if they are presented in an understandable and accessible manner, and if there is straightforward, affordable recourse for individuals whose rights are denied.

3. The Convention has indicated that it is not yet certain what legal status the Charter will have, if any. Eurolink Age argues that it is imperative that the Charter is legally binding and can ultimately be relied upon by individuals. Unless the Charter is applied in practice, the original goal set out at the Cologne summit in June 1999 – ‘to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union’s citizens’ – becomes a nonsense. In particular, we believe that it is no longer acceptable to sideline those – such as non-EU citizens or older people without a history of involvement in the labour market - who may be affected by, but not yet protected by the EC Treaties.

\textsuperscript{1} Conclusions of the European Council in Cologne, 3-4/6/99
Grievances should be dealt with within an acceptable timeframe.  
4. At present, those provisions under the EC Treaties with direct effect (which can be relied upon by individuals) are enforceable through national judicial systems and the European Court. The process is time consuming. Where a case is referred to the Court of Justice, it can take two years or longer before a judgment is given. If the final Charter is to be relied upon by individuals, legal procedures must ensure that an already lengthy system is not further worsened as a result of the Charter. Especially for elderly people, recourse must be obtainable within an acceptable timeframe.

5. We draw the attention of the Convention to the ‘Declaration of principles to mark the end of the European Year of the Elderly and Solidarity between Generations’ agreed by the EU Council and Ministers for Social Affairs, meeting on 8 December 1993, as well as to the United Nations Principles for Older Persons. We believe that these principles should be incorporated into the draft Charter.

\[2\] Resolution 46/91, adopted by the UN General Assembly on 16 December 1991

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Annex 1
Extract from the Declaration of Principles of the Council of the European Union and the Ministers for Social Affairs, meeting within the Council of 8 December 1993 to mark the end of the European Year of the Elderly and of Solidarity between Generations (1993)

Ministers .......

9. DECLARE that:
- Member States recognize, in their legislation and policies, the full citizenship of the elderly, in freedom and with equal rights and obligations, in all areas of the life of the community;
- they intend to promote the integration of the elderly in all areas of the life of the community, thereby acting to counter social exclusion and isolation as well as discrimination, given that all persons of any age are entitled to recognition of their human dignity;

10. – DECLARE that Member States wish to pursue policies based on the essential principles of solidarity between and within generations in order to:

- promote the social integration of the elderly by enabling them to manifest themselves in society in the spheres of family, social, political, cultural, recreational and educational life;
- encourage respect for the elderly as individuals and their right to privacy and physical integrity, and promote opportunities for the elderly to assume their responsibilities;

11. CALL UPON MEMBER STATES, in accordance with the above principles, to approve the following objectives framing policies concerning areas of special interest to the elderly:

(i) regarding level of income and standard of living:

(a) take measures to guarantee the elderly the right to minimum resources and/or access to other systems of social protection and to enable them to play a continuing part in social life on an independent basis;
(b) grant the elderly, when ceasing work at the end of their working lives, a substitute income, determined by means of standard benefits or calculated in relation to their earlier earnings, maintaining their standard of living in a reasonable manner, on the basis of their participation in appropriate social-security schemes;
(c) refer, in setting amounts, to such indicators as they consider appropriate, e.g. statistics on the average available income in the Member State concerned, statistics on household consumption, the statutory minimum wage, if any, or price levels;
(d) introduce arrangements for periodic review of such amounts in accordance with these indicators, to ensure that needs continue to be met;
(e) ensure that the elderly can remain active in society and, having due regard to the economic and employment situation in each Member State, can retain links with the labour market;
(f) in due course, adapt pension schemes to demographic changes, while maintaining the basic role of statutory retirement arrangements;

(ii) regarding housing and mobility:

(a) encourage a flexible housing policy providing for a variety of accommodation which enables the elderly to continue to play a part in the life of the community; in this connection, account should be taken of the personal wishes of the elderly to continue living in their own homes;
(b) ensure that the independence and privacy of the elderly are respected;
(c) encourage the independence of the elderly by promoting a residential environment and transport infrastructure that are accessible and safe;

(iii) regarding provision of care and services:

(a) on the basis of objective criteria, provide adequate assistance geared to the autonomy and physical, mental and social well-being of the elderly; such assistance could include home care, home help, mobile services, sheltered housing and health services;
(b) encourage co-ordination of the various health and social services;
(c) promote a range of qualified services to meet the new requirements of a population with increasing numbers of very elderly people, so that dependence and institutionalization can be avoided as far as possible; this applies in particular to persons suffering from ageing diseases;
(d) establish criteria for introducing and organizing such services and facilities;
(e) without concentrating exclusively on the elderly as a target group, envisage preventive measures aimed at forestalling or delaying the onset of diseases and the beginning of dependence;

(iv) regarding employment of elderly workers and preparation for retirement:

- take initiatives to:

(a) assess, in a spirit of solidarity between generations, the extent to which differential treatment based on age is justified;
(b) make possible a smooth transition from working life to retirement;
(c) provide appropriate support for the elderly during that transition by introducing facilities for advice and counselling, information and practical assistance and streamlining administrative procedures accordingly;
(d) encourage the passing on of expertise to rising generations in order to take advantage of the experience of the elderly;

(v) regarding the participation of the elderly:

promote, in all layers of society, full involvement of the elderly in the life of the community through suitable provision of the information needed for active involvement in appropriate fashion in all areas concerning them;

12. EMPHASIZE that:

(a) the attainment of the above objectives can make a considerable contribution towards combating and preventing the social exclusion and isolation of the elderly;
(b) it is desirable to encourage the attainment of those objectives in the Member States;
(c) the Council and the Ministers for Social Affairs will periodically review progress in implementing those objectives;

13. NOTE the following statement by the Commission:

‘The Commission emphasizes that demographic trends, and the ageing of the population in particular, constitute one of the major challenges for social policies. It further points out that the European Year of the Elderly and of Solidarity between Generations has enabled firm progress to be made on, in particular, data analysis, the debate on the implications of ageing, the development of innovative approaches, the exchange of experience, the mobilization of the bodies involved, co-operation between the latter and active participation by the persons concerned.

In this connection, it emphasizes that activities need to be undertaken which draw on this progress and that the 1994 budget guidelines provide a modest, but useful, basis for this purpose.

On the basis of the evaluation under way and the achievements of the European Year it intends to make medium-term proposals in 1994 for increased Community support for Member States’ policies in this area.’
Annex 2

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.
## New .eu Domain

### Changed Web and E-Mail Addresses

The introduction of the .eu domain also required the web and e-mail addresses of the European institutions to be adapted. Below please find a list of addresses found in the document at hand which have been changed after the document was created. The list shows the old and new address, a reference to the page where the address was found and the type of address: http: and https: for web addresses, mailto: for e-mail addresses etc.

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