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COVER NOTE
Subject: Draft Charter of Fundamental Rights of the European Union

Please find hereafter the English version of the common statement by the International Federation of Human Rights (FIDH). ¹ ²

¹ This text has been submitted in English and French languages.
² FIDH: 91, rue de l'Enseignement, 1000 Brussels, Belgium. Tel: +32-2-209 62 89. Fax: +32-2-209 63 80. E-mail: fidh.bruxelles@linkline.be
The European Union Charter of Fundamental Rights and Third Country Nationals


The debate has now entered a new phase: it is now time to go ahead on discussions on the drafting procedure and to address the content of the future Charter.

Taking into consideration the discussions so far on the Charter and the ambiguity surrounding the scope of the Charter (who it will apply to), our organisations call for the full and express recognition of the fundamental rights of Third Country Nationals within the territory of the European Union.

Consequently, the following three basic principles need to be remembered:

**The universality of human rights**

Human rights, by definition, benefit every human being for the simple reason that he/she is a human being. The universality of human rights has already been established through the body of existing international and regional Human Rights instruments, to which the EU member states are signatories. For example:

- Article 2 of the Universal Declaration of Human Rights states that:
  «Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.»

- Article 1 of the European Convention of Human Rights (ECHR) provides that:
  «The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.»

- Article 2 of the International Covenant on Civil and Political Rights reads:
  «Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.»

- Article 2 of the International Covenant on Economic, Social and Cultural Rights states, in paragraph 2, that:
  «The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour,
sex, language, religion, political or other opinion, national or social origin, property, birth or other status.»

2. Non-discrimination

As the European Court of Human Rights has repeatedly stressed, distinctions between citizens and non-citizens of the EU can only be established on the condition that they are objectively justified and proportionate to the goal of setting up specific legal arrangements between the EU member states, after establishing its own citizenship. Hence, the principle of non-discrimination, an essential reference in the field of fundamental rights, implies that the rights restricted to EU citizens should be narrowly defined and that such a difference in treatment should be firmly justified and proportionate to the objective to be achieved.

In this regard, our organisations invite the body drafting the Charter to examine the best wording possible for the specific non-discrimination clause which will be included in the Charter. The proposed Protocol to the ECHR (Protocol 12) on non-discrimination will probably be adopted during the year 2000. This could form a good reference point for this purpose.

The basic principle must be that the rights enshrined in the Charter will be universal. Differences in application of the Charter’s rights should result from an objective difference in the circumstances of those entitled to the rights. It is not necessary to create a priori categories of beneficiaries.

As for civil and political rights, international law at present allows the rights to vote and eligibility to stand for election in European and municipal elections to be conferred solely on EU citizens. The international treaties binding Member states (Article 25 of the International Covenant on Civil and Political Rights, Article 21 of the Universal Declaration of Human Rights) provide for the possibility of such a restriction. We urge however the drafters of the Charter to extend this right to people residing legally in the territory of the EU, provided they comply with specific conditions (e.g., 5 years of legal residence), as requested by the European Parliament in April 19991. The fact that Third Country Nationals live in the territory of the EU is today a permanent characteristic of European societies. The Council of Europe’s Convention on the Participation of Foreigners in Public Life at local level (1992) could serve as a reference in this field.

If a form of diplomatic protection (Article 20 of EEC) could be reserved to the EU citizens, the right to petition before the European Parliament and the right to introduce a complaint to the European Ombudsman should continue to be available to all people residing in the territory of Member states. The right to address the European institutions in any of the 12 official languages and to receive a response in that language (Article 21 EEC) should equally be extended to all people under the jurisdiction of the EU Member states.

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1 Resolution on the strategy document on the Position of the European Union regards migration and asylum adopted 13 April 1999, para.23.
The **right to move and reside freely** (Article 18 EEC) within the EU is, for the time being, restricted to Member states nationals. Our organisations believe that this right should benefit all people residing legally within the EU, in conformity with the general prohibition of discrimination on the basis of nationality.

In addition, the extension of this right to third country nationals could be considered in the future to be a requirement resulting from the right to move freely within States, enshrined in various international human rights instruments. These instruments do not include any reference to nationality as a pre-condition (Article 2 of Protocol 4 to ECHR, Article 12 of the International Covenant on Civil and Political Rights\(^2\)). In line with the progress of European integration, it is logical and fair that the right to move and reside freely within the EU should equally benefit all people residing legally in Member states. This would be conform to the aim to create an internal market without borders.

Eventually, in relation to this right, the future Charter should include an explicit reference to the right of asylum-seekers, stateless people and people entitled to benefit from family reunification to enter the territory of Member states.

Other rights which would only benefit Third Country Nationals could be enshrined in the Charter. For example, the prohibition of collective expulsions of foreigners (as foreseen in Article 4 of Protocol 4 to ECHR).

The signatory organisations of this paper consider that **economic and social fundamental rights** should have the same scope of application to the persons as the civil and political rights. Therefore, the right to medical and social assistance (including the right to adequate housing and sufficient food), the right of children to education and the right to gender equality should benefit to all people under the jurisdiction of EU Member states. This should be regardless of their nationality and the legality of their residence in the EU.

Some social rights are linked to the exercise of a job (for example, the right to vocational training), others depend on the legality of residence (for instance, the right to work, the right to social welfare – this is different from the fundamental right to medical and social assistance). Therefore, those residing illegally in the territory of the Union will not benefit from these rights. A specific clause excluding these people from the benefit of such rights is neither necessary nor desirable.

\(^2\) "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."
3. Harmonisation of the instruments of protection

Our organisations are convinced that the proposed EU Charter of Fundamental Rights and the ratification by the EU (or in default by the EC) of the European Convention on Human Rights and the Revised European Social Charter are complementary. It is only by combining these processes that contradictory jurisprudence will be avoided since in the medium term, the Charter might become a binding instrument and be invoked before the Community courts. This is also the only way to ensure coherence among the mechanisms of protection of fundamental rights in Europe.

Such an accession would require a revision of the EEC Treaty. Therefore, we call for the inclusion of the Charter of Fundamental Rights as well as the accession to the relevant instruments of the Council of Europe (in particular ECHR and the Revised ESC) on the agenda of the forth-coming Inter-Governmental Conference.

Our organisations call upon the Body elaborating the Charter of Fundamental Rights to make sure that all its thematic working groups duly take into account the situation of Third Country Nationals residing within the EU, and consistently keep in mind the universal nature of fundamental rights.

Brussels, 14 February 2000

This paper is signed by the following organisations:
European Justice and Peace Commissions – tel: ++32 2 738 08 01
International Federation of Human Rights - FIDH – tel: ++32 2 209 62 89
European Migrants’ Forum – tel: ++32 2 230 28 60
ICMC – tel: ++32 2 230 94 35
KAIROS Europe – tel: ++32 2 479 96 55
Pax Christi International – tel: ++32 2 502 5550
Présence des Communautés d’origine africaine – tel: ++32 477 48 22 62
Quaker Council for European Affairs – tel: ++32 2 230 49 35