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 1651). 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.
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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