Brussels, 18 April 2000

CHARTE 4229/00

CONTRIB 103

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

Please find hereafter a contribution by the Association of German Public Service Broadcasting Corporations (ARD) and German Television (ZDF) with a view for the hearing on the 27 April 2000.  

2 This text has been submitted in German, French and English.
Draft

for a

EUROPEAN FUNDAMENTAL RIGHT TO
FREEDOM OF EXPRESSION AND INFORMATION

in the

European Charter on Fundamental Rights

submitted by
the Association of German Public Service Broadcasting Corporations (ARD)
and German Television (ZDF)
1.4.2000
A. **Draft text**

1. The right to freedom of expression shall be guaranteed. Likewise, the right to obtain comprehensive information from a range of generally accessible sources shall be guaranteed. This includes, but is not limited to, access to cultural and educational content.

2. The freedom of the press, broadcasting, film and other communications addressed to the public shall be guaranteed.

3. These rights may be restricted by law only to protect legal interests of higher priority. In no case may they be restricted on account of the content of the opinion expressed, unless such a restriction serves to protect minors or personal honour, or to prevent the glorification of violence or the expression of opinions that fail to respect human dignity.

4. There shall be no censorship.
B. Notes

I. General notes

The draft text for a European fundamental right to freedom of expression and information is founded on the guarantees in Article 10 of the European Convention on Human Rights (ECHR). It takes account of the jurisdiction of the European Court of Human Rights but presents it in more concrete and more extensively developed terms. The underlying consideration is that the ECHR already provides a benchmark for fundamental rights for the whole of Europe and that its contents represent a common denominator for all European states in this respect.

This draft European fundamental right to freedom of expression and information for a European Charter on Fundamental Rights deals with key principles, especially for broadcasting. Broadcasting is protected by the constitutions of all countries (except in the case of the United Kingdom, which has no written constitution). It is either an express provision (for example, in Germany and Portugal) or part of general freedom of opinion (for example, in Italy, France, Spain, Belgium and in Article 10(1) ECHR). In all countries, broadcasting is assigned a special role in the formation of public opinion and, hence, for society. The fundamental right to broadcasting freedom always has an objective legal aspect, too, according to the equivalent construction in all states.

Moreover, all European institutions, including - to a minor extent - the European Court of Justice (ECJ) in its jurisdiction, have repeatedly and expressly emphasized the fundamental importance and necessity of securing pluralism in broadcasting. The context of the pluralism principle also provides the justification of a dual broadcasting system. Such a system exists in all EU Member States, with central broadcasting functions assigned to public broadcasting. At a European level this consensus on the leading role of public broadcasting is set out in the Protocol to the Amsterdam Treaty. Here the special role of public broadcasting for democracy, social integration and culture is expressly pointed out and thus acknowledged at the level of the Amsterdam Treaty. Similarly, it guarantees the competence of the Member States to regulate the mission, financing and organization of public broadcasting. These guarantees and large-scale exemption of the financing of public broadcasting from the provisions of the EC Treaty must not be affected by the creation of a charter of fundamental rights. In this respect, the draft contains no assignment of competence that would favour EU institutions.

The addressee and holders of the fundamental right to freedom of expression and information are specified in the general provisions of the Charter on Fundamental Rights. In this context, it must be ensured that the charter is addressed only to the European Union and its bodies and institutions. The European Charter on Fundamental Rights including the Fundamental Right to Freedom of Opinion and Information may neither replace nor supersede the constitutions of the Member States and their regulations on media law. In particular, the way the freedom of broadcasting and, especially, public broadcasting is organized falls within the competence of each Member State and can be measured only by the respective fundamental rights guaranteed by each Member State.
One of the basic requirements for a European Charter on Fundamental Rights is that its guarantees must be justiciable. The holders of fundamental rights must be able to defend themselves in court against EU bodies and institutions. Therefore, a judicial EU authority must be created separately from the ECJ to provide effective (individual) legal protection against violations of fundamental rights by EU bodies and institutions, through special proceedings. There must also be a clear demarcation between that authority and the European Court of Human Rights, to avoid any incompatibility with the latter's jurisdiction.

ARD and ZDF regard as indispensable these requirements regarding the content and function of a European Fundamental Right to Freedom of Opinion and Information, its addressees and limitations on its effectiveness and organization according to the laws of the Member States and regarding the special judicial protection of fundamental rights. If some of these requirements cannot be achieved, ARD and ZDF recommend that a European Charter of Fundamental Rights should be brought about in such a way that the European Union should accede to the European Convention on Human Rights after meeting the corresponding pre-conditions.

II. Individual notes

1. Paragraph 1

Sub-paragraph 1 of paragraph 1 defines the "right to freedom of expression" as the fundamental right to freedom to hold opinions in a traditional and comprehensive sense. Both the internal process of forming an opinion and the external action of expressing it should be protected. With the wording "[…] shall be guaranteed", sub-paragraph 1 makes it clear that as well as being a subjective defensive right, the fundamental right also has objective legal content which must be respected by European institutions.

Sub-paragraph 2 fundamentally protects freedom of information from generally accessible sources. This guarantee is found in the same, or similar, form in all constitutions and in Article 10 ECHR and thus takes up traditional regulations. The right to gain "comprehensive" information from "varied" sources expressly accounts for the principle of pluralism, which plays a central role in all European constitutions and is emphasized by EU institutions time and again. In view of the development of an information and knowledge society, this is obviously of great importance, particularly since the constantly increasing amount of information is - to some extent - restricted by technical and financial conditions.

Sub-paragraph 3 places the guarantee in sub-paragraph 2 in more concrete, broader terms. The wording "access to cultural and educational content" - in addition to the pluralism guarantee - aims to take account of the move towards an information and knowledge society and to ensure that such content may be enjoyed. In this respect, it meets the corresponding concerns of broadcasting providers to be able to provide coverage.
2. **Paragraph 2**

Paragraph 2 protects the press, broadcasting, film and all other (mass) communication media and their activities. Alongside its role in providing a subjective defensive right against state intervention, it also contains an institutional safeguard. Owing to the importance of these media for society and democracy, this guarantee of fundamental rights has received a paragraph of its own. It protects communication in a comprehensive manner. The guarantee is open to any kind of media development.

3. **Paragraph 3**

Paragraph 3 regulates restriction options for the guarantees given in paragraphs 1 and 2 and their pre-conditions.

Under sub-paragraph 1 the fundamental rights in paragraphs 1 and 2 may be restricted only to protect legal interests of a higher priority. This may occur solely on the basis of consideration of each individual case. In addition, such a restriction must be effected "by law". The term "law" means a type of action described in the general provisions of the Charter of Fundamental Rights. In view of the outstanding importance of the freedom of opinion and information, the formal requirements for this type of action must be of a high standard, which involves, in particular, qualified participation by the European Parliament.

Sub-paragraph 2 points out in sub-sub-paragraph 1 that no restriction may be made on account of the content of the opinion expressed. Exceptions to this rule are listed in the form of a final catalogue in sub-sub-paragraph 2 and concern the protection of minors, the protection of honour, protection against the glorification of violence and the protection of human dignity. Sub-paragraph 2 must be understood in conjunction with sub-paragraph 1. As regards restrictions on a given opinion, consideration is also required in individual cases, but the inviolability of human dignity may not be the subject of consideration.

4. **Paragraph 4**

Paragraph 4 features the traditional ban on censorship. This guarantee is of fundamental importance. The ban on censorship should essentially emerge from the overall view of the other provisions in this draft and thus has only a declarative meaning. However, to avoid any uncertainty regarding the existence of a ban on censorship it has been expressly mentioned in the last paragraph.

__________
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.

<table>
<thead>
<tr>
<th>Page</th>
<th>Type</th>
<th>Old</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>mailto</td>
<td><a href="mailto:fundamental.rights@consilium.eu.int">mailto:fundamental.rights@consilium.eu.int</a></td>
<td><a href="mailto:fundamental.rights@consilium.europa.eu">mailto:fundamental.rights@consilium.europa.eu</a></td>
</tr>
</tbody>
</table>