

## Note from the Praesidium of the Convention: explanations on the Charter of Fundamental Rights of the European Union (Brussels, 11 October 2000)

**Caption:** On 11 October 2000, the Praesidium of the Convention responsible for drafting the European Union Charter of Fundamental Rights publishes a note aimed at explaining certain provisions of the Charter.

**Source:** 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, CHARTE 4473/00 - CONVENT 49. Brussels: Praesidium of the Convention responsible for drafting the Charter of fundamental rights, 18.10.2000. 56 p.

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## Draft Charter of Fundamental Rights of the European Union (Brussels, 11 October 2000)

### NOTE FROM THE PRAESIDIUM

Subject: Draft Charter of Fundamental Rights of the European Union

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

1. 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.*

*2. 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**

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.

#### *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 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. 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. Citizen's 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."*