

Βρυξέλλες, 16 Μαΐου 2000 (19.05)
(OR. fr)

*Να το
επιστρέψετε στον
κ. Παναγιώτη*

CHARTÉ 4316/00

CONVENT 34

ΣΗΜΕΙΩΜΑ ΓΙΑ ΤΟ ΠΡΟΕΔΡΕΙΟ

Θέμα : Σχέδιο Χάρτη θεμελιωδών δικαιωμάτων της Ευρωπαϊκής Ένωσης
- Νέα πρόταση άρθρων όσον αφορά τα οικονομικά και κοινωνικά δικαιώματα και τις οριζόντιες διατάξεις
(έγγρ. αναφοράς : CHARTÉ 4192/00 CONVENT 18, CHARTÉ 4193/00 CONVENT 19, CHARTÉ 4227/00 CONVENT 26, CHARTÉ 4235/00 CONVENT 27)

Επισυνάπτεται για τα μέλη του Προεδρείου το κείμενο των κοινωνικών δικαιωμάτων και των οριζόντιων διατάξεων που τους υποβάλλεται προς εξέταση. Ως διορία για την κατάθεση των τροπολογιών ορίσθηκε η 5η Ιουνίου. Για τη διατύπωση των τροπολογιών, είναι χρήσιμο να ακολουθείται το έντυπο που σας έχει απευθυνθεί (πρβ. έγγρ. CHARTÉ 4303/00 CONVENT 29).

Άρθρο 31. Δικαιώματα και αρχές στον κοινωνικό τομέα

Τα όργανα και οι οργανισμοί της Ένωσης, τα κράτη μέλη όταν ενεργούν αποκλειστικά στο πλαίσιο του πεδίου εφαρμογής του κοινοτικού δικαίου και οι κοινωνικοί εταίροι σε κοινοτικό επίπεδο και στο πλαίσιο των αντίστοιχων αρμοδιοτήτων τους σέβονται τα δικαιώματα και υλοποιούν τις κοινωνικές αρχές, που εξαγγέλλονται στον παρόντα Χάρτη.

Αιτιολόγηση

Η διάταξη αυτή επιτρέπει να ληφθεί υπόψη η ιδιαιτερότητα των κοινωνικών δικαιωμάτων και να τονισθούν οι συνέπειες του πεδίου εφαρμογής του Χάρτη εν προκειμένω. Τα κοινωνικά δικαιώματα δεσμεύουν τον κοινοτικό νομοθέτη, τη νομοθεσία των κρατών μελών όταν εφαρμόζουν το δίκαιο της Ένωσης, καθώς και τους κοινωνικούς εταίρους στο κοινοτικό επίπεδο οι οποίοι δυνάμει του άρθρου 139 ΣΕΚ, μπορούν να συνάπτουν συμφωνίες σε κοινοτικό επίπεδο. Όλοι αυτοί οι φορείς πρέπει να σέβονται τα εν λόγω κοινωνικά δικαιώματα και δεν μπορούν να δρουν αντίθετα προς αυτά όταν θέτουν κανόνες, με εξαίρεση περιορισμούς σύμφωνα με τα προβλεπόμενα στη γενική ρήτρα περί περιορισμών. Λαμβάνοντας υπόψη τον δυναμικό χαρακτήρα των δικαιωμάτων αυτών και το γεγονός ότι συχνά συγκεκριμενοποιούνται μόνον μέσω της υλοποίησής τους, όταν περιέχουν ένα δικαίωμα θετικής παροχής, είναι αναγκαίο να διευκρινισθεί ότι, σε ορισμένες περιπτώσεις, πρόκειται για αρχές των οποίων η υλοποίηση εξαρτάται από τη θέσπιση μέτρων εφαρμογής. Στην περίπτωση αυτή, είναι σαφές ότι η θέσπιση αυτών των μέτρων βρίσκεται σε συνάρτηση με την κατανομή των αρμοδιοτήτων, όπως αυτή γίνεται στις συνθήκες και με τήρηση της αρχής της επικουρικότητας. Με άλλα λόγια, δεν είναι δυνατόν, για παράδειγμα, να θεσπισθεί μια ρύθμιση που θα έθιγε το δικαίωμα κοινωνικής βοήθειας ή θα εμπόδιζε την εφαρμογή του. Αλλά η επίκληση του δικαιώματος αυτού μπορεί να γίνει μόνον στο πλαίσιο των ισχυόντων κοινοτικών ή εθνικών μέτρων.

Άρθρο 32. Επαγγελματική ελευθερία

Κάθε πρόσωπο έχει το δικαίωμα να επιλέγει και να ασκεί το επάγγελμά του.

Αιτιολόγηση

Το δικαίωμα αυτό αναγνωρίζεται πέραν πάσης αμφιβολίας από την νομολογία του Δικαστηρίου ως θεμελιώδες δικαίωμα (βλ. την απόφαση αρχής *Nolde*, υπόθεση 4/73, Συλλογή 1974, σ. 491).

Σύμφωνα με το άρθρο 48, το δικαίωμα αυτό ασκείται υπό τις προϋποθέσεις και εντός των ορίων που προβλέπονται στις συνθήκες, συμπεριλαμβανομένων και των ρυθμίσεων σχετικά με την άσκηση των επαγγελματιών.

Άρθρο 33. Δικαίωμα των εργαζομένων στην ενημέρωση και τη διαβούλευση εντός της επιχείρησης

Οι εργαζόμενοι και οι εκπρόσωποί τους έχουν το δικαίωμα έγκαιρης ενημέρωσης και διαβούλευσης εντός της επιχείρησης που τους απασχολεί.

Αιτιολόγηση

Κείμενο που εμπνέεται από τον αναθεωρημένο ευρωπαϊκό κοινωνικό Χάρτη (άρθρο 21) και τον κοινοτικό Χάρτη (άρθρο 17). Το κοινοτικό κεκτημένο στον τομέα αυτό είναι σημαντικό. Οδηγίες 98/59/EK (συλλογικές απολύσεις), 77/187/EK (μετεγκατάσταση επιχειρήσεων) και 94/45/EK (ευρωπαϊκές επιτροπές επιχειρήσεων).

Άρθρο 34. Δικαίωμα διαπραγματεύσεων και συλλογικής δράσης

Οι εργοδότες και οι εργαζόμενοι έχουν το δικαίωμα να διαπραγματεύονται και να συνάπτουν συλλογικές συμβάσεις και να προσφεύγουν, σε περίπτωση σύγκρουσης συμφερόντων, σε συλλογικές δράσεις για την υπεράσπιση των οικονομικών και κοινωνικών συμφερόντων τους, ακόμη και στο επίπεδο της Ένωσης, υπό τις προϋποθέσεις που προβλέπονται στις εθνικές νομοθεσίες και πρακτικές.

Αιτιολόγηση

Το συνδικαλιστικό δικαίωμα αναγνωρίζεται στο άρθρο 11 της Ευρωπαϊκής Σύμβασης των δικαιωμάτων του ανθρώπου. Το δικαίωμα συλλογικών διαπραγματεύσεων και συλλογικής δράσης αναγνωρίζεται από τον αναθεωρημένο κοινωνικό Χάρτη (άρθρο 6) και από τον κοινωνικό Χάρτη. Αναφέρεται στο σημείο 12 του κοινοτικού Χάρτη. Η νομολογία του Ευρωπαϊκού Δικαστηρίου των δικαιωμάτων του ανθρώπου αναγνωρίζει ότι απορρέει από το άρθρο 11 της Σύμβασης (σουηδικό συνδικάτο οδηγών σιδηροδρόμων, 1976). Τέλος, τα άρθρα 138 και 139 της συνθήκης ΕΚ οργανώνουν τον κοινωνικό διάλογο σε κοινοτική κλίμακα και προβλέπουν τη σύναψη συλλογικών συμβάσεων. Στην έννοια των συλλογικών δράσεων περιλαμβάνεται, ιδίως, το δικαίωμα απεργίας.

Άρθρο 35. Δικαίωμα ανάπαυσης και ετήσιας άδειας

Κάθε εργαζόμενος έχει δικαίωμα σε ένα όριο μέγιστης διάρκειας εργασίας και σε ημερήσιες και εβδομαδιαίες περιόδους ανάπαυσης καθώς και σε ετήσια περίοδο αμειβόμενων διακοπών.

Αιτιολόγηση

Το άρθρο αυτό εμπνέεται ιδίως από την οδηγία 93/104/ΕΚ καθώς και από το άρθρο 2 του κοινωνικού Χάρτη.

Άρθρο 36. Υγεία και ασφάλεια κατά την εργασία

Κάθε εργαζόμενος έχει δικαίωμα στην υγεία και την ασφάλεια κατά την εργασία.

Αιτιολόγηση

Το άρθρο αυτό εμπνέεται από την οδηγία 89/391/ΕΚ καθώς και από το άρθρο 3 του κοινωνικού Χάρτη. Βλέπε επίσης την παράγραφο 19 του κοινοτικού Χάρτη.

Άρθρο 37. Προστασία των νέων

Η ελάχιστη ηλικία για την ανάληψη εργασίας δεν πρέπει να είναι μικρότερη από την ηλικία κατά την οποία λήγει η υποχρεωτική σχολική φοίτηση, με την επιφύλαξη ευνοϊκότερων κανόνων για τους νέους, συγκεκριμένα δε κανόνων που τους εξασφαλίζουν επαγγελματική ένταξη χάρη στην κατάλληλη κατάρτιση, με παρεκκλίσεις για ορισμένες μόνον ελαφρές εργασίες.

Οι εργαζόμενοι νέοι πρέπει να απολαύουν συνθηκών εργασίας προσαρμοσμένων στην ηλικία τους.

Αιτιολόγηση

Το κείμενο αυτό εμπνέεται από το άρθρο 7 του ευρωπαϊκού κοινωνικού Χάρτη και από τον κοινοτικό Χάρτη των θεμελιωδών κοινωνικών δικαιωμάτων των εργαζομένων (σημεία 20 έως 23).

Επαναλαμβάνει, αρχικά, τα ουσιώδη στοιχεία του σημείου 20 που προβλέπει τον καθορισμό ελάχιστης ηλικίας που συνδέεται με τη λήξη της υποχρεωτικής σχολικής φοίτησης και η οποία δεν μπορεί να είναι, επ' ουδενί, κατώτερη των 15 ετών. Ο Χάρτης αρχίζει ωστόσο με το εξής κείμενο : "Με επιφύλαξη κανόνων ευνοϊκότερων για τους νέους, συγκεκριμένα δε κανόνων που τους εξασφαλίζουν επαγγελματική ένταξη χάρη στην κατάρτιση και με παρεκκλίσεις που περιορίζονται σε ορισμένες ελαφρές εργασίες" .

Το δεύτερο εδάφιο εμπνέεται από το περιεχόμενο του σημείου 22 του Χάρτη αυτού που ορίζει ότι οι κανόνες του εργατικού δικαίου που εφαρμόζονται στους νέους πρέπει να αναπροσαρμοσθούν ώστε να λαμβάνεται υπόψη η εξέλιξή τους και οι ανάγκες επαγγελματικής κατάρτισης. Η διατύπωση του εδαφίου αυτού προέρχεται κυρίως από το άρθρο 1, παρ. 3 της οδηγίας 94/33/ΕΚ σχετικά με την προστασία των νέων κατά την εργασία.

Άρθρο 38. Δικαίωμα προστασίας σε περίπτωση απόλυσης

Κάθε εργαζόμενος έχει δικαίωμα προστασίας έναντι οποιασδήποτε αδικαιολόγητης ή καταχρηστικής απόλυσης.

Αιτιολόγηση

Το άρθρο αυτό καθιερώνει απλώς μία προστασία έναντι της αυθαιρεσίας όσον αφορά τις απολύσεις.

Άρθρο 39. Δικαίωμα συνδυασμού οικογενειακής και επαγγελματικής ζωής

Κάθε εργαζόμενος έχει δικαίωμα συνδυασμού της επαγγελματικής και οικογενειακής του ζωής. Το δικαίωμα αυτό περιλαμβάνει ιδίως δικαίωμα άδειας μητρότητας πριν και/ή μετά τον τοκετό καθώς και δικαίωμα γονικής άδειας μετά τη γέννηση ή υιοθεσία ενός παιδιού.

Αιτιολόγηση

Άρθρα 8 και 27 του αναθεωρημένου κοινωνικού χάρτη.

Οδηγία 92/85/ΕΚ της 19ης Οκτωβρίου 1992 σχετικά με το δικαίωμα άδειας μητρότητας τουλάχιστον δεκατεσσάρων εβδομάδων και οδηγία 96/34 σχετικά με το δικαίωμα γονικής άδειας τουλάχιστον 3 μηνών.

Άρθρο 40. Δικαίωμα των διακινούμενων εργαζομένων σε ίση μεταχείριση

Οι υπήκοοι τρίτων χωρών που εργάζονται νομίμως στο έδαφος των κρατών μελών δικαιούνται μεταχείριση εξίσου ευνοϊκή με εκείνη της οποίας απολαμβάνουν οι εργαζόμενοι της Ευρωπαϊκής Ένωσης όσον αφορά τις συνθήκες εργασίας.

Αιτιολόγηση

Η κοινοτική αρμοδιότητα εν προκειμένω βασίζεται στο άρθρο 137 παρ. 3 τέταρτη περίπτωση. Τίθεται απλώς ο κανόνας περί μη διακρίσεως στις συνθήκες εργασίας.

Άρθρο 41. Κοινωνική ασφάλεια και κοινωνική βοήθεια

- 1. Προβλέπονται παροχές κοινωνικής ασφάλειας σύμφωνα με τις διαδικασίες που ισχύουν σε κάθε κράτος μέλος, οι οποίες εξασφαλίζουν προστασία σε περίπτωση μητρότητας, ασθένειας, εξάρτησης ή γήρατος καθώς και σε περίπτωση απώλειας της απασχόλησης.**
- 2. Προβλέπεται κοινωνική βοήθεια και στεγαστική βοήθεια προκειμένου να εξασφαλισθεί μια αξιοπρεπής διαβίωση σε κάθε πρόσωπο που δεν διαθέτει επαρκείς πόρους.**

Αιτιολόγηση

Πρόκειται για αρχή που υλοποιείται σύμφωνα με τις εθνικές νομοθεσίες και το κοινοτικό δίκαιο.

Άρθρο 42. Προστασία της υγείας

Η πρόσβαση στην ιατρική περίθαλψη και την υγειονομική πρόληψη εξασφαλίζεται σε κάθε πρόσωπο σύμφωνα με τις διαδικασίες που ισχύουν σε κάθε κράτος μέλος.

Αιτιολόγηση

Πρόκειται για αρχή που υλοποιείται κυρίως από τις εθνικές νομοθεσίες.

Άρθρο 43. Άτομα με ειδικές ανάγκες

Προβλέπονται υπέρ των ατόμων με ειδικές ανάγκες μέτρα κοινωνικής και επαγγελματικής ένταξης.

Αιτιολόγηση

Το άρθρο 13 της συνθήκης για την ίδρυση της Ευρωπαϊκής Κοινότητας επιτρέπει τη λήψη θετικών μέτρων για να αποφευχθούν οι διακρίσεις λόγω αναπηρίας. Το άρθρο 137 παρ. 1, τέταρτη περίπτωση δημιουργεί κοινοτική αρμοδιότητα με σκοπό την ένταξη των προσώπων που έχουν αποκλεισθεί από την αγορά εργασίας.

Άρθρο 44. Προστασία του περιβάλλοντος

Οι πολιτικές της Ένωσης διασφαλίζουν την προστασία του περιβάλλοντος, η οποία συνεπάγεται τη διαφύλαξη, την προστασία και τη βελτίωση της ποιότητας του περιβάλλοντος, την προστασία της υγείας του ανθρώπου καθώς και τη συνετή και ορθολογική χρησιμοποίηση των φυσικών πόρων.

Αιτιολόγηση

Ο τίτλος XIX της συνθήκης καθιερώνει την κοινοτική αρμοδιότητα στον τομέα του περιβάλλοντος. Και εδώ, πρόκειται για αρχή που συγκεκριμενοποιείται μέσω των μέτρων εφαρμογής που οριοθετούν την έκταση αυτού του δικαιώματος. Η διατύπωση είναι παρεμφερής με εκείνη του άρθρου 174 της συνθήκης ΕΚ.

Άρθρο 45. Προστασία των καταναλωτών

Οι πολιτικές της Ένωσης διασφαλίζουν υψηλό επίπεδο προστασίας της υγείας, της ασφάλειας και των συμφερόντων των καταναλωτών.

Αιτιολόγηση

Η κοινοτική αρμοδιότητα καθιερώνεται στον τίτλο XIV της συνθήκης. Ο Χάρτης κατοχυρώνει μια αρχή που συγκεκριμενοποιείται μέσω των κοινοτικών ή εθνικών νομοθεσιών. Η διατύπωση είναι παρεμφερής με εκείνη του άρθρου 153 της συνθήκης ΕΚ.

Άρθρο 46. Πεδίο εφαρμογής

1. Οι διατάξεις του παρόντος Χάρτη απευθύνονται στα όργανα και τους οργανισμούς της Ένωσης στο πλαίσιο των αρμοδιοτήτων που τους απονέμουν οι Συνθήκες καθώς και στα κράτη μέλη αποκλειστικά στο πλαίσιο της εφαρμογής του δικαίου της Ένωσης.
2. Ο παρών Χάρτης δεν δημιουργεί καμία νέα αρμοδιότητα ούτε κανένα νέο καθήκον για την Κοινότητα και για την Ένωση ούτε τροποποιεί τις αρμοδιότητες και τα καθήκοντα που καθορίζονται από τις συνθήκες.

Αιτιολόγηση

Στόχος της διάταξης αυτής είναι να προσδιορισθεί το πεδίο εφαρμογής του Χάρτη. Επιδιώκει να καταστήσει σαφές ότι ο Χάρτης εφαρμόζεται κατ' αρχάς στα όργανα και τους Οργανισμούς της Ένωσης και στο πλαίσιο των αρμοδιοτήτων και καθηκόντων αυτής. Με άλλα λόγια, ο Χάρτης εφαρμόζεται αποκλειστικά σε τομείς που εμπίπτουν στην κοινοτική αρμοδιότητα και τα καθήκοντα της Ένωσης. Η διάταξη αυτή είναι πιστή στο άρθρο 6 παρ. 2 της συνθήκης για την Ευρωπαϊκή Ένωση που επιβάλλει στην Ένωση υποχρέωση σεβασμού των θεμελιωδών δικαιωμάτων καθώς και στην εντολή που έδωσε το Ευρωπαϊκό Συμβούλιο της Κολωνίας.

Ο όρος "όργανο" κατοχυρώνεται στη συνθήκη που απαριθμεί το θεσμικά όργανα αυτής στο άρθρο 7. Ο όρος "οργανισμός" χρησιμοποιείται συνήθως αναφερόμενος σε όλα τα επικουρικά όργανα που δημιουργούνται βάσει των συνθηκών ή βάσει πράξεων παραγώγου δικαίου. Από τη νομολογία του Δικαστηρίου απορρέει πέραν πάσης αμφιβολίας ότι η υποχρέωση σεβασμού των θεμελιωδών δικαιωμάτων επιβάλλεται και στα κράτη μέλη όταν ενεργούν το πλαίσιο του κοινοτικού δικαίου (Απόφαση της 13ης Ιουλίου 1989, Wachauf, υπόθεση 5/88, Συλλογή σ. 2609). Όπως προσφάτως, το Δικαστήριο επιβεβαίωσε τη νομολογία αυτή ως εξής : "Επί πλέον, υπενθυμίζεται ότι οι υποχρεώσεις που απορρέουν από την προστασία των θεμελιωδών δικαιωμάτων στην κοινοτική έννομη τάξη δεσμεύουν και τα κράτη μέλη όταν υλοποιούν κοινοτικές ρυθμίσεις ..." (Απόφαση της 13ης Απριλίου 2000, υπόθεση C-292/97, αιτιολογική σκέψη 37, δεν έχει ακόμη δημοσιευθεί). Η δεύτερη παράγραφος επιβεβαιώνει ότι ο Χάρτης δεν μπορεί να έχει επιπτώσεις στις αρμοδιότητες και τα καθήκοντα που απονέμονται στην Κοινότητα και την Ένωση από τις συνθήκες.

Άρθρο 47. Περιορισμός των διασφαλιζομένων δικαιωμάτων

Κάθε περιορισμός της άσκησης των δικαιωμάτων και ελευθεριών που αναγνωρίζονται στον παρόντα Χάρτη πρέπει να προβλέπεται από την αρμόδια νομοθετική αρχή. Πρέπει να σέβεται το ουσιώδες περιεχόμενο των εν λόγω δικαιωμάτων και ελευθεριών. Κάθε περιορισμός πρέπει να παραμένει, τηρουμένης της αρχής της αναλογικότητας, εντός των αναγκαίων ορίων για την προστασία νομίμων συμφερόντων σε μία δημοκρατική κοινωνία. Οι περιορισμοί αυτοί δεν μπορούν να υπερβαίνουν εκείνους που επιτρέπονται από την Ευρωπαϊκή Σύμβαση για την προάσπιση των δικαιωμάτων του ανθρώπου και των θεμελιωδών ελευθεριών.

Αιτιολόγηση

Στόχος αυτής της διάταξης είναι να καθορίσει το γενικό καθεστώς των περιορισμών. Το άρθρο ορίζει ότι δεν είναι επ' ουδενί δυνατόν να γίνει υπέρβαση του καθεστώτος περιορισμών που προβλέπει η Ευρωπαϊκή Σύμβαση των δικαιωμάτων του ανθρώπου, η οποία αποτελεί ελάχιστο πρότυπο. Συνάγεται ότι εφόσον η Σύμβαση δεν επιτρέπει να περιορισθούν ορισμένα δικαιώματα, αυτά δεν μπορεί να περιορισθούν ούτε βάσει του κοινοτικού δικαίου. Εφόσον πρόκειται για το ίδιο το καθεστώς περιορισμών της Ένωσης, η διατύπωση εμπνέεται από τη νομολογία του Δικαστηρίου : "... κατά πάγια νομολογία μπορεί να επέλθουν περιορισμοί στην άσκηση των θεμελιωδών

δικαιωμάτων, ιδίως στο πλαίσιο κοινής οργάνωσης της αγοράς, υπό την προϋπόθεση ότι οι εν λόγω περιορισμοί ανταποκρίνονται πράγματι σε στόχους γενικού συμφέροντος που επιδιώκει η Κοινότητα και δεν συνιστούν, ενόψει του επιδιωκόμενου στόχου, υπέρμετρη και επαχθή επέμβαση, η οποία θα έθιγε την ίδια την ουσία των δικαιωμάτων αυτών" (Απόφαση της 13ης Απριλίου 2000, υπόθεση C-292/97, αιτιολογική σκέψη 45).

Άρθρο 48. Προϋποθέσεις και όρια που καθορίζονται στη Συνθήκη

Τα δικαιώματα που αναγνωρίζονται από τη συνθήκη για την ίδρυση της Ευρωπαϊκής Κοινότητας ασκούνται υπό τις προϋποθέσεις και εντός των ορίων που καθορίζονται σε αυτή.

Αιτιολόγηση

Το άρθρο αυτό παραπέμπει στη συνθήκη όποτε τα σχετικά δικαιώματα καθορίζονται στην ίδια τη Συνθήκη. Αυτό συμβαίνει με ορισμένα δικαιώματα όπως η ελευθερία μετακίνησης, το δικαίωμα συμμετοχής στις ευρωπαϊκές καθώς και τις δημοτικές και κοινοτικές εκλογές, το δικαίωμα προσφυγής στο διαμεσολαβητή, το δικαίωμα αναφοράς κ.λπ.

Άρθρο 49. Επίπεδο προστασίας

Καμία διάταξη του παρόντος Χάρτη δεν μπορεί να ερμηνευθεί ως περιορίζουσα την έκταση ή θίγουσα τα δικαιώματα του ανθρώπου και τις θεμελιώδεις ελευθερίες που αναγνωρίζονται στα αντίστοιχα πεδία εφαρμογής, από τα συντάγματα των κρατών μελών, το διεθνές δίκαιο και τις διεθνείς συμβάσεις που έχουν υπογράψει η Ευρωπαϊκή Κοινότητα και όλα τα κράτη μέλη, και ιδίως από την Ευρωπαϊκή Σύμβαση για την προάσπιση των Δικαιωμάτων του Ανθρώπου και των θεμελιωδών ελευθεριών.

Αιτιολόγηση

Ο στόχος της διάταξης είναι σαφής. Επιδιώκει να διατηρήσει το επίπεδο προστασίας που παρέχεται σήμερα από το δίκαιο της Ένωσης, το δίκαιο των κρατών μελών και το διεθνές δίκαιο. Λόγω της σημασίας της, μνημονεύεται η Ευρωπαϊκή Σύμβαση των δικαιωμάτων του ανθρώπου που αποτελεί σε όλες τις περιπτώσεις ελάχιστο πρότυπο. Η παραπομπή στην Ευρωπαϊκή Σύμβαση των δικαιωμάτων του ανθρώπου εξυπακούεται ότι αφορά τη Σύμβαση όπως αυτή ερμηνεύεται ή θα ερμηνεύεται μελλοντικά από το Ευρωπαϊκό Δικαστήριο των δικαιωμάτων του ανθρώπου, δυνάμει της αρχής ότι κάθε ερμηνεία ενσωματώνεται στο ερμηνευόμενο κείμενο. Το ίδιο ισχύει για τη νομολογία του Δικαστηρίου των Ευρωπαϊκών Κοινοτήτων όσον αφορά το κοινοτικό δίκαιο.

Άρθρο 50. Απαγόρευση της κατάχρησης δικαιώματος

Καμία από τις διατάξεις του παρόντος Χάρτη δεν μπορεί να ερμηνευθεί ως συνεπαγόμενη οιοδήποτε δικαίωμα επίδοσης σε δραστηριότητα ή εκτέλεσης πράξης που αποσκοπούν στην καταστροφή των δικαιωμάτων ή ελευθεριών που αναγνωρίζονται στον παρόντα Χάρτη ή σε περιορισμούς των δικαιωμάτων και ελευθεριών ευρύτερους από τους προβλεπόμενους στον παρόντα Χάρτη.

Αιτιολόγηση

Το άρθρο αυτό επαναλαμβάνει το άρθρο 17 της Ευρωπαϊκής Σύμβασης των δικαιωμάτων του ανθρώπου:

"Ουδεμία διάταξις της παρούσης Συμβάσεως δύναται να ερμηνευθή ως επαγομένη δι' έν Κράτος, μίαν ομάδα ή έν άτομον οιονδήποτε δικαίωμα όπως επιδοθή εις δραστηριότητα ή εκτέλεση πράξεις σκοπούσας εις την καταστροφήν των δικαιωμάτων ή ελευθεριών, των αναγνωρισθέντων εν τη παρούσα Συμβάσει, ή εις περιορισμούς των δικαιωμάτων και ελευθεριών τούτων μεγαλυτέρων των προβλεπομένων εν τη ρηθείσα Συμβάσει."

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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Brussels, 5 May 2000 (12.05)
(OR. fr)

CHARTE 4284/00

CONVENT 28

PRAESIDIUM NOTE

Subject : Draft Charter of Fundamental Rights of the European Union
- New proposal for Articles 1 to 30 (Civil and political rights and citizens' rights)

Members of the Convention will find below the new wording of Articles 1 to 30, which has been drawn up in the light of suggested amendments and comments. Each Article is followed by a statement of reasons. The order of the Articles is provisional.

Draft Articles

Article 1. Dignity of the human person

- 1. The dignity of the human person must be respected and protected.**
- 2. Everyone is equal before the law.**

Statement of reasons

This Article appears 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.

Paragraph 2 sets out a principle which the Court has held to be a fundamental Community principle (judgment of 13 November 1984, Racke, Case 283/83, ECR 3791).

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 the general clause in draft Article H2 in CHARTE 4235/00 CONVENT 27.

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"

The problem of limitations will be resolved by the horizontal clause relating to the European Convention.

Article 3. Right to respect for the integrity of the human person

- 1. Everyone has the right to respect for his physical and mental integrity.**
- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - prohibition of eugenic practices;**
 - respect for the informed consent of the patient;**
 - prohibition of making the human body and its products a source of financial gain;**
 - prohibition of the reproductive cloning of human beings.**

Statement of reasons

These principles are set out in the Convention on Human Rights and Biomedicine. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for 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 or degrading treatment or punishment.
No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.**

Statement of reasons

*This Article is taken from Article 3 of the European Convention on Human Rights:
No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The second sentence of the Article incorporates the European Court's jurisprudence on Article 3.*

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.

- "1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. 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."*

The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. It will be incorporated via the horizontal clause relating to the European Convention on Human Rights. It goes without saying that the concept of forced labour does not cover, inter alia, personal services laid down by law which are exacted of citizens for civic reasons or in case of an emergency or calamity, the fulfilment of military obligations or alternative service, or any work ordinarily exacted of a person deprived of liberty.

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 cases prescribed by law 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, which apply by virtue of draft Article H2(2) on the limitation of guaranteed rights, set out in CHARTE 4235/00 CONVENT 27. Insofar as the Charter applies within the context of 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 ordinary-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

- 1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
- 2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective 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."

In Community law, the right to a fair hearing applies to all disputes. 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, ECR 1339; that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, ECR 1682).

The limitations have not been included, but they apply in the general clause on limitations which will appear in the Charter.

With regard to paragraph 2, 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. Presumption of innocence and rights of the defence

- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.**
- 2. Everyone who has been charged shall be guaranteed respect for his rights to defence.**

Statement of reasons

This Article is taken from Article 6(2) and (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 offence on account of any act or omission which did not constitute an offence under national 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 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 international law.**

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 reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular.

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."*

Paragraph 2 of the Article in Protocol No 7 will be applicable by virtue of the horizontal clause relating to 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 150 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, not yet published).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour and his reputation, his home and the confidentiality of his correspondence and 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 been added to "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 by virtue of the horizontal clause relating to the Convention.

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 national laws governing the exercise of this right.**

- 3. The family shall enjoy legal, economic and social protection.**

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."

The reference to national law in paragraph 2 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. Its exact position will be determined when the overall structure of the Charter is considered.

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, by virtue of the horizontal clause relating to the Convention. 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

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.

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 by virtue of the horizontal clause relating to the Convention. 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).

Article 16. Right to education

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include 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 respected.**

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.

Article 17: Freedom of assembly and association

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 or political parties.

Statement of reasons

This Article is based on Article 11 of the European Convention on Human Rights:

- "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 question of restrictions will be covered by the horizontal clause relating to the European Convention on Human Rights.

Article 18. Right of access to documents

Every citizen of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, of the Council and of the Commission.

Statement of reasons

This Article is taken from the first sentence of Article 255 of the EC Treaty. The conditions and limits described in the remainder of the Article are covered by the horizontal clause which deals with the issue in a general fashion.

Article 19. Data protection

Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.

Statement of reasons

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy.

Article 20. Right to property

Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Statement of reasons

This Article is based on Article 1 of the Additional Protocol to the European Convention on Human Rights:

"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 principle 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 3727). A number of members wished to update the wording of the Convention. The use of possessions must be within the limitations imposed by the general interest.

Article 21. Right to asylum and expulsion

- 1. Nationals of third countries shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.**
- 2. Collective expulsion of aliens is prohibited.**

Statement of reasons

Paragraph 2 of this Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights 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 with particular characteristics. The text of paragraph 1 is based on Article 63 TEC which incorporates the Convention on Refugees into Community law. The provisions of Article 1 of Protocol No 7 to the ECHR concerning procedural safeguards in the event of expulsion have not been incorporated as most Member States have not signed or ratified that Protocol. In any event the Geneva Convention contains guarantees in that respect.

Article 22. Equality and non-discrimination

1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with 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, any discrimination on grounds of nationality shall be prohibited.
3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.

Statement of reasons

Paragraph 1 is based on the European Convention on Human Rights. The ECHR limits the application of the principle to guaranteed rights, but Community law goes further following the adoption of the Amsterdam Treaty. The list combines that in Article 13 of the Community Treaty with that in Article 14 of the ECHR. The principle of non-discrimination set out in paragraph 2 is enshrined in Article 12 of the EC Treaty.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

The wording of paragraph 3 is intended to authorise positive action as provided for in the Treaty.

Article 23. Children's rights

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Statement of reasons

This Article is in response to various requests and is based on the Convention on the Rights of the Child.

Principle of democracy

Following the Convention's discussions, it was decided that the following statements would appear in the preamble:

- 1. All public authority stems from the people.**
- 2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights and the rule of law, principles which are common to the Member States.**

Paragraph 3 follows Article 190(1) TEC, which was considered preferable to Article 3 of the Additional Protocol to the ECHR: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the

opinion of the people in the choice of the legislature." This Article takes the form of an international commitment, whereas the Treaty provides for elections in Article 190(1) TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage". This paragraph has been transferred to the Article relating to European elections.

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Statement of reasons

Every Union citizen is guaranteed the right to found a political party, and the right to join such a party is open to anyone living in a Member State. The possibility of limiting the exercise of these rights will derive from the horizontal article concerning limitations.

Article 25. Right to vote and to stand as a candidate for the European Parliament

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.**
- 2. Every citizen of the Union has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State.**

Statement of reasons

This text follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal article.

Article 26. Right to vote and to stand as a candidate in 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 resides under the same conditions as nationals of that State.

Statement of reasons

This text follows Article 19(1) of the TEC: "Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal clause.

Article 27. Relations with the administration

1. Every person has the right to have his 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 adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Statement of reasons

The first paragraph is in response to a request made several times during the Convention, particularly by the Ombudsman.

The principles set out in paragraph 2, which only concern individual decisions, basically result from the case law of the Court and, with regard to the obligation to give reasons, from Article 253 of the Treaty: "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty." The principles for non-contentious administrative procedure are set out in the following judgments in particular: Case 374/87 Orkem [1989] ECR 3283, Case T-450/93 Lisrestal, CFI. [1994] ECR II-1177, Case C-269/90 TU München [1991] ECR I-5469, Case T-167/94 Detlef Nölle [1995] ECR II-2589. The reference to confidentiality refers to the protection of personal data.

Paragraph 3 follows Article 21 of the TEC: "Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language."

Article 28. Ombudsman

Every citizen and every natural and 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 by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Statement of reasons

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21:

"Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances 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.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

A reference to the Treaty will be made in a horizontal clause.

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Statement of reasons

This Article presents the principles resulting from Articles 21 and 194 of the TEC.

Article 21: "Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194."

Article 194 of the TEC: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly."

Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

Statement of reasons

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC:

- "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.*
- 2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."*

A reference to the Treaty will be made in a horizontal clause.
