

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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(OR. multilingue)**

CHARTE 4332/00

CONVENT 35

PRAESIDIUM NOTE

Subject: Draft Charter of Fundamental Rights of the European Union
– Amendments submitted by the members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached the amendments submitted by members of the Convention.

Amendments are set out Article by Article, and paragraph by paragraph where applicable, and bear a serial number. General comments and desiderata regarding the preamble are set out separately at the beginning of the document. The preamble will be discussed separately once the amendments have been examined.

General comments

ANDREW DUFF M.E.P.

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

I. COMMENT

1. The amendments tabled here are drafted on the following presumptions:

- *the Charter will have binding effect on the institutions and agents of the European Union;*
- *the Charter will be inserted somehow into the Treaty of Nice;*
- *there will be no preamble to the Charter that qualifies its force or meaning;*
- *the statement of reasons (or 'definitions') will have equal force to that of the articles themselves: I have suggested amendments to both parts;*
- *if we are to paraphrase the existing treaties we should attempt to do so with more style and clarity than we have usually managed to achieve in the first draft.*

2 *My amendments are especially substantive concerning:*

Article 3 to include ecology

Article 12 to exclude honour and reputation

Article 13 to make specific reference to modern partnerships

Article 15 to protect cultural, national and regional minorities

Article 18 to widen the scope of access to documents

Article 21 to reinforce the rights of asylum seekers

Article 22 to reinforce regional and cultural minorities

Article 23 to assert the principle of democracy

Article 26 bis to include the right to diplomatic protection

Article 27 to ensure transparency of legislative acts and public access to information

Article HH to introduce a new horizontal clause allowing for the widening of the scope of application of the citizenship privileges.

3. *I have made no proposals at this stage about the re-ordering of the articles.*

ANDREW DUFF M.E.P.

Brussels

23 May 2000

Comments and proposals for amendments by the representative of the Danish Government,
Dr Erling Olsen,
concerning CONVENT 28 (Articles 1-30) of 5 May 2000

General comments

- (1) The following proposals for amendment are put forward on condition that the text of the various articles and the accompanying definition of rights constitutes a composite whole. The section in CONVENT 28 entitled “Statement of reasons” (which, incidentally, I would propose be called “definition of right”/Part B, which appears more to the point), should in other words form an integral part of the Charter. I would reserve any further comments on the provisions in CONVENT 28 until such time as an adapted version of the definition of rights is available from the Secretariat: see CONVENT 29.

- (2) At various points in the “Statements of reasons” it is indicated that the question of restrictions of the rights described will be settled in the relevant horizontal provision (former Article H.2, now Article 47 in CONVENT 34). In my view this is insufficient and could give rise to legal uncertainty regarding the extent to which the relevant restrictions are to apply. As has been pointed out on a number of occasions, the exceptions laid down in the European Convention on Human Rights (ECHR) are of widely differing nature. Accordingly, the restriction of the individual right should be set out in conjunction with the right in Part B. This is to some extent already the case as regards CONVENT 28, Articles 2,5, 6, 12, 14, 15 and 17. In these cases a reference should also be made to the case law of the Court of Justice in Strasbourg.

GENERAL COMMENT ON MY AMENDMENTS

R. VAN DAM

MEP

If the Charter is to be an official document of the European Union, it should include *only* rights that are relevant to the functioning of European Union institutions and bodies. It is, after all, intended to apply to those bodies. We should not lose sight of that objective if the Charter is not to become a pointless document. If the Charter includes all sorts of rights which are not related to the powers of the Union, it will be impossible to uphold. It will promise a great deal but the rights it includes cannot be guaranteed. Existing competence cannot be expanded by this document. That is why I am advocating the deletion of a number of articles. Their content is often praiseworthy but the Charter is not a human rights convention. Human rights have to be protected and developed at other levels. The Member States are responsible in the first instance for protecting and developing fundamental rights. Then international organisations such as the United Nations and the Council of Europe have an important task in this area. That is where the protection of human rights should be concentrated primarily. The institutions and bodies of the Union must *respect* rights, but they are not the bodies primarily responsible for *guaranteeing* them.

That brings me to another point. I consider it essential that there be a uniform system for the protection of human rights throughout Europe. The text of the Charter must therefore be as closely aligned as possible on the European Convention on Human Rights. Many of my amendments are therefore intended to bring about closer alignment on the ECHR. On that point, I strongly support the proposal by the representative of the Netherlands Government, Korthals Altes. In that connection I have opted for a number of limitations *per article*, despite the Praesidium's proposal that limitations be grouped in one general horizontal article. Formulating limitations per article makes the Charter more transparent. Finally, I also consider it essential that the wording of the rights do not conflict with Europe's Christian roots.

Amendments proposed by the representatives of the Parliament of the Netherlands to the articles as set out in CHARTE 4248/00 CONVENT 28

Submitted by: E.M.H Hirsch Ballin, M. Patijn (on behalf of G.J.W. van Oven)

I. General reservations

A general reservation has been entered to the effect that as work proceeds on the establishment of the Charter, there must be a consensus on its relationship with the European Convention on Human Rights.

The proposers of these amendments are assuming that the Charter will depart as little as possible from the ECHR. At a later stage in the establishment of the Charter, specific limitation clauses will have to be drafted for each article, in accordance with the ECHR system.

There is a further general reservation on the Dutch text of CHARTE 4248/00 CONVENT 28 on the grounds that in some instances it is not in line with prevailing Dutch legal terminology.

Heinrich Neisser

*Member of the Convention for the drawing up of a draft
Charter of fundamental rights of the European Union*

Vienna, 23 May 2000

Subject: Proposed amendments to Articles 1 - 30 (CONVENT 28)

Dear Mr Chairman,

I should like to bring to your attention below a number of concrete proposals for amendments to the Articles referred to above.

However, I should first like to make a general comment regarding the problem of reservations concerning restrictions: in the current version of the draft (CONVENT 28), a horizontal provision on restrictions has apparently continued to be retained, which was not taken from the provisions on restrictions contained in the European Convention on Human Rights. Instead, CONVENT 34 contains a horizontal Article 47 (Limitation of guaranteed rights) which is intended to replace these specific provisions.

As discussion of the final wording of this horizontal Article is not intended to be held until after the "second reading" of the Civil and Political Rights, my proposed amendments below do not relate to the question of any specific provisions on restrictions. It will be possible to judge whether such provisions should be inserted only when it is established how a horizontal provision on restrictions

could be worded. It might therefore prove necessary to return to the Articles on Civil and Political Rights after the discussion of Article 47 in order to insert specific reservations regarding restrictions at that stage, if possible.

(Complimentary close).

Heinrich Neisser

23 May 2000

M Jean-Paul Jacqué
Charter Praesidium
Brussels

DRAFT AMENDMENTS TO CONVENT 28

1. Thank you for sending me Convent 28 with the Praesidium's latest draft Articles 1-30. I would like to table the following written amendments.
2. The Praesidium's work to cross refer to the language and approach of the ECHR remains welcome. But as I mentioned in my letter of 17 March, we must go further. The explanatory notes provide some guidance as to the Convention's rationale for particular draft Articles. But they cannot be taken as having the same legal force and effect as a clear definition of the right, tying the right to the corresponding existing right, e.g. under the ECHR. I therefore regard a full and integrated "Definition of Rights" section as essential if we are to stay within the remit given by the Cologne Conclusions. I remain convinced that this approach is fully consistent with Union law, e.g. Article 6.2 TEU.
3. In submitting my draft amendments, I have therefore included language for the "Definition of Rights" section. I have included the appropriate "Definition" language alongside the corresponding "Proclamation" text. I envisage the two would be in different parts of the document. My reasons are not, of course, part of the revised text. Please note that the Part A text is offered on the basis that it must be given the solid legal ground I propose for Part B. Without Part B, my Part A proposals do not stand. I have not set out the ECHR or Treaty right in full in this document, although this could be done should the Convention prefer. For ease of reference, I will send a separate annex showing how the amended two-part document would look.
4. The Horizontal Articles will need to cover key ancillary provisions (e.g. ECHR Articles 17, 18 and where appropriate 16) which will need to be read together with the ECHR-based rights. Horizontal provisions will be needed to reinforce other aspects of the two-part approach (e.g. regarding the ability to derogate, respect for national identities and to clarify that the Charter does not contain new rights or remedies.)

Lord Goldsmith QC

Stockholm
2000-05-23

Mr Jean-Paul Jacqué
EU Charter Presidium
Council Secretariat
BRUSSELS

Draft Chart of Fundamental Rights of the European Union

Dear M. Jacqué,

I have the honour to submit to you my first suggestions regarding document "CONVENT" (draft Articles 1-30) of the draft Charter.

Further comments may follow once the full text of the charter and suggestions by other members of the Convention have been presented.

At this stage I wish to make two general comments. The first is that the Swedish translation of the texts in Convent 28 is not altogether satisfactory and will need to be reviewed at a later point.

The second is that the entire text of the Charter needs to be gender neutral. To this end, I have enclosed a separate proposal which I kindly ask you to take into consideration.

Yours sincerely,

Professor Daniel Tarschys

Gender neutrality

In addition to comments and proposals for the draft text I suggest that a gender neutral text be employed. For that reasons, all the pronouns "his" should be replaced with "his or her" throughout the text.

Example:

"Everyone has the right to liberty and security of person. No one shall be deprived of his *or her* liberty save in cases prescribed by law and in accordance with a procedure prescribed by law."

Daniel Tarschys

Preamble

Proposed amendment to Article: Preamble, paragraph 2

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights (*one word deleted*), the rule of law and solidarity, principles which are common to the Member States.

Reasons:

On the basis of the "Declaration of fundamental rights and freedoms" adopted by the European Parliament on 12 April 1989, in the Preamble to which the principle of solidarity and the social state are enshrined, I would propose that the term "solidarity" be included as a further principle in the Preamble to the Charter.

Draft Charter of fundamental rights of the European Union
CONVENT 28

Submitted by: Jürgen Gnauck

The current proposal for a text for "**Principle of democracy**" in CONVENT 17 should be included, at least in part, in the Preamble. This is why it has currently elicited no proposed amendments. However, it should be pointed out in advance that the wording "All public authority stems from the people" could create misunderstandings. If such a provision had to be included in the Preamble at all, it should preferably be worded: "All public authority stems from the peoples of the States brought together within the European Union".

Proposed amendment to the Preamble/Principle of democracy

Submitted by: Prof. Dr Jürgen Meyer/Pervenche Beres/Jo Leinen/Hans-Peter Martin/Ieke van den Burg

Proposed text:

The Union and its institutions are founded on the principles of liberty, democracy, equality, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.

Reasons:

The proposed amendment reiterates the first pillar of the 3-pillar structure submitted on 4 May (CONTRIB 144).

The wording of the Article takes over a proposal from the Praesidium and adds to it the concepts of "equality" and "solidarity".

The principle of solidarity is a constituent element of every - also non-state - community. In Germany, it is implicitly contained in the social state principle laid down in the Basic Law ¹, in France in the historical constitutional link between the terms "solidarité" and "fraternité", in the Spanish Constitution (Article 2) and the Polish Constitution

¹ Jarass, Hans/Pieroth, Bodo: *Grundgesetz für die Bundesrepublik Deutschland. Kommentar.* Munich: Beck, 2000, Art. 20 para 105, p. 503 (5th edition)

(Preamble). For the EC/EU, the European Court of Justice refers to the "duty of solidarity assumed by the Member States through their accession to the Community" ECJ Judgment, Case 39/73, Rep. 1973, 101 [102]), and reiterates this in many other judgments and opinions (ECJ Opinion, Rep. 1977, 741 et seq. Opinion 1/76, ECJ Judgment, Rep. 1980, 907 et seq. Case 136/82; Case 263/82; Case 64/84; Case 250/84; Case 276/80; Case 203/86).

As the 3-pillar structure has met with general approval in the Convention, and above all the first pillar, the principle of solidarity should be taken into account in the Preamble or in a separate Article.

Proposed amendment to Article: Preamble/Principle of democracy

Submitted by: R. VAN DAM (MEP)

Proposed text:

Delete paragraph 1.

Reasons:

Sovereignty of the people is not a concept central to the Member States of the European Union.

Proposed preamble

Submitted by: Georges BERTHU, MEP

Proposed text:

“The Signatory States:

- Are convinced that peaceful and happy societies are based on respect for the fundamental rights of the person, which is sacred; they reject any form of contempt for human beings.
- Affirm that this central value of respect for the person of necessity entails:
 - protecting the life and dignity of every human being;
 - equality before the law which defines and protects fundamental rights;
 - mutual support in the face of the vagaries of existence;
 - the right of all persons to be self-governing; to participate fully as citizens in the life of their communities in order better to defend their families and protect their material and spiritual goods; to exercise freely their sovereign rights by political democracy and the market economy;
 - respect for the affection and solidarity felt by each person, and thus for the feeling of belonging based on transmitted culture, a learnt past and the use of a common language;
 - the inalienable right of all citizens to exercise effective control over their representatives; to delegate only close, controllable and always revocable powers; to give institutions only subsidiary and subordinate powers.

- Recognise that the citizens of Europe’s countries express their desire for solidarity by specific associations and communities, such as family or local communities, cantons, Länder, counties, regions and provinces; that the broadest and firmest expression of that support is in a nation’s shared values which is where democracy is most fully exercised, and where the main thrust of political association must be situated.
- Consider contempt for nations one of the major causes of the wars which have ravaged Europe; but that respect for the diversity of nations and their peoples will benefit Europe, since it will promote freedom, emulation and pluralism which are the sources of European civilisation’s oldest and most steadfast wealth.
- Are convinced that ignorance of, forgetting or scorning the rights of the person, as of families, communities or nations, are the sole causes of public misfortune and government corruption;
- State therefore that the European Union is a union of nations which, in mutual respect for each other and the democratic expression of each people, must pursue the following goals:
 - encouraging a common defence of the peoples of Europe in order together to protect their values, rights, languages, social models, territories and borders;
 - contributing to laying the foundations for sustainable development, through respect for life and by seeking the most fulfilling balance between man and his natural environment;
 - promoting the prosperity of the peoples of Europe by domestic free trade and competition, and by negotiating external trade agreements for fair trade between zones with different rules.

Reasons:

What the European Union needs is less a charter of citizens’ rights (which, with the notable exception of the right to democratic expression at national level, are already well protected), than a solemn declaration setting forth member countries’ common values.

Such a declaration, answering the prime question of “What brings us together?”, would have the merit of making the European Union much more “visible” (as the Cologne Council wanted) than a

mere list of legal rights which are in any case shared with many countries in the world outside the EU.

Proposed amendment to Article: Principle of democracy (page 24 of CONVENT 28)

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. Redraft paragraph 1 to read as follows:

“From the parish to Europe, all public authority stems from the people.”

2. Add a paragraph 3 to the proposed provision to read as follows:

“The requirement of transparency which characterises democracy implies that all legislative deliberations are open to the public.”

Reasons:

Re 1: It should be pointed out that the democratic principle applies, without exception, to all levels of public action.

Re 2: Applies a secular principle of democratic protection to the European Union.

Proposed amendment to Article: Principle of democracy

Submitted by: Simone BEISSEL

Proposed text:

All public authority stems from nations.

Reasons:

Proposed amendment to: Preamble

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. There are no rights without duties.
2. No freedom is absolute. The law, by its principles and in its texts, determines the circumstances in which limitations may be recognised, and any limits or derogations.
3. Any alien in Union territory shall enjoy the protection granted to persons and goods by this Charter, unless it provides otherwise.

Reasons:

Such important principles must be laid down at the beginning of the Charter if we do not want to distort the perception of the text or even its legal effectiveness.

Proposed amendment to Article: preamble (“Principle of democracy”)

Submitted by: Pervenche BERÈS

Proposed text:

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

Reasons:

*All public authority does not stem directly from the people, or else judges would have to be elected.
Equality and solidarity must appear in a modern list of the Union’s founding principles.*

Proposals concerning the whole of Article 1

AMENDMENT 1

Proposed amendment to Article: 1

Submitted by: Andrew DUFF, MEP.

Proposed text:

Article 1. Personal Dignity [delete: 4 words]

1. The dignity of the (delete: 1 word) person [delete 5 words] is inviolable.
2. Everyone is equal before the law.

Reasons:

This Article appears as the first Article of the Charter since dignity of the (delete: 1 word) 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 (delete: 1 word) 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).

AMENDMENT 2

Proposed amendment to Article: 1

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. **The dignity of the human person must be respected and protected.**
2. **Everyone is equal before the law.**
3. **Everyone has the right to develop their personality freely.**

Reasons:

The principle of freedom, like the principle of equality, stems from human dignity and should therefore not be left out of this article. General freedom of action is known to several European constitutions.

AMENDMENT 3

Proposed amendment to Article: 1

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete all. Substitute the following two-part text:

For Part A, “Proclamation of Rights”:

“Article 1: Object and purpose

“All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law. In recognition of this, the European Union Institutions respect, within the spheres of their competences, the fundamental rights set out below.”

Reasons:

This draft of Article 1 is intended to state clearly at an early stage the important principles of dignity, equality and equal protection before the law which are the context and indeed the ultimate source of the substantive rights which follow. They are not, however, as the Praesidium’s draft of Article 1 might suggest, to be put on the same basis as existing, justiciable, substantive rights. For example, dignity does not, as such, exist as a separate right in the ECHR, or elsewhere in Union law. To treat these principles as constituting the same sort of justiciable rights could create legal uncertainty and confusion. It might lead to obligations of uncertain scope and effect for the European Union institutions – and for Member States when acting as agents. My approach is intended clearly to show that this opening article is of a different nature from the Articles which follow. It is for that reason also that the Article should appear before the first heading for “Proclamation of Rights” and why there appears to be no need to provide a Definition of Rights (Part B) text (although I reserve the right to reconsider that issue once the text is otherwise complete).

AMENDMENT 4

Proposed amendment to Article: 1.– Dignity of the human person

Submitted by: Gabriel Cisneros LABORDA

Proposed text:

1. The dignity of each human being must be respected and protected.
2. All human beings shall be equal before the law.

Reasons:

Avoid exclusions derived from specific interpretations of the concept of person. Furthermore, the expression *human being* is the one used in Article 1 of the Universal Declaration of Human Rights.

Perhaps owing to a translation oversight, paragraph 2 of the Spanish text of the proposal is grammatically and legally incomplete.

AMENDMENT 5

Draft Article 1 Dignity of the human person

Move 1.1. to a preambular part of the Charter.

Merge 1.2 (equality before the law) with Article 22 on equality and non-discrimination.

Reasons:

1. "Dignity" is not really a right but rather a fundamental convention that must inform all legislation and political action. The UN Universal Declaration of Human Rights sets out the principle of the dignity of "members of the human family", "human beings" and "the human person" in its preamble and not in the operative part of its text.

AMENDMENT 6

Proposed amendment to Article: 1.

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Substitute the following for the article:

- “1. The dignity and the freedom of a human being are inviolable.
2. The European Union shall recognise and protect fundamental rights and guarantee the free development of personality and respect for the principle of solidarity”.

Reasons:

The term “inviolable” stresses the fundamental value of a human being’s dignity and freedom with respect to the specific rules concerning them.

The second paragraph stresses the relevance of fundamental rights as an element in the progressive and concrete self-assertion of the human being.

AMENDMENT 7

Proposed amendment to Article: 1

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

- Reverse the order of the first two rights
- Replace paragraph 2 by the following:
Human beings are born free and equal in law and so remain.

Reasons:

- for the first point: A person must be born before he acquires dignity by deserving respect in his own right.
- for the second amendment:
 - we should not depart from tradition
 - the wording should be more in line with the spirit of the language

Proposals for Article 1(1)

AMENDMENT 8

Proposed amendment to Article: 1

Submitted by: Win Griffiths MP

Proposed text:

Article 1.1 Delete here but include in preamble of Clauses.

Reasons:

A statement similar to this one is included in the preamble of the Universal Declaration of Human Rights.

AMENDMENT 9

Proposed amendment to Article: 1 - Dignity of the human person – Paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete paragraph 1

(“The dignity of the human person must be respected and protected.”)

Reasons:

This principle is so fundamental that it should not appear in the Charter itself but in the Preamble so that it permeates all of the rights set out in the rest of the text.

AMENDMENT 10

Proposed amendment to Article: 1(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

The dignity of the human person **is inviolable**.

Reasons:

The text proposed in CONVENT 28 is “*the dignity of the human person must be respected and protected*”. The qualification “*human*” may be omitted because it already appears in the title. On the other hand, the qualification “*inviolable*” is intended to strengthen the value of human dignity, also bearing in mind the fact that it frequently appears in national constitutions.

^{*} The amendments proposed are indicated by **bold type**.

AMENDMENT 11

Proposed amendment to Article: 1.

Submitted by: Johannes VOGGENHUBER

Proposed text:

1. The dignity of the human person is inviolable.

Reasons:

AMENDMENT 12

Proposed amendment to Article: 1.1.

Submitted by: Pervenche BERÈS

Proposed text:

Everyone shall be entitled to respect for and protection of his dignity.

Reasons:

In the interests of harmonious drafting, “everyone” ought to be the subject of this article.

AMENDMENT 13

Proposed amendment to Article: 1.1.

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Respect for the inviolable dignity of the person and of the rights inherent therein shall constitute the foundation of the Union's legal, political and social order.

Reasons:

Improved drafting. The dignity of the person is not strictly speaking an actionable right or one on which courts can rule separately in the context of the foundation of all the rights that inherently attach to the person entitled to them. That being so, the wording of the provision does not express, with the force appropriate at the beginning of a charter such as this, the value of the dignity of the person or its relationship with the fundamental rights enunciated later.

Proposals for Article 1(2)

AMENDMENT 14

Proposed amendment to Article: 1

Submitted by: Win GRIFFITHS, MP

Proposed text:

Article 1.2 Delete but include in Article 8 (see later amendment).

Reasons:

Equality before the law is more suitable for Article 8.

AMENDMENT 15

Proposed amendment to Article: 1

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Transfer paragraph 2 to Article 22.

Reasons:

Paragraph 2 is better placed in Article 22 (provision on non-discrimination). See the amendment to Article 22.

AMENDMENT 16

Proposed amendment to Article: 1(2)

Submitted by: Pervenche BERÈS

Proposed text:

Make this a separate article (*Everyone is equal before the law.*)

Reasons:

Equality and dignity are two different concepts and each deserves its own article.

AMENDMENT 17

Proposed amendment to Article: 1.2.

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Everyone is equal before the law.

Reasons:

The Spanish translation of this provision is incomprehensible (Equality of rights for all persons) and is not in line with the French text (Everyone is equal before the law).

The right to equality before the law must be compatible with the existence of differences in treatment that are proportionate and can be justified objectively and reasonably.

AMENDMENT 18

Proposed amendment to Article: 1.Dignity of the human person

Submitted by: Jordi SOLÉ TURA

Proposed text:

2. Everyone is equal before the law.

Reasons:

More appropriate wording in Spanish.

AMENDMENT 19

Proposed amendment to Article: 1(2): Dignity of the human person

Submitted by: Dr Ingo Friedrich

Proposed text:

“1. Die Würde des Menschen ist zu achten und zu schützen.

2. Alle Menschen sind vor dem recht gleich.”

(No change to the English text).

Reasons:

The term “Gesetz” (law) belongs to the Member States’ legal domain. “Gesetz” could be misunderstood as “a” law in the formal sense: fundamental rights have to apply to all legal pronouncements. Its use elsewhere in the draft Charter should consequently also be checked.

AMENDMENT 20

Proposed amendment to Article: 1(2)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Alle Menschen sind vor dem Recht gleich". (No change to the English text).

Reasons:

The term "Gesetz" (law) belongs to the Member States' legal domain. Its use elsewhere in the draft Charter should consequently also be checked.

Proposals for Article 1a

AMENDMENT 21

Proposed amendment to Article: 1

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

After Article 1 insert the following:

"Article 1a. Equality and non-discrimination

1. Everyone shall be equal before the law.
2. Any form of discrimination on the basis of sex, race, skin colour, ethnic or social origin, language, religion or personal conviction, political opinion, membership of a national minority, possessions, birth, handicap, age or sexual orientation, genetic characteristics or state of health shall be prohibited.
3. Within the scope of the Treaty establishing the European Community and the Treaty on European Union all discrimination on the basis of nationality shall be prohibited.
4. The Union shall strive to eliminate existing inequality and to promote conditions that make equality effective".

Article 22 is accordingly deleted.

Reasons:

Every aspect of the fundamental principle of equality is regulated in full here (produced by combining the provisions of Articles 1 and 22, appropriately reframed, of the Praesidium text).

Proposals for the whole of Article 2

AMENDMENT 22

Proposed amendment to Article: 2

Submitted by: François LONCLE

Proposed text:

“Everyone is equal before the law.”

Reasons:

The purpose of this amendment is to separate the principle of equality from Article 1, which also deals with the dignity of the human person.

AMENDMENT 23

Proposed amendment to Article: 2, Statement of reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted as the Charter is addressed to EU bodies and so does not have to fix exceptions as the ECHR does.

AMENDMENT 24

Proposed amendment to Article: 2

Submitted by: Andrew DUFF, MEP.

Proposed text:

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to (delete: 1 word) death (delete: 3 words).

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

Since Protocol No. 6 was signed on 28 April 1983, the death penalty has been abolished in most Member States and has not been applied in any of them (Declaration No. 3 of the Treaty of Amsterdam relating to the Treaty on European Union). The problem of limitations will be resolved by the horizontal clause relating to the European Convention.

AMENDMENT 25

Specific proposals for amendment

Submitted by: Evling OLSEN

Article 2: Replace “Everyone” by “Every individual”.

AMENDMENT 26

Proposed amendment to Article: 2. Right to life

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. (a) Everyone has the right to life.
(b) No one shall be condemned to the death penalty, or executed.

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 prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Reasons:

The right to life is regarded as "*the supreme right*" among fundamental human rights (Human Rights Committee, No 146/1983, *Baboeram v. Suriname*, A/40/40, paragraph 697; General Comment 6/16 of 27 July 1982, paragraph, 1 and General Comment 14/23 of 2 November 1984; also to be found in: NOWAK, M., *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein, Engel Verlag, 1993, p. 851 and p. 861), or as "*one of the most fundamental provisions*" of the European Convention on Human Rights (Court of Human Rights, *McCann, Farrell and Savage*, 27 September 1995, *Publications of the Court*, Series A, Vol. 324, paragraph. 147; Court of Human Rights, *Andronicou and Constantinou*, 9 October 1997, *Reports*, 1997, paragraph. 171; Court of Human Rights, *Kaya*, 19 February 1998, *Reports*, 1998, paragraph 107; Court of Human Rights, *Caciki*, 8 July 1999, *Reports*, 1999, paragraph 86), in view of the fact that the exercise of all other protected rights presupposes respect for the right to life. The "fundamental nature" of the right to life requires that the possible restrictions be expressly included in Article 2 itself.

Proposals for Article 2(1)

AMENDMENT 27

Proposed amendment to Article: 2(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Every *person* has the right to life.

Reasons:

It is proposed that *every person* be substituted for *everyone*, both to conform to the expression used in Article 1 (which refers to the "human person") and to avoid any interpretations that might lead to a general prohibition on abortion, contrary to many countries' national legislation.

^{*} Proposed amendments are in **bold type**.

AMENDMENT 28

Proposed amendment to Article: 2(1)

Submitted by: Hubert HAENEL

Proposed text:

1. Everyone has the right to life *for the term of his natural life*.

Reasons:

The right to life is so fundamental that it should be without limits: whatever a person's age or state of health, that right should not be violated on any account. It is thus worth stating that this right applies until the end of a person's natural life.

AMENDMENT 29

Proposed amendment to Article: 2. Right to life, paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

1. Everyone has the right to life, **from the beginning until natural death.**

Reasons:

The addition of “from the beginning until natural death” is intended to mean that the right to life is in no way diminished by the person’s inability to express himself, either at the beginning or the end of his life.

On the other hand, the right to life may be subject to other limitations for various reasons (see paragraph 1a).

AMENDMENT 30

Proposed amendment to Article: 2(1)

Submitted by: Gabriel Cisneros LABORDA

Proposed text:

Every human being has the right to life from its beginning until its natural end.

Reasons:

The same argument as in connection with Article 1.

AMENDMENT 31

Proposed amendment to Article: 2

Submitted by: R. VAN DAM, MEP

Proposed text:

Replace paragraph 2 by:

- That right shall be protected from conception to the end of life.

Reasons:

It is hard to imagine that Union bodies would ever acquire jurisdiction to impose penalties, much less a death penalty. This provision does not belong in a Charter addressed to the Institutions of the Union (cf. horizontal Article H.1(2) in CONVENT 27). A more precise definition of the right to life clarifies the implications which are inherent in inserting that right.

AMENDMENT 32

Proposed amendment to Article: 2(1)

Submitted by: M. PATIJN (on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace current wording by: Everyone's right to life shall be protected by law.

Reasons:

The wording of that fundamental right should be closely aligned on the ECHR.

AMENDMENT 33

Proposed amendments to Article: 2. Right to life

Submitted by: Daniel TARSCHYS

Proposed text:

2.1 Everyone' s right to life shall be protected by law.

2.2 Retained.

Reasons:

Paragraph 2:1 is taken from Article 2 of the ECHR. However, while ECHR stipulates that the right shall be protected by law, no such formulation is included in the Convent 28 version of this Article. The ECHR places a positive obligation on Contracting States to ensure that their penal law includes provisions criminalising murder, manslaughter and also acts by which a person's death is caused unintentionally. It does not, however, hold them responsible for human rights violations as a result of acts (e.g. murders) committed by third parties. Since the draft Article has no equivalent formula, this might be interpreted as meaning that whoever is the addressee of the draft Article may be held responsible for ensuring that, for instance, no murders *de facto* take place within the EU territory.

AMENDMENT 34

Proposed amendment to Article: 2(1)

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to respect for his life.

Reasons:

To make the first paragraph less ambiguous.

AMENDMENT 35

Proposed amendment to Article: 2(1)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister.

Proposed text:

Todos tienen derecho a la vida. (No change to English text).

Reasons:

The proposal is to translate “everyone” by “todos” instead of “toda persona” to avoid any conflict in the legal definition of “person” which varies between Member States.

AMENDMENT 36

Proposed amendment to Article: 2(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Everyone's right to life shall be protected by law. 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.”*

Reasons:

The general limitation clause in the “horizontal provisions” (Art. 47 of CHARTE 4316/00 CONVENT 34) is too broad for the fundamental right to life. The link with the clause on the level of protection, basically guaranteeing that no further limitations can be placed on the right to life, as provided in Article 2 of the ECHR, is not clear enough for citizens to understand. It is important to see immediately that the fundamental right to life can only be limited in specific circumstances.

To preclude any differing interpretations of Article 2 of the ECHR in this important area, the wording of that Article should be taken over.

AMENDMENT 37

Proposed amendment to Article: 2

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, "Proclamation of Rights":

Delete in 2.1: "Everyone has the right to life"

Substitute in 2.1: "Everyone's right to life shall be protected by law"

Retain 2.2 as drafted

For Part B, "Definition of Rights":

"The rights in Article 2 are the rights guaranteed by Article 2 of the ECHR and Articles 1 – 4 of Protocol 6 to the ECHR."

Reasons:

The Praesidium's draft of Article 2 is inconsistent with the corresponding right in the ECHR. It may be taken by the ECJ or others to have a different meaning, for example that it confers new rights upon the unborn. My amendment ensures that Article 2 is understood within the meaning of the relevant existing ECHR rights and subject to ECHR case law. I do not accept that limitations to this, or the other Charter rights, can be dealt with satisfactorily in a single "horizontal" clause. Limitations differ in type and effect from right to right. They need to be defined precisely in relation to each right so as to ensure legal certainty.

AMENDMENT 38

Proposed amendment to Article: 2 – Right to life
Paragraph 1a

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

“However the law may lay down measures departing from the previous paragraph if they are absolutely vital to protect the lives of other persons from unlawful violence or in defence of society”.

Reasons:

After affirming the right to life, to be honest, we should immediately be reminded of the traditional limitations, either by an explicit reference to Article H2 (horizontal clause), or by stating the spirit of those limitations directly.

Not to do so might impair understanding of the Charter were the reader not to read right to the last line which radically alters the whole meaning.

Proposals for Article 2(2)

AMENDMENT 39

Proposed amendment to Article: 2 – Right to life
Paragraph 2

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete paragraph 2 (“No one shall be condemned to the death penalty, or executed”).

Reasons:

This paragraph does not correspond to any existing European Union powers.

AMENDMENT 40

Proposed amendment to Article: 2.

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1.
2. **The death penalty shall be prohibited.** No one shall be condemned **to death** or executed.

Reasons:

AMENDMENT 41

Proposed amendment to Article: 2

Submitted by: RODOTÀ, PACIOTTI and MANZELLA

Proposed text:

Substitute the following for paragraph 2:

"2. No public authority may provide for the death penalty or impose or execute a sentence of death".

Reasons:

The aim of paragraph 2 is the outright elimination of the death penalty from the legal systems of the Union. The wording proposed addresses legislators, courts and administrative authorities alike.

AMENDMENT 42

Proposed amendment to Article: 2(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. No one shall be condemned to death or executed, save under military criminal law in time of war.

Reasons:

Protocol No 6 to the ECHR provides, by way of exception to the abolition of the death penalty, for its application in time of war, and the Convention was ratified on that basis. With Organic Law 11/1995 of 27 November 1995 Spain abolished the death penalty even in such cases; Article 15 of Spain's constitution, however, provides for the possible application of the death penalty in the event of war if at that juncture the legislator so stipulates, a rule with which total abolition is not compatible.

The statement of reasons for the draft addresses that situation, but considers an exception to be made for it through the establishment of a general horizontal clause on the limitation of rights, a general approach used in the other articles, with all references to limitations, exceptions and definitions being omitted. I feel, on the contrary, that limitations on rights, as part and parcel of their make-up, must appear in the definition of the rights themselves, which provides, furthermore, the best guarantee that they will be safeguarded under implementing legislation, as well as ensuring proper coexistence of rights that may clash with each other.

The existence of a horizontal clause – subject at present to the drafting chosen for that clause so that it is acceptable to Spain – does not resolve the problems of the specific limitations on the exercise of certain rights; what would be unacceptable to Spain, as I have repeatedly indicated, is a clause that merely makes reference to the relevant provisions of the ECHR.

In addition, a general limitations clause is not a valid way of resolving the problem. In fact, in some of the articles it is not a question of enabling rights to be limited but rather of defining them negatively to make it clear beyond what point the content of the right does not extend. In other cases it is a matter of regulating those limits, to ensure that when the public authority (the legislator) establishes them it is similarly limited in the way in which it frames them. Clearly, that is not required in the case of every right in the Charter, but only for some which, because of their nature, so require.

The EU Charter of Fundamental Rights must be an autonomous text, drafted, naturally, in such a way as to comply with the fundamental rights "contained" in the ECHR, i.e. in content. But that does not mean that the EU Charter of Fundamental Rights must restrict itself merely to following or transcribing the text of the ECHR, as that would render unnecessary (being pointless and repetitive) a large part of the Convention's work.

In addition, the technique of resolving the problem of the limitations on the exercise of rights recognised in the Charter by means of a reference to the corresponding article of the ECHR in which exceptions or limitations are laid down is unacceptable, as I have already said in Convention working meetings. For that would mean introducing the ECHR law as directly applicable within the Charter. Or, in other words, including the ECHR in Community Treaty law, producing a result equivalent to the EU's accession to the ECHR. That is a possibility that the Council, the IGC and the Court of Justice of the European Communities have expressly rejected.

It should be noted that the reference to the ECHR in Article 6(2) of the TEU is not actually incorporating the ECHR into the text of the Treaty, but doing something quite different: obliging the European Union to respect fundamental rights, as guaranteed by the ECHR, as principles of Community law.

The proclamation of the fundamental rights and freedoms in the Charter (all the more so if the latter is to be incorporated into the EU Treaty as a text with legal force) must be an autonomous text, which does not need to be incorporated or supplemented (as if blank or incomplete) by other legal provisions alien to the Community law of which it forms part (such as the ECHR, the Universal Declaration of Human Rights or any other international law treaty or convention on human rights). There is therefore no room for any other source of human rights alongside or external to the Charter itself.

The contrary would mean that to a large extent the Charter (or at least that part of its content which overlaps with the ECHR) would be rendered redundant as a legal instrument, as it would serve to convert the ECHR into an autonomous standard by which to gauge the validity of acts and provisions of Community institutions and bodies from the point of view of the fundamental rights that the latter must respect.

If that were the case, there would be no need for the solemn declaration of those rights in the Charter and it would be sufficient if the Charter simply made reference to the ECHR, so that the Convention would be incorporated, as directly applicable law, into the Charter and into primary Community legislation.

I must make it clear that the amendment I propose is not meant to deny or detract from the crucial, outstanding value and importance of the role to be played by the ECHR and the case law of the CDH in the interpretation of the fundamental rights and freedoms in the Charter. Nor is it intended to call into question the relationship or cooperation between Community institutions (in particular the Court of Justice) and the Strasbourg court. Quite the contrary, what must be avoided is

that, through a legal subterfuge, what the European Council and the Luxembourg Court of Justice have rejected – EU accession to the ECHR – is indirectly incorporated into Community Treaty law, like some Trojan horse.

Perhaps many of the fears that have arisen in connection with the references to the ECHR might be dispelled if in the end it were clearly established in the horizontal clauses that the Charter does not alter existing legal rules or the jurisdiction of the courts. Furthermore, the risk that two courts may interpret the same rights text in different ways exists at present, witness the wording of the Treaties and the case law of the Luxembourg court.

Finally, I would say that, if the intention of the agreements reached at the European Council meeting in Cologne and the Convention is to draw up a Charter that makes fundamental rights and freedoms visible for the citizen, referring to another standard (such as the ECHR) for the purpose of settling the limits to their exercise in every case will deprive the Charter of all visibility, make it complicated and confused and render it accessible only to legal experts, since to know fully the scope and content of a right it will be necessary to have recourse to another, different text, which is just what "visibility" is meant to avoid.

AMENDMENT 43

Proposed amendment to Article: 2(2)

Submitted by: EINEM/HOLOUBEK

Proposed text:

No one shall be condemned to the death penalty or executed. *No limitation of this right shall be permissible.*

Reasons:

The first sentence is unchanged and corresponds exactly to the Praesidium proposal. The added second sentence is intended to make it clear to the citizen in a directly comprehensible manner that the death penalty has in fact been abolished. The possibility of making this provision subject to the general limitation of the horizontal clause in Article 43 of the draft would be a step backwards from the position of the ECHR.

The drafting proposed fundamentally takes over the level of protection afforded by Protocol No 6 to the ECHR. It goes further in that even "in time of war or of imminent threat of war" the death penalty is not permissible. In view of the rule-of-law and democratic standards achieved in the European Union there is no convincing basis for the death penalty at all. It is not necessary even in time of war. The dangers involved in this type of penalty are much greater than any benefit to society. This applies in time of war as well, because in exceptional circumstances the danger of defective procedures and accordingly of miscarriages of justice is particularly great.

Proposals for Article 2(3)

AMENDMENT 44

Proposed amendment to Article: 2

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Add the following new paragraph 3:

3. No one shall be expelled or extradited to a State where there are substantial grounds for believing that he would be in danger of being subjected to the death penalty or execution.

Reasons:

This provision is more appropriate here than in Article 4, which deals with the prohibition of torture and inhuman treatment. The text is in line with the grounds adduced by the European Court of Human Rights in the Case Soering v United Kingdom of 7 July 1989.

Proposed amendment to Article: 2

Proposed text:

Add the following new paragraph 4:

4. Deprivation of life shall not be regarded as in contravention of this Article when it results from the use of force which is no more than absolutely necessary, in accordance with the instances listed in Article 2(2) of the ECHR.

Reasons:

This provision is in line with Article 2(2) of the ECHR, which lists a number of instances of deprivation of life resulting from the use of force which is no more than absolutely necessary. In keeping with the desire for conciseness, reference is made to Article 2(2) of the ECHR. The same technique has been used in amending the other articles.

Proposals for Article 3 as a whole

AMENDMENT 45

Proposed amendment to Article: 3

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this Article entirely but see Reasons below

Reasons:

I remain concerned as to how to deal with this issue pending the entry into force of the Human Rights and Biomedicine Convention in all the Member States. It is not yet ratified by the majority of Member States. The matters dealt with in the Convention on Human Rights and Biomedicine are complex and sensitive. Reference in the Charter to only some of the principles in the Biomedicine Convention is an unsatisfactory way forward and would be likely to create uncertainty, controversy and possible conflict with national positions. It should be noted that ECHR Articles 2, 3 and 8 have some bearing on the matters referred to in Charter Article 3. To that extent these matters may be covered by the Charter indirectly. I am not aware of any other rights existing at Union level.

I am prepared to consider this issue further but it could only be on the basis of a statement tied to existing national laws and practices, such as:

A: Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine.

B: The right in Article 3 is the right, to the extent recognised in national law, of:

- a) respect for the informed consent of the patient;
- b) prohibition of making the human body and its parts, as such, a source of financial gain;
- c) prohibition of creation of a human being identical to another human being whether living or dead.

It would have to be made clear, moreover, that the right cannot extend further than the corresponding provisions in the Biomedicine Convention.

AMENDMENT 46

Proposed amendment to Article: 3

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 3. Right to respect for (delete: 1 word) personal integrity (delete: 4 words)

- 3. Everyone's (delete: 7 words) physical and mental integrity shall be respected.**

- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - prohibition of eugenics (delete: 1 word);
 - 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.

- 3. In the field of ecology, the principle of sustainable development shall be respected.**

Statement of reasons

The principles in the field of medicine and biology 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 (delete: 1 word) developments in this area.

Article 2 of the Treaty on European Union as amended by the Treaty of Amsterdam sets for the Union the objective of achieving "balanced and sustainable development". Article 3(l) of the Treaty establishing the European Community establishes a competence in the field of environment

policy. The obligatory nature of the principle of sustainable development is established in Article 6, which reads:

"Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development."

AMENDMENT 47

Proposed amendment to Article: 3

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. **Everyone has the right to respect for his physical and mental integrity.**
2. **Everyone has the right to a clean and healthy environment and to the protection of natural life support systems.**
3. **In the fields of medicine and biology, the following principles must be respected in particular:**
 - **any intervention directed at alteration of the human genome may be undertaken only for preventive, diagnostic or therapeutic purposes and only if it is not intended to bring about any alteration in the genome of progeny;**
 - **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.**
4. **Everyone has the right to be informed of all data concerning his health and genetics. The wish not to be informed of such matters must be respected.**
5. **Genetic information may be used and passed on only with the patient's consent. The use of genetic diagnostics in employment and insurance matters is in any event prohibited.**

Reasons:

AMENDMENT 48

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

Submitted by: Jürgen GNAUCK, Minister for Federal and European matters of Thuringia

Proposed text:

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

Everyone has the right to respect for his physical and psychological integrity."

Reasons:

Article 3 should contain only the above key statement. The term "psychological" also seems to be more appropriate than the term "mental" actually used.

Paragraph 2 should be deleted for the following two reasons: the principles mentioned in paragraph 2 are set out in the Convention on Human Rights and Biomedicine. It should be noted that not all Member States have acceded to that Convention.

The principles mentioned here also appear to be greatly in need of interpretation. Where, for example, does the boundary lie between genuine and reprehensible eugenic practices ? In particular, the "prohibition of eugenic practices" referred to in the first indent is too indefinite, and so far-reaching in its effects as also to affect existing national provisions. Any measure intended to avoid genetically diseased progeny could ultimately be termed "eugenic". Accordingly, the abortion of a genetically affected embryo would also be "eugenic". This would also affect the current intensive discussion over pre-implantation diagnostics, as the latter's top priority aim is to detect genetic defects and "sort out" the corresponding embryos from the outset. In addition, the Article leaves the question entirely open as to whether "everyone" (cf. paragraph 1) covers the post-natal human being or also the unborn embryo. Paragraph 2 does not differentiate in this respect, however. In the case of "reproductive cloning of human beings" also referred to in paragraph 2, it does not seem clear what kind of human cloning (!) is indeed permitted (the cloning of parental cells, perhaps?). Further clarification in the statement of reasons at least would be helpful here.

Furthermore, it can be seen from the provisions of Article 3(2) how difficult it is to formulate "modern fundamental rights" succinctly. This is why the German Länder are in favour, at least

for the moment, of refraining from seeking a fundamental solution to problems such as medicine and biology, in particular, and of omitting the proposed paragraph 2. In the case of the problems raised, sufficient protection against abuse should be provided by Article 1 in conjunction with Article 3(1).

AMENDMENT 49

Proposed amendment to Article: 3

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the text of the Article with the following:

- "1. Everyone is entitled to respect for physical and mental integrity.**
- 2. No medical intervention can be carried out without the prior, free and informed consent of the person concerned and unless it is in conformity with his/her rights.**
- 3. The human body and its parts cannot be objects of trade.**
- 4. Eugenic practices aimed at organising the selection and the instrumentalisation of the person are prohibited.**
- 5. Human reproductive cloning is prohibited".**

Reasons:

The text, worded in prescriptive terms, reflects the state of development of the law regarding bioethics (cf. European Convention on Biomedicine).

AMENDMENT 50

Proposed amendment to Article: 3

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace Article 3 by the following text :

1. The physical and mental integrity of the human person may not be harmed.
2. Respect for moral and physical integrity implies free access for all to advances in medicine and other sciences, and in particular equal access for all to health care.
3. Scientific research must also take account of everyone's rights:
 - increasing mastery of human genetics may not lead to eugenic practices designed to deprive the weakest of their rights;
 - the human body, its components and products may not be a source of financial gain;
 - more generally, living matter may not be patented, in whole or in part.
4. When old age impairs a person's integrity, that person shall receive specific help and assistance, regardless of his right to a pension,.
5. Everyone has the right to request and obtain a death which respects his dignity, particularly when respect for his physical and moral integrity or his dignity as a human being is infringed.
6. Everyone has the right to protection of the environment and shall have the right to compensation if that environment is altered without his agreement and his integrity is impaired.

Reasons:

Re 1: Stylistic improvement.

Re 2: Stylistic improvement; the right to free and equal access to health care is added as requested in a number of contributions to the Convention.

Re 3: Progress in genetics as a science requires a fuller text dispelling any ambiguity.

- Re 4: The community must rise to the challenges created by longer life-expectancy if human dignity is not to be sacrificed.
- Re 5: The Convention cannot avoid taking a stand on what happens when the right to life comes into conflict with respect for human dignity and is mistaken for a duty to remain alive.
- Re 6: The Charter cannot fail to address the implications of protection of the environment for the individual.

Proposals for Article 3(1)

AMENDMENT 51

Proposed amendment to Article: 3(1)

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

“Everyone has the right to respect for his physical, genetic and mental integrity.”

Reasons:

The reference to genetic integrity in Art. 3(1) clarifies the enumeration in Article 3(2). This seems desirable given the high value of genetic integrity.

AMENDMENT 52

Proposed amendment to Article: 3. Right to respect for the dignity of the human person

Submitted by: Jordi SOLÉ TURA

Proposed text:

p. 1 “Everyone has the right to respect for his physical and moral integrity.”

Reasons:

“Moral” is a more appropriate term than “mental” (in Spanish “psíquico”).

AMENDMENT 53

Proposed amendment to Article: 3(1)

Submitted by: Piero MELOGRANI

Proposed text*:

p. 1 Every **person** has the right to respect for his physical and mental integrity.

Reasons:

It is suggested that *everyone* be replaced by *every person* both in order to bring the text into line with Article 1 and with the title of Article 3 (which has “human person”) and to preclude interpretations which might lead to a general ban on abortion, in contrast to national legislation in many Member States.

* Proposed amendment in bold.

AMENDMENT 54

Proposed amendment to Article: 3(1)

Submitted by: Alvaro Roríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to respect for his physical and moral integrity.

Reasons:

The French text does not contain the term “psychique”. Mental is a broader term, as is moral.

AMENDMENT 55

Proposed amendment to Article: 3(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Every *individual* has the right to respect for his physical and mental integrity”.

Reasons:

As a principle it seems expedient to make a clear distinction in the Charter between “individuals”, i.e. natural persons, and “persons” i.e. natural or legal persons. We therefore propose as a rule to speak of “individuals” when only natural persons are meant, and “persons” when natural and legal persons are meant.

There is no change to the content of the proposal by the Praesidium.

AMENDMENT 56

Proposed amendment to Article: 3(1)

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

“Everyone has the right to respect for his physical, genetic and mental integrity.”

Reasons:

The reference to genetic integrity in Art. 3(1) clarifies the enumeration in Art. 3(2). This seems desirable given the high value of genetic integrity.

Proposals for Article 3(2)

AMENDMENT 57

Proposed amendment to Article: 3

Submitted by: Win GRIFFITHS, MP

Proposed Text:

Everyone has the right to respect for his/her physical and mental integrity.

Delete 3.2

Reasons:

3.2 sets out criteria which, if included at all in the Charter, would be better placed in "Part B" – however that may be set out in the Charter.

It will also be necessary to indicate any limitations to the individual right to appeal when the individual himself/herself is not able to make decisions on his/her own.

AMENDMENT 58

Proposed amendment to Article: 3

Submitted by: Erling OLSEN

Proposed text:

Paragraph 2 should be deleted.

AMENDMENT 59

Proposed amendment to Article: 3

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

In the third indent of the second paragraph, insert “, *its parts*” after “*the human body*”.

Reasons:

As presently drafted, the provision that the human body cannot be commercialised is incomplete as it does not cover organs.

AMENDMENT 60

Proposed amendment to Article: 3(2)

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (on behalf of G.J.W. VAN OVEN)

Proposed text:

- Amend the introductory phrase to read as follows:

The following principles must be respected in this connection:

- Add the following to the fourth indent:

“and the creation of human/animal hybrids”.

Reasons:

The original introduction is too restrictive. The proposed addition reflects developments in bio-ethics.

AMENDMENT 61

Proposed amendment to Article: 3

Submitted by: R. VAN DAM,MEP

Proposed text:

Paragraph 2, fourth indent: prohibition of the (one word deleted) cloning of human beings.

Reasons:

The Article would thus provide greater protection against threats to human integrity.

AMENDMENT 62

Proposed amendment to Article: 3(2)

Submitted by: Piero MELOGRANI

Proposed text *:

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, ***although an intervention may be carried out on a person who does not have the capacity to consent, solely for his or her direct benefit.***;
- prohibition of making the human body and its products a source of financial gain;
- prohibition of the reproductive cloning of human beings.

Reasons:

The words in bold are taken from Article 6 of the Oviedo Convention and are intended to allow interventions which may be necessary for minors and those who are temporarily or permanently incapacitated.

* Proposed amendment in bold.

AMENDMENT 63

Proposed amendment to Article: 3(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the (*one word deleted*) consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (*one word deleted*) cloning of human beings.

Reasons:

1. (Does not apply to the English text.)
2. It is a principle that the patient's decision must be respected and not made conditional upon prior information which doctors are in any case required to give.
3. Delete the term "reproductive" which to my mind (a) is unclear and (b) may be interpreted as restricting a total ban on cloning human beings.

AMENDMENT 64

Proposed amendment to Article: 3(2) Right to respect for the integrity of the human form

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;¹
 - [...] free and 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.

Reasons:

1. “Respect” in the second indent repeats the verb in the introductory sentence.
2. Consent must not only be informed but also and above all free (see also Article 5(1) of the Convention on Human Rights and Biomedecine).

¹ The concept of eugenic practices must be clarified in the statement of reasons by, for instance, pointing out that its main purpose is the selection and instrumentalisation of persons.

AMENDMENT 65

Proposed amendment to Article: 3(2)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Prohibition of the cloning of human beings"

Reasons:

The prohibition of the production of human beings with the same genetic material as a certain person living or dead must cover all stages of human development starting from the fusion of egg and sperm cell. Restricting the prohibition of cloning to reproductive cloning only would be wholly untenable and would certainly undermine acceptance of the Charter by numerous people in Europe.

AMENDMENT 66

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

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

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 **and stated** consent of the patient, **although that consent may not be to acts which are unlawful under domestic law or in breach of the rights guaranteed in this Charter and in particular in Article 2;**
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (...) cloning of human beings.

Reasons:

- A. The patient's consent must not only be based on detailed prior information, but must also be clearly expressed.
- B. There must be a total ban on cloning of human beings, not just on reproductive cloning, to prevent any risk of slippage. The distinction is in fact artificial, since the act is still the same and it is a fundamental principle that the law punishes acts, not the reasons for them.

AMENDMENT 67

Proposed amendment to Article: 3

Submitted by: Pervenche BERÈS

Proposed text:

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

Everyone has the right to respect for his physical and mental integrity.

In the fields of medicine and biology, the following principles must be respected in particular:

- prohibition of eugenic practices, with the purpose of selection and instrumentalisation of persons;
- respect for the informed consent of the person;
- prohibition of making the human body and its products into any kind of saleable commodity;
- prohibition of the reproductive cloning of human beings.

Reasons:

AMENDMENT 68

Proposed amendment to Article: 3: Right to respect for the integrity of the human person

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. Everyone has the right to respect for his physical and mental integrity. (No change to English text)
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 (one word deleted) cloning of human (one word deleted) life forms in all stages of their development.

Reasons:

Re paragraph 1:

Does not apply to the English text.

Re paragraph 2:

Only by banning the cloning of human beings can their uniqueness be ensured.

AMENDMENT 69

Proposed amendment to Article: 3

Submitted by: Heinrich NEISSER

Proposed text:

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 **as such** a source of financial gain;
 - prohibition of the reproductive cloning of human beings.

Reasons:

The expression “as such” bases the Article more closely on Article 21 of the Council of Europe Convention on Human Rights and Biomedicine. A total ban on any financial gain in connection with the human body and its parts seems excessive, particularly as far as getting blood and blood plasma from voluntary donors is concerned. The explanatory notes to Article 21 of the Convention state that organs and tissues proper should not be bought or sold or give rise to financial gain, but that technical acts (medical testing, pasteurisation, storage) performed in that connection should give rise to reasonable remuneration, and that medical devices incorporating processed human tissue may be sold. Further, blood and plasma donors may thus receive compensation (for their time and loss of income), but not payment in the sense of a purchase price.

AMENDMENT 70

Proposed amendment to Article: 3 : Right to respect for the integrity of the human person

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

1. Everyone has the right to respect for his physical and **moral** integrity.
2. At the end of the next paragraph, add:

All human life must necessarily result from the fusion of gametes of human origin.

Reasons:

1. *Moral* is considered a more appropriate word than *mental*.
2. Science is progressing constantly. Apart from cloning, research is being conducted into ways of creating life in which a human being will not originate from a man and a woman. Attempts are also being made to produce human eggs from any kind of living cell.

AMENDMENT 71

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

Submitted by: Daniel TARSCHYS

Proposed text:

Article 3.1. Delete the words "physical and mental".

Article 3.2. It is suggested to make a separate paragraph of this Article.

Reasons:

Paragraph 1.

Swedish experts are uncertain as to the precise meaning of the expression "mental integrity". I would leave out the qualification.

The relationship of this Article to Article 12 (respect for private life) requires further consideration.

Paragraph 2.

While paragraph 1 of this draft Article is a more general protection clause, paragraph 2 appears to deal with very specific aspects of a person's physical and mental integrity. It would be better to treat these aspects separately.

(For the Swedish translation of the second indent, revert to the version used in Convent 13).

AMENDMENT 72

Proposed amendment to Article: 3

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Delete paragraph 2.

Reasons:

Paragraph 2 may be omitted as it concerns a number of principles contained in the Council of Europe Convention on Human Rights and Biomedicine. Various Member States have not yet adopted a definitive position on a number of provisions of that Convention. It would also raise the question of why principles contained in other Council of Europe Conventions (such as the Framework Convention for the Protection of National Minorities, the European Charter of Local Self-government and the European Charter for Regional or Minority Languages) have not been included. This would not benefit the succinctness of the Charter, which is a further reason for deleting paragraph 2.

Proposed amendment to Article: 3

Proposed text:

Add a new paragraph 3 reading as follows:

3. The right to respect for physical and mental integrity may be restricted only in accordance with the conditions laid down in Article 8(2) of the ECHR.

Reasons:

It would be preferable, as in the case of the ECHR, to indicate, for each right, the conditions under which the right in question may be restricted. A general restrictive clause would involve the danger that the possibilities for restriction might become too broad. In the interests of succinctness, Article 8(2) of the ECHR is not quoted in full, but merely referred to. It is thus clear that the conditions laid down by the ECHR must at least be fulfilled.

Proposals for Article 4

AMENDMENT 73

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete the second sentence (“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.”).

Reasons:

While the first sentence sets out a general principle, the second sentence deals with a specific case.

This specific case would be better placed in Article 21 (Right to asylum and expulsion), assuming that the wording of Article 21 does not render it superfluous.

AMENDMENT 74

Proposed amendment to Article: 4

Submitted by: R. VAN DAM, MEP

Proposed text:

Article 4 to be deleted.

Reasons:

This Article may already be inferred implicitly from Articles 1 and 3 of the Charter. The expansion of the relevant concept in this Article does not contain any useful message for the *bodies of the European Union*. They do not have, nor should they be given, any penal jurisdiction. However necessary, protection against torture and inhuman or degrading treatment and punishment would be better dealt with in other contexts (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 75

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jordi SOLÉ TURA

Proposed text:

Sentence 2: “No one may be expelled or extradited to a State whose legal order does not condemn the death penalty, torture or inhuman treatment.”

Reasons:

The concept of “a State where he would be in danger of being subjected to” is inappropriate in law.

AMENDMENT 76

Proposed amendment to Article: 4

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

In the title, after “inhuman”, insert “or degrading”.

Also insert “or degrading” towards the end of the second sentence of the Article.

Reasons:

The aim is to make the title more consistent with the content of the Article and prevent the second sentence from being interpreted to mean that degrading treatment is not sufficient to prevent expulsion or extradition.

AMENDMENT 77

Proposed amendment to Article 4: Prohibition of torture and inhuman treatment

Submitted by: Dr Ingo FRIEDRICH

Proposed text: Delete sentence 2 from Article 4 and add as paragraph 2 to Article 21.

Reasons:

Contents belong to Article 21.

AMENDMENT 78

Proposed amendment to Article: 4

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Delete the second sentence of this Article.

For Part B, “Definition of Rights”:

“The right in Article 4 is the right guaranteed by Article 3 of the ECHR.”

Reasons:

I believe that, as with the other formulations, a clear legal definition is required which avoids any risk of uncertainty or conflict and in every case attracts the relevant jurisprudence of the European Court of Human Rights. This is not the case here. Equally, it would be a mistake for the Charter to single out particular items of ECHR case law: that could imply that other important case law is less important or to be ignored.

AMENDMENT 79

Proposed amendment to Article: 4

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

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 the circumstances give reason to believe that he could be* subjected to the death penalty, torture or other inhuman treatment.

Reasons:

The words in bold replace “*where he would be in danger of being*”, which cannot be seen as a sufficient guarantee. The proposed amendment is in line with the case law of the European Court of Human Rights.

* Proposed amendments are in bold.

AMENDMENT 80

Proposed amendment to Article: 4

Submitted by: Andrew DUFF, MEP

Proposed text:

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 or she would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

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 (delete: 1 word) embodies the jurisprudence of the European Court of Human Rights (delete: 1 word) on Article 3.

AMENDMENT 81

Proposed amendment to Article: 4

Submitted by: Erling OLSEN

Proposed text:

The words "death penalty" contained in the second sentence of this provision should be deleted. (The prohibition on expulsion or extradition to countries in which the party concerned risks the death penalty comes under Article 2 of the Charter.)

Reasons:

The reason for this proposed amendment is that the prohibition on expulsion or extradition to countries in which the party concerned risks the death penalty does not follow from the jurisprudence of the Court of Human rights on Article 3 of the ECHR, as claimed in the "statement of reasons". On the contrary, the prohibition is regarded as a reflex effect of Article 2 of and Additional Protocol No 6 to the Convention. This provision therefore comes under Article 2 of the Charter, possibly through a reference to the relevant case law in part B.

AMENDMENT 82

Proposed amendment to Article: 4

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Turn the first sentence into paragraph 1 and the second sentence into paragraph 2.

Reasons:

This corresponds more closely to the structure of the other Articles.

Proposed amendment to Article: 4 (second sentence)

Proposed text:

The second sentence of Article 4 would read as follows:

2. No one may be expelled or extradited to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment.

Reasons:

The text corresponds to the grounds of the European Court of Human Rights in the case of *Soering v. United Kingdom* of 7 July 1989. Article 4 relates to torture. There is no obvious reason, therefore, why the death penalty should be referred to here. See the amendment to Article 2.

AMENDMENT 83

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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 or degrading treatment or punishment.

Reasons:

In order to bring the second sentence of this Article fully into line with the European Court case law on Article 3 of the European Convention on Human Rights (CDH, Cruz Varas et al., 20 March 1991, *Publications of the Court*, Series A, Vol. 201, par. 69-70; CDH, Vilvarajah et al., 30 October 1991, *Publications of the Court*, Series A, Vol. 215, par. 103), the words “*or degrading treatment or punishment*” need to be added to this provision (CONVENT 28 version).

AMENDMENT 84

Proposed amendment to Article: 4

Submitted by: Win GRIFFITHS MP

Proposed text:

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 allegations against him/her would put him/her in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

Amended text relates more specifically to any charge which would justify an application for extradition.

AMENDMENT 85

Proposed amendment to Article: 4, second sentence

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of Mr G.J.W. VAN OVEN)

Proposed text:

"No one may be expelled or extradited to a State if it can reasonably be foreseen that he may be subjected to torture or other inhuman treatment".

Reasons:

The wording proposed is more balanced than that contained in CONVENT 28.

AMENDMENT 86

Proposed amendment to Article: 4

Submitted by: Pervenche BERÈS

Proposed text:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited directly or indirectly to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

The aim is to prevent expulsion to a destination from which an individual is likely to be ultimately expelled to a State where his physical integrity is threatened.

AMENDMENT 87

Proposed amendment to: 4 (second sentence)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Delete the second sentence or, if it is retained, refer only to a third State.

Delete “expelled”.

Reasons:

The wording of this provision is highly confusing and could well lead to misinterpretation. What does “in danger of being” actually mean? How can this be verified? As the European Union is not excluded from the scope of this clause, this right could be exercised between Union States, which is inadmissible in a Union of law. In the case of expulsion – if the text is interpreted literally – illegal immigrants (in breach of immigration laws) could not be expelled to their countries of origin under such circumstances.

The text must be seen in the light of Protocol 29 of the Treaty establishing the European Community which covers asylum and extradition between Member States of the Union; this provides that given the level of protection of fundamental rights and freedoms “Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters.”

Given the sweeping nature and vagueness of the concepts it introduces and the way it is drafted, this clause is unacceptable. It is as well to remember that within the European Union, members of terrorist groups frequently claim to be “in danger” of being subjected to torture or inhuman treatment and use this as a legal loophole to prevent their being expelled or extradited to a European Union Member State wishing to try them for terrorist acts they have committed.

AMENDMENT 88

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

Article 4. Prohibition of torture and inhuman treatment

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Reasons:

Article 4 should contain only the above. The second sentence (prohibition of expulsion and extradition) should be added to Article 21 as a new paragraph 3 for reasons of logic.

AMENDMENT 89

Proposed amendment to: Article 4 (sentence 2)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be expelled or extradited to a **third country whose legal order does not explicitly reject the death penalty, torture and other human treatment.**

Reasons:

The concept of “danger”, which is a clearly defined concept in criminal law, is unsuitable in this context and would be lacking in all legal rigour.

European Conventions on extradition provide that such bans must be limited to States which are not members of the European Union.

AMENDMENT 90

Proposed amendment to Article: 4

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Delete from “No one may be expelled ...” to the end of the Article.

Reasons:

This sentence has been transferred to Article 21 (see corresponding amendment).

AMENDMENT 91

Proposed amendment to Article: 4

Submitted by: EINEM/HOLOUBEK

Proposed text:

“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. *Any restriction of this right is prohibited.*”

Reasons:

Sentence 1 and sentence 2 of the proposed text remain unchanged. However, the third sentence which we propose adding should make it clear – in a way that the citizen can easily understand – that this fundamental right may not be restricted, in particular not in the framework of the “limitation of guaranteed rights” of Article 43 of the horizontal clauses.

Proposals for Article 5 as a whole

AMENDMENT 92

Proposed amendment to Article: 5. Statement of reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted since the Charter refers to EU bodies and therefore none of the exceptions laid down in the ECHR apply.

AMENDMENT 93

Proposed amendment to Article: 5

Submitted by: R. VAN DAM, MEP

Proposed text:

Article 5 to be deleted.

Reasons:

This Article is already implied in Articles 1 and 3 of the Charter. Such expansion does not contain any useful message for the bodies or institutions of the European Union. In this case too, although the right in question needs to be protected, such protection would be better regulated and safeguarded elsewhere (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 94

Proposed amendment to Article: 5

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 5. Prohibition of slavery and forced labour

No one shall be (delete: 5 words) enslaved or subjected to forced labour.

(Delete: paragraph 2)

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. (Delete: 5 words) 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.

AMENDMENT 95

Proposed amendment to Article: 5. Prohibition of slavery and forced labour

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 5. Prohibition of slavery, forced labour and trafficking in human beings.

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.”

Reasons:

Trafficking in human beings is a growing problem throughout the world. It should, therefore, be expressly prohibited in the Charter.

AMENDMENT 96

Proposed amendment to Article: 5. Prohibition of slavery and forced labour

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the draft text and replace it by Article 4 ECHR, possibly split between a part A and a part B.

Reasons:

Paragraph 3 of Article 4 of the ECHR does not merely contain definitions (a term used in the statement of reasons to the draft Article). Article 4 paragraph 3 of the ECHR implies significant limitations of the prohibition of forced and compulsory labour as found in paragraph 21 of the same Article. The only proper manner to deal with this is to reintroduce the exact wording of the ECHR, i.e. the whole text of Article 4 ECHR.

AMENDMENT 97

Proposed amendment to Article: 5

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Retain existing text.

For Part B, “Definition of Rights”:

“The right in Article 5 is the right guaranteed by Article 4 of the ECHR”

Reasons:

I welcome the Praesidium’s reliance on the ECHR wording. But I disagree that limitations in this case or qualifications from ECHR case law “go without saying”. These matters are not necessarily obvious or beyond argument. The Charter must be completely clear and precise. It must avoid any legal uncertainty or conflict with existing obligations.

AMENDMENT 98

Proposed amendment to Article: 5

Submitted by: Erling OLSEN

Proposed text:

No changes to the wording of this Article are proposed. However, the definition of the right should make it clear that the performance of community service as an alternative to imprisonment is not covered by the term "forced or compulsory labour".

AMENDMENT 98

Blank

Proposals for Article 5(1)

AMENDMENT 99

Proposed amendment to Article: 5(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

No one shall be held in slavery or servitude. *Any restriction of this right is inadmissible.*

Reasons:

Sentence 1 corresponds word for word to the proposed text. Our proposal for an additional sentence 2 should make it immediately clear to citizens that this fundamental right cannot be restricted, and particularly not under the “general limitation clause” in Article 43 of the horizontal provisions.

Proposals for Article 5(2)

AMENDMENT 100

Proposed amendment to: Article 5(2) (addendum)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add a third paragraph to read as follows: **“Forced or compulsory labour shall not include personal services as established by law or required of citizens for civic reasons or, in the case of an emergency or calamity, the performance of military service or alternative community service, or any work ordinarily required of a person in the course of detention.”**

Reasons:

Pursuant to Article 4(3) (a), (b), (c), and (d) of the ECHR “forced labour” excludes personal services exacted of citizens for civic reasons or in the case of an emergency or calamity, or the performance of military service or alternative community service or any work ordinarily required of a person in the course of detention. Although the statement of reasons states that the horizontal clause is a sufficient way of incorporating these exceptions, it must be stressed that, without pre-empting the status that this Charter must be given in the European legal order, a provision of this nature addressed to the States should set out in appropriate terms the legal justification for excluding the circumstances listed from being considered as forced labour.

The reasons given in the statement of reasons for the amendment to Article 2(2) should be reproduced here.

AMENDMENT 101

Proposed amendment to Article: 5(2)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

2. No one shall be required to perform forced or compulsory labour, save in the cases referred to in Article 4(3) of the European Convention on Human Rights.

Reasons:

Article 4(3) of the ECHR stipulates those activities not to be regarded as forced or compulsory labour for the purposes of that article. In view of the system followed as regards limitations, reference should be made to Article 4(3) of the ECHR.

AMENDMENT 102

Proposed amendment to Article: 5. Prohibition of slavery and forced labour
Paragraph 2

Submitted by: Georges BERTHU, MEP

Proposed text:

“No one shall be required to perform forced or compulsory labour, **subject to the reservations set out in Article H2** (provisional numbering)”.

Reasons:

The same as for Article 2(1).

AMENDMENT 103

Proposed amendment to Article: 5

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. ...
2. **No one shall be subjected to forced or compulsory labour.**

Reasons:

AMENDMENT 104

Proposed amendment to Article: 5

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace paragraph 2 of the proposed text by the following:

Apart from a legal requisition to fulfil a social obligation, no one shall be required to perform forced or compulsory labour.

Reasons:

There are cases in which the survival of a community may justify compulsory labour, even if it is arduous or dangerous, but legal texts must lay down specific arrangements for the various cases conceivable.

Proposals for Article 6

Proposals for Article 6

AMENDMENT 105

Proposed amendment to Article: 6

Submitted by: R. VAN DAM, MEP

Proposed text:

The second sentence to be deleted.

Reasons:

The second sentence bears no relation to the powers of the institutions and bodies of the European Union. In this case too, although the right in question needs to be protected, such protection would be better regulated and safeguarded elsewhere (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 106

Proposed amendment to Article: 6. Reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted since the Charter refers to EU bodies only and therefore none of the exceptions laid down in the ECHR apply.

AMENDMENT 107

Proposed amendment to Article: 6

Submitted by: Peter ALTMAIER, Member of the German Bundestag

Proposed text:

Delete sentence 2.

Reasons:

To be systematic, sentence 2 should be deleted since the general limitation clause in the horizontal provisions of the Charter of Fundamental Rights also applies to Article 6.

AMENDMENT 108

Proposed amendment to Article: 6

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Delete the second sentence.

Reasons:

The limitation results from the horizontal articles.

AMENDMENT 109

Proposed amendment to Article: 6

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in **specified cases and in accordance with a procedure prescribed by law as laid down in the European Convention on Human Rights.**

AMENDMENT 110

Proposed amendment to Article: 6

Submitted by: AndrewDUFF, MEP

Proposed text:

Article 6. Right to liberty and security

Everyone has the right to liberty and security (delete: 2 words) . No one shall be deprived of (delete: 2 words) these save in cases prescribed by law (delete: 1 word) and in accordance with (delete: 1 word) judicial procedures (delete: 3 words).

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. (Delete: 11 words) 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.

AMENDMENT 111

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Art. 6. Right to liberty (delete two words)

Everyone has the right to liberty (delete two words) of person. No one shall be deprived of his liberty save in specific cases and in accordance with a procedure prescribed by law.

Reasons:

If the concept of “security” was viewed in isolation, namely as an object of legal protection in its own right, including it in the Charter of Fundamental Rights would add a new dimension to its contents which would legally bind the State, i.e. the security authorities and thus also the police, to a very large extent. The Member States’ constitutions will not contain provisions of this sort explicitly guaranteeing (public) security. The Amsterdam Treaty does indeed set the Union the aim of creating “an area of freedom, security and justice” (Article 2 of the TEU) and this political objective may be seen as a guarantee of the security of persons living on Union territory. However, there is no need to create an individual legal status with very unspecific contents.

AMENDMENT 112

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 6. Right to liberty.

Everyone has the right to liberty. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law”.

Reasons:

The term “security” in Article 6 sentence 1 still seems unacceptable to the Länder. Taken over from French judicial usage, this term could cause problems under a German understanding of law. It might, for example, give rise to the mistaken belief that citizens had claims to internal security measures. The term is not explained in detail in the statement of reasons; it therefore seems preferable to delete it.

AMENDMENT 113

Proposed amendment to Article: 6

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. Everyone has the right to liberty and security of person.
2. No one may be deprived of his liberty except in the cases mentioned in Article 5(1) of the ECHR.
3. 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.
4. Everyone arrested or detained in accordance with the introductory part of Article 5(1) and Article 5(c) of the ECHR 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.
5. 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.
6. 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.

Alternative text:

1. Everyone has the right to liberty and security of person.
2. No one may be deprived of his liberty except in the cases mentioned in Article 5(1) of the ECHR and having regard to the rights guaranteed in Article 5(2) to (5) of the ECHR.

Reasons:

As with the ECHR, it is preferable, in the case of each right, to indicate the conditions under which that right may be restricted. With a general restriction clause, the possibilities for restriction may become too extensive. As a result, the proposed text refers to the grounds mentioned in Article 5(1) of the ECHR.

The rights guaranteed in Article 5(2) to (5) of the ECHR are set out in paragraphs 3 to 6 of the present article. Reference to the ECHR would be insufficient here as what is involved is not possible restriction of rights but the substance of rights themselves. If this should prove undesirable given the wish to keep the Charter concise, it would suffice to refer to the rights of someone deprived of his liberty, as laid down in Article 5(2) to (5) of the ECHR. In this connection see the alternative amended text.

AMENDMENT 114

Proposed amendment to Article: 6

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The text of Article 5 (1) of the ECHR should be adopted word for word.

Reasons:

An exhaustive description of the fundamental right to liberty and security is contained in the ECHR. The text of Article 6 as contained in CONVENT 28 is loosely worded.

AMENDMENT 115

Proposed amendment to Article: 6

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Amend to read: “Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law”

For Part B, “Definition of Rights”:

“The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR”

Reasons:

I am happy with the substance of the Praesidium proposal but would suggest the small adaptation shown above which I think reads better and expresses the limitation better. My comments about Article 5 above are relevant. The Praesidium asserts in its commentary that these rights necessarily apply when the Union adopts framework decisions for harmonisation in criminal matters in accordance with Title VI of TEU. That assertion would have to be examined very carefully in the context of existing provisions about competence and justiciability.

AMENDMENT 116

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the second sentence of the draft Article. Reproduce the full Article 5 of the ECHR in a part B of the Charter.

Reasons:

Article 5 of the ECHR is the source of inspiration for this draft Article. It regulates in an exhaustive manner all the instances when the deprivation of a person's liberty is in line with the ECHR. To merely have a reference to (some) "cases" without express mention of those cases would be a step backwards as far as European protection of human rights is concerned. Moreover, the fact that important additional rights as provided for in Article 5 paragraphs 2-5 of the ECHR are left out of the draft Article means that the protection intended to be covered by it is not as wide-reaching as that already afforded by the ECHR.

AMENDMENT 117

Proposed amendment to Article: 6

Submitted by: Jordi SOLÉ TURA

Proposed text:

“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.**”

Reasons:

More appropriate legal drafting in Spanish.

AMENDMENT 118

Proposed amendment to Article: 6

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Right to liberty

Everyone has the right to liberty (...) 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.

Reasons:

It is proposed that the reference to *security* be deleted from both title and text of the Article, as it is a potential source of misunderstanding. The words “right to security of person” tend to suggest a guarantee against danger, for example dangers relating to crime. The Court has consistently interpreted the “right to security of person” as a safeguard against arbitrary detention, as with the right of *habeas corpus*. That concept is covered by “right to liberty”.

^{*} Proposed amendments are in bold.

AMENDMENT 119

Proposed amendment to Article: 6

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed and in accordance with legal procedures.

Reasons:

“Loi” is a concept which does not exist in continental European law.

AMENDMENT 120

Proposed amendment to Article: 6

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“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.**”

Reasons:

The proposed wording is a linguistic improvement [to the Spanish], and also brings the text into line with technical legal language: “specific” cases [used in the Spanish] are only those which are prescribed by law and the “legal means” [in Spanish] are the forms or procedures also prescribed by law. Moreover, this is the wording in the French text, suggesting that there must just be a problem with the Spanish translation.

AMENDMENT 121

Proposed amendment to Article: 6

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Every *human being* has the right to liberty and security. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.”

Reasons:

It is only possible to deprive natural persons of their liberty. For the sake of clarity, we propose using “human being”.

AMENDMENT 122

Proposed amendment to Article: 6

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

After “security of person” add “and family”.

Reasons:

The aim in specifying further the concept of security is to ensure that it applies to the family sphere and not just the individual.

AMENDMENT 123

Proposed amendment to Article: 6

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace Article 6 by the following:

1. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.
2. The public authorities have a duty to organise society in such a way that the safety of persons and property is guaranteed, giving society a sense of security.

Reasons:

Re 1: The general right to liberty has been recognised by Article 1(2). No amendment has been made to the second sentence of Article 6.

Re 2: Society's headlong slide into violence starting at school necessitates a more precise formulation very different from the text in the European Convention on Human Rights.

Proposals for Article 7

AMENDMENT 124

Proposed amendment to Article: 7

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Defer consideration of this Article (although see the proposal in the body of the Reasons)

Reasons:

This article creates problems which cannot be resolved until the totality of the other rights in the Charter have been finalised. This provision relates principally to the provision of remedies. The provision of remedies is rather the question of the horizontal articles and the legal status of the document.

The proposed Article is in any event unsatisfactory in extending Article 13 ECHR to all rights and in removing reference to “national authority”.

My position therefore is that this should be deferred until later. At that stage it may be possible to agree that a version along the following lines be put forward:

For Part A, “Proclamation of Rights”:

“Everyone whose rights and freedoms in this Charter are violated has the right to an effective remedy before an appropriate authority.”

For Part B, “Definition of Rights”:

“The rights in Article 7 are the rights provided a) in the case of acts of the Union Institutions, by Articles TEC 230 (action for annulment), 232 (failure to act); and 234 (preliminary rulings); and b) in the case of Member States implementing Community law, by national rules.”

AMENDMENT 126

Proposed amendment to Article: 7

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Reasons:

This Article (delete: 1 word) reflects 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 I 651). 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.

AMENDMENT 126

Proposed amendment to Article: 7

Submitted by: Pervenche BERÈS

Proposed text:

Everyone whose rights or freedoms **have been** violated has the right to an effective remedy before a court.

Reasons:

This wording is in line with the new wording of Article 4.

AMENDMENT 127

Proposed amendment to Article: 7. Right to an effective remedy

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone whose rights and freedoms are violated **within the framework of the activities of the European Union** has the right to an effective remedy **before an independent and impartial court**.

Reasons:

As the Charter should concern only the direct or indirect activities of the institutions of the European Union, it is important to emphasise that here.

Addition of the phrase “before an independent and impartial court” moreover makes it possible to do without Article 8 (see that Article).

AMENDMENT 128

Proposed amendment to Article: 7:

Submitted by: Heinrich NEISSER

Proposed text:

Article 7: Right to an effective remedy

*Everyone whose rights and freedoms **as set forth in this Charter** are violated has the right to an effective remedy before a court.*

Reasons:

This Article is meant to correspond to Article 13 of the European Convention on Human Rights. That Article contains a procedural guarantee which extends only to rights guaranteed in the ECHR; in other words it is accessory. Article 7 of the Draft should therefore also be accessory. However, the present version (CONVENT 28) would include a general right to access to a court, which already exists in Article 8 of the Draft. Our proposed wording would emphasise the binding character of the rights set forth in the Charter.

AMENDMENT 129

Proposed amendment to Article: 7. Right to an effective remedy

Submitted by: Daniel TARSCHYS

Proposed text:

Rephrase this Article in the following way: "Everyone whose rights and freedoms *according to this Charter* are violated has the right to an effective remedy before a *competent authority*".

Reasons:

There are two main problems with the draft version of this Article.

In the first place it is not at all clear what is to be understood by the notion of "rights and freedoms". Article 13 of the ECHR is limited to the rights and freedoms set forth in the ECHR. Are rights and freedoms under domestic law to be included or does the formula in Convent 28 refer only to the rights that are included in the proposed charter? Assuming the latter, I propose to insert a clarification on this point. If any right under domestic legislation is to be covered by the draft Article, including such rights that do not fall within the scope of a "civil right" as this notion is interpreted by the European Court of Human Rights in the light of Article 6 of the ECHR, parts of the procedural laws of Member States (cf. the reference in the statement of reasons to the application of "this principle" also to Member States when they are implementing Community law) probably have to be amended in order to fulfil the requirements of this Article.

A second problem is linked to the reference to "courts" rather than "national authorities", which is the term used in Article 13 of the ECHR. The statement of reasons is not convincing on this point, since national bodies are involved in the implementation of Community legislation.

AMENDMENT 130

Proposed amendment to Article: 7:

Submitted by: Heinrich NEISSER

Proposed text:

Article 7: Right to an effective remedy

*Everyone whose rights and freedoms **as set forth in this Charter** are violated has the right to an effective remedy before a court.*

Reasons:

This Article is meant to correspond to Article 13 of the European Convention on Human Rights. That Article contains a procedural guarantee which extends only to rights guaranteed in the ECHR; in other words it is accessory. Article 7 of the Draft should therefore also be accessory. However, this version (CONVENT 28) would include a general right to access to a court, which already exists in Article 8 of the Draft. Our proposed wording would place particular emphasis on the binding character of the rights set forth in the Charter.

AMENDMENT 131

Proposed amendment to Article: 7

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Everyone whose rights and freedoms, as recognised in this Charter, are violated has the right to effective judicial protection”

Reasons:

1. Given the context of the Charter the precise scope of this right should be specified; it should therefore be stated explicitly that the rights and freedoms to be protected are those recognised by the Charter, and no others.
2. The Spanish word ‘recurso’ [appeal] is used when a case on which sentence has already been passed by a lower body is reviewed either by an administrative or a legal body. The technically more correct phrase – “access to effective judicial protection” is therefore proposed.

The right to effective judicial protection is a fundamental “service” right, requiring that the legislator regulate the relevant form and conditions (i.e. organise the judiciary and the administration of justice) for this right to be exercised and enjoyed by anyone.

AMENDMENT 132

Proposed amendment to Article: 7

Submitted by: Erling OLSEN

Proposed text:

As I already pointed out in my written submission of 17 March 2000, this provision should either be deleted or be dealt with separately as a horizontal provision.

In any case, the words "as referred to in this Charter" should be inserted after the words "rights and freedoms". Moreover, the words "before a court" should be deleted.

Reasons:

This provision does not make sense unless it is made clear which rights and freedoms it covers.

AMENDMENT 133

Proposed amendment to Article: 7

Submitted by: R. VAN DAM, MEP

Proposed text:

"Everyone whose rights and freedoms are violated has the right to an effective legal remedy before a court of competent jurisdiction."

Reasons:

This brings the text closer to Article 13 of the ECHR while taking account of the special characteristics of the Union.

AMENDMENT 134

Proposed amendment to Article: 7

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court *or an equivalent body*.

Reasons:

As the horizontal clauses specify, the Charter applies not merely to Union bodies but also to Member States when they are applying or implementing Community law. It should therefore be made clear that, at national level, effective remedy may also be sought before “*an equivalent body*”, i.e. a body which, while technically speaking not forming part of the judicial machinery, will by virtue of its position and procedures provide equivalent safeguards (impartiality, fair hearing, etc.) to those of the courts.

^{*} Proposed amendments are in bold

AMENDMENT 135

Proposed amendment to Article: 7. Right to an effect remedy

Submitted by: Micheal O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 7

Everyone whose rights and freedoms are violated has the right to an effective remedy before a **competent authority.**

Reasons:

Change "court" to "competent authority" as there are wider sources of remedies than courts, such as an Ombudsman. This also reflects the language of the ECHR.

AMENDMENT 136

Proposed amendment to Article: 7. Right to effective legal protection (delete 1 word)

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Everyone whose rights and freedoms are violated has the right to (delete 6 words) effective legal protection before a court.

Reasons:

“Legal protection” should be used rather than “remedy”, since “remedy” has a specific and very narrow meaning. Further, “effective remedy” could create the mistaken impression that the remedy must also in some way be successful.

The term “court” should be understood in the sense decided by the CJEC in relation to requests for preliminary ruling pursuant to the second paragraph of Article 234 of the TEC; therefore rulings on appeal in the area of asylum law, for example, may also be taken by an independent and impartial review body (see Section III point 8 of the Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures, OJ C 274/13 of 19 September 1996).

AMENDMENT 137

Proposed amendment to Article: 7. Right to effective remedy

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 7. Right to effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.”

Reasons:

The wording in CONVENT 13 seems preferable to that in CONVENT 28 since the term “remedy”, as understood in German law, has a specific and very narrow meaning.

AMENDMENT 138

Proposed amendment to Article: 7

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

“Every one whose rights and freedoms are violated has the right to **effective access to the courts**”.

Reasons:

The use of the word “recurso” [appeal] in the Spanish could cause confusion with a body of second instance.

AMENDMENT 139

Proposed amendment to: Article 7 (heading)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 7. Right to an effective remedy before a court

Reasons:

This brings the wording of the heading into line with the wording used in the Article.

AMENDMENT 140

Proposed amendment to Article: 7

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone whose rights and freedoms are violated has the right to an effective remedy before **the national or Community court having jurisdiction.**

AMENDMENT 141

Proposed amendment to Article: 7

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace the proposed text of Article 7 by the following:

The European Union guarantees the right of everyone whose rights and freedoms are violated to an effective and rapid remedy before an independent court.

Reasons:

The European Union does not have the power to modify social conduct but has the right and the duty to establish a procedure for protection and remedy.

It is normal and necessary that rapidity be guaranteed; otherwise remedy becomes derisory.

Finally, in such a context, remedy cannot be sought in just any court.

Proposals for Article 8 as a whole

AMENDMENT 142

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Daniel TARSCHYS

Proposed text:

Reconsider the whole text of this Article.

Reasons:

Paragraph 1:

I have several problems with this text which is said to follow Article 6 of the ECHR. Not quite. Firstly, Article 6 ECHR makes a distinction between civil and criminal cases and the case law of the Strasbourg Court is extensive when it comes to the definitions, in particular regarding the meaning of "civil rights and obligations".

Paragraph 2

The draft Article leaves open the object of the "fair and public hearing". Can anyone request a tribunal to conduct a hearing on any matter whatsoever? Article 6 paragraph 1 of the ECHR applies only to cases where the "determination of [a person's] civil rights and obligations or of any criminal charge against [a person]" is concerned.

The way the present draft Article is construed leaves room for doubt as to whether there is a need for draft Article 7. The relationship between the two Articles needs further clarification.

I also question the second paragraph of the draft Article which seems to guarantee free legal aid in all cases, including civil matters. Like many other Member States, Sweden does not automatically grant legal aid in all matters. Article 6 of the ECHR, according to its wording, guarantees legal aid in the form of legal assistance in criminal matters only. Furthermore, neither the Article nor statement of reasons indicates who would bear the costs for what might become a substantial undertaking. EU institutions? Member States? Any estimate of the financial implications of this Article?

AMENDMENT 143

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

Paragraph 2 corresponds rather to a measure implementing the general principle set out in paragraph 1 (everyone is entitled to a fair hearing). It should therefore be included in a legislative text of a lower level, not in a charter of fundamental rights.

Paragraph 1 could be transferred to Article 8 (see amendment to that Article) so as to shorten the Charter by condensing provisions which are in any case already contained in a multitude of international texts and are disputed by no-one.

AMENDMENT 144

Proposed amendment to Article: 8

Submitted by: Win GRIFFITHS, MP

Proposed text:

1. Everyone is equal before the law and 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 in circumstances prescribed by member states.

Reasons:

1. The inclusion of the principle of equality before the law is a more appropriate place, I believe, than in Article One where it is linked with the dignity of the person. It is better to link it with the right in a fair trial.
2. I am not aware of a legal base making legal aid a fundamental right so if it is to be mentioned at all it should be in the context of the legislation of member states.

AMENDMENT 145

Proposed amendment to Article: 8

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The title to be changed to: "Right to access to justice"

The following text to be added to paragraph 1: "Judgment shall be pronounced publicly."

Reasons:

The proposed amendments conform more closely to the ECHR.

AMENDMENT 146

Proposed amendment to Article: 8.1 Right to a fair trial

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 8

1. **In the determination of the civil and political rights and obligations of any person or of any criminal charge against any person,** everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Reasons:

Article 8.1 requires an introduction in order to identify in which area the right applies. It is therefore suggested that the introduction from the ECHR be restored.

AMENDMENT 147

Submitted by: Erling Olsen

Article 8:

A description of the areas covered should be added to paragraph 1.

Paragraph 1 should be reworded as follows: “In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

In paragraph 2 it should be added that legal aid is provided subject to the conditions laid down by national legislation or by the Rules of Procedure of the Court of Justice and the Court of First Instance.

Reasons:

Pursuant to Article 6 (1) of the ECHR, this provision covers only criminal offences and matters relating to civil rights and obligations. As regards the addition to paragraph 2, more detailed provisions concerning the right to a free trial are contained in national legislation and in the Rules of Procedure of the Court of Justice and the Court of First Instance. In its current form, this provision fails to specify *inter alia* that there must be reasonable grounds for conducting proceedings.

AMENDMENT 148

Proposed amendment to Article: 8

Submitted by: Heinrich NEISSER

Proposed text (for the Article and the comment):

*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. **Everyone is entitled to be advised and represented by a legal counsel in matters of law.**
Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons:

This Article favours [...]

In Community law [...] applies

The concept of a “court” is understood here in the broad sense as developed by the European Court for Human Rights in its case law on Article 6 of the ECHR: as an independent and impartial judicial body which decides on cases according to the law on the basis of a regulated procedure with appropriate guarantees. However, the mere fact of being termed a “court” is not sufficient.

The term “legal counsel” means that it is left to the national legal systems to regulate representation in and out of court under the law on professions.

The limitations have not been adopted [...]

Reasons:

The right to legal council is expressly provided for in some European constitutions (Netherlands, Portugal, Italy, Spain) and should therefore be included in the Draft.

The term “court” must be explained to take account of the wide range of judicial bodies in the Member States.

AMENDMENT 149

Proposed amendment to Article: 8

Submitted by: EINEM/HOLOUBEK

Proposed text: Article 8. Right to a **fair trial**

1. *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.*
2. *Everyone is entitled to make use of a legal counsel.* Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons: The heading should refer to the general concept of a “fair trial”. The right to an impartial tribunal is only one part of this, albeit an important one.

Unlike the Praesidium Draft, the proposed wording of paragraph 1 follows the rule in Article 6(1) of the ECHR that this fundamental right applies to “the determination of (his) civil rights and obligations or of any criminal charge”. Right of access to a court for all actions – the basis for the statement of reasons in the Praesidium text – is already guaranteed in Article 7. The specific procedural guarantees, in particular the principle of a public trial, should in accordance with Article 6 of the ECHR refer to civil rights and obligations and/or criminal charges.

The proposed text avoids having to allow for numerous exceptional procedures (e.g. tax tribunals) via the “general limitation clause”. It makes it immediately clearer to citizens what their rights are. The wording should not create the impression that comprehensive and very far-reaching rights are being promised, which are then largely taken away by a single provision.

The first sentence of paragraph 2 contains a proposal for a new right entitling every person to make use of a legal counsel. In view of the complexity of legal provisions, this right is one of the essential requirements for holding a fair trial. It can also be seen as the logical prerequisite for the right to legal aid guaranteed under the second sentence of paragraph 2. This second sentence follows the Praesidium Draft word for word.

AMENDMENT 150

Proposed amendment to: Article 8

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Right to an impartial judge

Replace “*prudencial*” with “*razonable*” [reasonable] in the Spanish text, replace “tribunal” with “judicial authority” and replace “established” with “predetermined”. Amend the second sentence by adding: “unless the claim is manifestly untenable or unfounded”.

Reasons:

The word “*razonable*” is more correct in Spanish, and moreover is the word used in the ECHR. The term “judicial authority” is more correct in Spanish in that it covers both single court judges and collegiate bodies, which is what tribunals are in Spain. The phrase “predetermined by law” is better than “established”.

As regards free legal aid, the ECHR has agreed that under the Convention such aid may be refused if the claim is manifestly unfounded.

AMENDMENT 151

Proposed amendment to Article: 8. Right to an independent tribunal

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 8. Right to an independent tribunal.

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, and where there is a reasonable chance of success.
3. Special tribunals are inadmissible.”

Reasons:

The addition to paragraph 2, “ and where there is a reasonable chance of success” is intended to prevent legal aid being requested for actions which are clearly hopeless or querulous.

The proposed paragraph 3 is intended to exclude special tribunals which would thwart the legal protection of citizens.

AMENDMENT 152

Proposed amendment to Article: 8

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

"1. “Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.

"2. “If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.”

For Part B, “Definition of Rights”:

“The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR”

Reasons:

My amendment defines the right in terms of the relevant ECHR provision. The CONVENT 28 draft is not an accurate expression of the relevant obligations accepted by parties to the ECHR. I do not accept the implied additional general obligations in Article 8 (*e.g.* relating to hearings in the determinations of all disputes, whether or not about a civil right or obligation or a criminal charge, and legal aid). Accordingly they should not be included in the Charter. I also disagree (for the reasons given in relation to Article 5 above) that it is possible or acceptable to deal with limitations to rights such as these in a general horizontal article.

In any event the detailed provisions of Article 6 ECHR, the corresponding right in this case, contain many positive rights which are not picked up by the short form text, either in the Praesidium’s text or in mine. It is to attract those, as well as any limitations, that the Part B definition text is necessary. This point applies also to several other ECHR-based Articles.

AMENDMENT 153

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. To ensure effective access to justice, legal aid shall be provided to those who lack sufficient resources.

Reasons:

The proposed text retains the principle of free legal aid for those in need. The stipulation that the aid must be “indispensable” to ensure effective access to justice has been left out in order to widen access to justice. The omission of this supplementary condition is in line with the case law of the European Court of Human Rights (see the note to this Article in CONVENT 13).

Proposals for Article 8(1)

AMENDMENT 154

Proposed amendment to Article: 8(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. *All or part of the trial may be held in camera under the conditions listed in Article 6(1) of the ECHR, but judgment shall be pronounced publicly.*

Reasons:

The proposed text follows Article 6(1) of the ECHR more closely since it states explicitly that judgment must be pronounced publicly and also refers to the grounds on which the court may decide that all or part of the proceedings are to be held in camera. For the sake of brevity, reference is made to Article 6(1) of the ECHR.

AMENDMENT 155

Proposed amendment to Article: 8

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1, replace “established” by “already established”.

Reasons:

The proposed amendment is designed to strengthen the right to a fair trial: by emphasising that the tribunal must already be established, it aims to avoid the possibility of ad hoc laws.

AMENDMENT 156

Proposed amendment to Article: 8

Submitted by: R. VAN DAM, MEP

Proposed text:

A new paragraph to be inserted between paragraphs 1 and 2:

2. Judgment shall be pronounced publicly. This right shall not be subject to any restrictions other than those permitted under Article 6(1) of the ECHR.

Reasons:

The text thus conforms more closely to the ECHR.

Proposals for Article 8(2)

AMENDMENT 157

Proposed amendment to Article: 8(2) Right to a fair trial

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Delete paragraph 2

Reasons:

This provision is only binding for access to the CJEC, as the Union is not competent for regulating national provisions on legal aid. For the CJEC, the institution of legal aid is sufficiently embodied in its Rules of Procedure. Moreover, the intent of paragraph 2 is already contained in paragraph 1: it is inherent in the right to a fair trial.

The provision is also problematic from a budgetary perspective.

AMENDMENT 158

Proposed amendment to Article: 8(2)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Legal aid shall be provided to those who lack sufficient resources insofar as such aid is ***necessary*** to ensure effective access to justice.

Reasons:

“*Necessary*” is proposed instead of “*indispensable*”, as it is felt that the latter excessively restricts the substance of the right to legal aid.

* Proposed amendments are in bold

AMENDMENT 159

Proposed amendment to Article: 8

Submitted by: José BARROS MOURA and Maria Eduarda AZVEDO

Proposed text:

Concerns the term used for “legal aid” in the Portuguese version only.

AMENDMENT 160

Proposed amendment to Article: 8

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 2, replace “Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable” by “Those who lack sufficient resources shall be provided with the necessary legal aid”.

Reasons:

The proposed amendment is designed to strengthen the right to a fair trial.

AMENDMENT 161

Proposed amendment to Article: 8

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice *and their defence*.
2. This also applies to witnesses and to victims of acts of criminal violence.

Reasons:

1. Legal aid must be free so as to ensure equality before the law for everyone.
2. With respect to paragraph 2, it would be desirable if – particularly in criminal proceedings – in addition to the rights of the accused, those of the witnesses or those of the victims of acts of criminal violence in general were provided for in an appropriate manner and if they were also guaranteed free, effective protection of their rights in proceedings. This is proposed in the new sentence 3.

AMENDMENT 162

Proposed amendment to Article: 8

Submitted by: Prof. Jürgen MEYER/Pervenche BERES/ Jo LEINEN/Hans-Peter MARTIN /Ieke VAN DEN BURG

Proposed text:

Article 8 Right to a fair trial and legal counsel

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone is entitled in matters of law to be advised and represented by a lawyer.
2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons:

Paragraph 1 sentence 1 follows the Praesidium's wording.

In sentence 2 the right to a legal counsel is supplemented. Although this right is not explicitly mentioned in the German Basic Law, the Federal Constitutional Court has derived such a right from the concept of the constitutional state (Constitutional Court 63, 266, 284).

This right is expressly provided for in the constitutions of the Netherlands (Art. 18), Italy (Art. 24), Portugal (Art. 20(2) and Art. 269(3) and Spain (Art. 17(3) and Art. 24(2)).

Paragraph 2 follows the Praesidium's wording.

Proposals for Article 9 as a whole

AMENDMENT 163

Proposed amendment to Article: 9

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 9. Presumption of innocence and rights (delete: 2 words) to defence

Everyone who has been charged shall be presumed innocent until proved guilty according to law, and shall have the right to a defence.

(Delete: paragraph 2)

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.

AMENDMENT 164

Proposed amendment to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 9

Everyone who has been charged **with a criminal offence** shall be presumed innocent until proved guilty according to law.

Everyone who has been charged **with a criminal offence** shall be guaranteed respect for that person's right to defence.

Reasons:

It is suggested that "with a criminal offence" be included as it conforms with the ECHR and it makes clear that the Article is about criminal offences only. The original formulation would cause unforeseen consequences if not amended.

AMENDMENT 165

Proposed amendment to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. [In the Swedish text, the words "för ett brott" should be deleted and the word "hans" changed to "**hans/hennes**".]
2. Everyone who has been charged shall be guaranteed respect for his **or her** rights to defence.
[In the Swedish text, the words "för ett brott" should be deleted.]

Reasons:

The Swedish version, which includes the words "ett brott" ["a crime"], does not correspond to the French or English versions. The Swedish version should be changed so that it corresponds to the French and English versions; the words "ett brott" should therefore be deleted from this Article.

AMENDMENT 166

Proposed amendment to Article: 9

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Now covered in Article 8. Therefore delete.

Reasons:

My version of Article 8 deals with the matters in Article 9. In any event, as it stands and without a clear definition in the Part B text defining these rights as the right in Article 6 ECHR, Article 9 would be much too imprecise and apt to create confusion and conflict.

Proposals for Article 9(1)

AMENDMENT 167

Proposed amendment to Article: 9(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Everyone who has been charged *with a criminal offence* shall be presumed innocent until proved guilty according to law.

Reasons:

This addition, whereby the person must have been charged “*with a criminal offence*”, comes from Article 6(2) of the ECHR and makes clear that the presumption of innocence does not apply to “charges” in connection with investigations under administrative law.

* Proposed amendments are in bold

AMENDMENT 168

Proposed amendment to Article: 9

Submitted by: Win GRIFFITHS, MP

Proposed Text:

Everyone who has been charged shall be presumed innocent until proven guilty according to the law and guaranteed respect for his/her rights of defence.

Delete 2

Reasons:

Brevity without loss of meaning.

Proposals for Article 9(2) and (3)

AMENDMENT 169

Proposed amendment to Article: 9

Submitted by: Kathalijne BUITENWEG

Proposed text:

Paragraph 2 to be amended as follows:

2. 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.

Reasons:

This amendment replaces paragraph 2 with the verbatim text of Article 6(3) of the ECHR. A list of the "rights of the defence" is best placed in a charter of fundamental rights.

AMENDMENT 170

Proposed amendment to Article: 9

Submitted by: R. VAN DAM, MEP

Proposed text:

Article 6(2): Everyone who has been charged shall be guaranteed respect for his rights to defence pursuant to Article 6(2) and (3) of the ECHR.

Reasons:

The text thus conforms more closely to the ECHR.

AMENDMENT 171

Proposed amendment to Article: 9(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

“*Everyone who has been charged* has the right to respect for his rights of defence”. (No change to English text.)

Reasons:

The non-gender specific wording “jeder angeklagten Person” is preferable to “jedem Angeklagten” which can only be masculine (translator’s note: this applies to the German only).

AMENDMENT 172

Proposed amendments to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Daniel TARSCHYS

Proposed textU:

Proposal (9.2):

It is suggested to change "respects for his rights" to "the right".

Reasons:

Article 6 paragraph 3 of the ECHR provides important minimum standards for human rights protection in the field of criminal procedural law. It therefore seems insufficient to refer to those rights merely by means of a reference to Article 6 of the TEU. In any event it seems uncertain in which situations this Article is supposed to be applied: to what extent does Community law allow its institutions to charge or prosecute individual citizens?

Guaranteeing only "respect for his rights" seems very weak.

AMENDMENT 173

Proposed amendment to Article: 9(2)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

2. 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.

Alternative:

2. Everyone charged with a criminal offence is entitled to respect for his rights to defence, as laid down in Article 6(3) of the European Convention on Human Rights.

Reasons:

Article 6(3) of the ECHR has been incorporated word for word. The only change is the use of the term "*strafvervolging*" [charged with a criminal offence] instead of "*vervolging*" [charged] in Dutch, for the sake of clarity. It is not sufficient here to refer to the ECHR, as the provision is concerned not with any limitations on rights but with the actual substance of those rights. Should this version not be desirable in the interests of keeping the Charter concise, the alternative, making clear the defence rights involved by reference to Article 6(3) of the ECHR, will suffice.

AMENDMENT 174

Proposed amendment to Article: 9(3)

Submitted by: Pervenche BERÈS

Proposed text:

Add:

3. Everyone who has been denied justice has the right to compensation.

Reasons:

Proposals for Article 10 as a whole

AMENDMENT 175

Proposed amendment to Article: 10 – No punishment without law

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

The first sentence of paragraph 1 posits an excellent principle (no punishment without law) but which, as it says itself, stems from national or international law, and not from European law.

The continuation of the Article (after the first sentence) sets out simple procedures for applying the general principle and should have been deleted in any case for reasons of simplification, even if the first sentence had been retained.

AMENDMENT 176

Proposed amendment to Article: 10

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed text for the heading:

"No punishment without general legal rule"

Reasons:

See reasons given for Article 1(2).

[For the record SN 2888/00: The term "law" ("Gesetz") belongs to the Member States' legal domain. Its use elsewhere in the draft Charter should consequently also be checked.]

AMENDMENT 177

Proposed amendment to Article: 10

Submitted by: Pervenche BERÈS

Proposed text:

Title: Principle of legality

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 offence is abolished or a new law provides for a lighter penalty, that penalty shall be immediately applicable.

Reasons:

It is important to provide for the case where the offence no longer exists, as was the case with abortion, and in future the possible decriminalisation of certain drugs.

AMENDMENT 178

Proposed amendment to Article: 10. No punishment without law

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence ¹ 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.

Reasons:

The translation into Swedish which includes "ett brott" does not correspond to the French and English versions. "Offence" in English means more than "brott" does in Swedish – "brott" should be "criminal offence" in English. The Swedish version should be amended so that it corresponds to the French and English texts and therefore "ett brott" should be deleted from the Article.

"Lagöverträdelse" is proposed as a translation instead, which is closer to "offence"/"infraction" respectively.

¹ Does not concern English text.

AMENDMENT 179

Proposed amendment to Article: 10

Submitted by: Heinrich NEISSER

Proposed text:

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 **used as a basis when the penalty is determined**.*
- 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 law¹.*

Reasons:

In its original wording the last sentence of paragraph 1 is misleading since it literally directs that the penalty should be applicable in any case.

In the German version the more common term "Völkerrecht" should be used in paragraph 2 instead of "internationales Recht".

¹ Does not concern English text.

AMENDMENT 180

Proposed amendment to Article: 10

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

Delete the last sentence of 10.1 and all of 10.2 so that the text reads:

“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”

For Part B, “Definition of Rights”:

“The right in Article 10 is the right guaranteed by Article 7 of the ECHR”

Reasons:

I have no objections of substance to the Praesidium’s proposed text, although I have previously suggested a text which might be shorter and easier to understand, namely “No one shall be punished except under the law.” My proposals for Part B ensure that Article 10 is understood within the meaning of ECHR Article 7. I have not included the reference made to the principle of retroactivity of a more lenient penal law. I confirm that the UK recognises that principle, but await confirmation that that is so in other Member States.

AMENDMENT 181

Proposed amendment to Article: 10. No punishment without law

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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 an offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law.

Reasons:

The proposed text is intended to replace the term "*general principles of international law*" (CONVENT 28 version) with "*general principles of (international) law*". The latter term is broader in scope and is also more in keeping with the terminology used in public international law. The "*general principles of (international) law*" represent the fundamental rules of the various national legal systems (FRIEDMANN, W., "The uses of "General Principles" in the Development of International Law", in *American Journal of International Law*, 1963, pp. 279-299; DEGAN, V.D., "General Principles of Law – A Source of General International Law", in *Finnish Yearbook of International Law*, 1992, pp. 1-102; ELIAS, O. and LIM, C., "General Principles of Law", "Soft" Law and the Identification of International Law", in *Netherlands Yearbook of International Law*, 1997, pp. 3-50). As regards the origin of the "general principles of (international) law", legal theory divides them into three types (MOSLER, H., "General Principles of Law", in *Encyclopedia of Public International Law*, BERNHARD, R (ed.), Amsterdam, Elsevier, 1995, Vol.II, pp. 511-527): (1) the general principles of law which are recognised in national legal systems and which are relevant to international law; (2) the general principles of law which have come into being in international relations; (3) the general principles of law which apply in all kinds of legal systems, whether national or international.

Proposals for Article 10(1)

AMENDMENT 182

Proposed amendment to Article: 10

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 10. No punishment without law

No one shall be held guilty of any offence (delete: 7 words) which did not constitute an offence under (delete: 4 words) 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 (delete: 1 word) committing of the offence, the law provides for a lighter penalty, that penalty shall be applicable.

(Delete: paragraph 2)

Reasons:

This Article is intended to reflect Article 7 of the ECHR, and 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.

AMENDMENT 183

Proposed amendment to Article: 10

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1, replace “under national or international law” with “under the law in force”.

Reasons:

The amendment to paragraph 1 is intended to prevent overlapping with paragraph 2.

AMENDMENT 184

Proposed amendment to Article: 10

Submitted by: François LONCLE

Proposed text:

Article 10

In the final sentence of paragraph 1, the word “lighter” should be replaced by “lesser”.

Reasons:

Editorial amendment in line with the terminology used in criminal law.

Proposals for Article 10(2)

AMENDMENT 185

Proposed amendments to Article: 10(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text: regarding “Principle of legality in criminal cases”

Paragraph 2: should be deleted.

Reasons:

Paragraph 2 introduces an open-ended criminal offence, “any act or omission which, at the time when it was committed, was criminal according to the general principles of international law”, which is incompatible with the principle of legality in criminal cases. Vague, unspecific and open-ended references to “the general principles of international law” in order to classify forms of behaviour as offences are inadmissible. In criminal matters, which are strictly subject to a reservation in law, references to indefinite generic “principles” create major legal uncertainty.

This provision should be deleted or, at the very least, the term “general principles” should be removed.

AMENDMENT 186

Proposed amendments to Article: 10(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. This Article shall not prejudice the trial and punishment for any act or omission *in connection with crimes against humanity* which, at the time when it was committed, was criminal according to the general principles of international law.

Reasons:

The inclusion of the reference to “crimes against humanity” more clearly defines the purpose of Article 10(2).

AMENEDMENT 187

Proposed amendments to Article: 10(2)

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 2, replace “of international law” with “of the international legal system”.

Reasons:

The amendment to paragraph 2 uses the expression “international legal system” to include evolving principles now established in the international community.

Proposals for Article 10a

AMENDMENT 188

Proposed amendments to Article: 10

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Add the following after Article 10:

“Article 10a. right to equal humane treatment

1. Any punishment or penalty shall be proportionate to the seriousness of the offence and shall not exceed the limits of what is appropriate and necessary to the achievement of the aim sought.
2. Punishment may not consist of inhumane treatment and shall be directed towards the re-education of the convicted person.”

Reasons:

The principle enshrined in paragraph 1 has frequently been asserted in the decisions of the Court of Justice (see judgement in the *Atalanta Case*, 21/6/79).

Paragraph 2 establishes a civilised principle accepted in a number of European constitutions or legal systems.

Proposals for Article 11

AMENDMENT 189

Proposed amendments to Article: 11. Right not to be tried or punished twice

Submitted by: Georges BERTHU, MEP

Proposed text: Delete this Article.

Reasons:

This Article deals explicitly with criminal law, which comes within the Member States' jurisdiction. If it were to remain, it would need to be linked to specific European jurisdiction, which is not the case here.

It should be noted that the same criticism could probably be levelled at the previous Articles, although there is no express reference in them to criminal law.

AMENDMENT 190

Proposed amendment to Article: 11

Submitted by: Erling OLSEN

Proposed text:

The provision in Article 4(2) of Protocol No 7 to the ECHR on the reopening of a criminal case should be incorporated into Article 11, or be clearly evident from Part B.

Reasons:

AMENDMENT 191

Proposed amendment to Article: 11

Submitted by: Andrew DUFF, MEP

Proposed text:

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 (delete: 1 word) lawfully acquitted or convicted (delete: 5 words).

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).

AMENDMENT 192

Proposed amendment to Article: 11

Submitted by: R. VAN DAM, MEP

Proposed text:

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, in accordance with Article 4 of Protocol No 7 to the ECHR.

Reasons:

This text fits in better with the ECHR and moreover leaves open the possibility of a case being reviewed (on the basis of new facts or circumstances).

AMENDMENT 193

Proposed amendment to Article: 11

Submitted by: Frits KORTHALS ALTES

Proposed text:

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, *due account being taken of the requirements of Article 4 of Protocol No 7 to the European Convention on Human Rights*.

Reasons:

The addition of a reference to Article 4 of Protocol No 7 to the ECHR is necessary as the provision would otherwise be too imprecise.

AMENDMENT 194

Proposed amendments to Article: 11. Right not to be tried or punished twice

Submitted by: Daniel TARSCHYS

Proposed text:

The draft text needs to be complemented and include what is presently in paragraph 2 of Article 4 of Protocol 7 to the ECHR.

Reasons:

The draft roughly corresponds to paragraph 1 of Article 4 of Protocol 7 of the ECHR but leaves out paragraph 2. The explanation that the latter will be applicable by virtue of the horizontal clause is not sufficient. It needs to be reproduced, at least in part B.

If the Charter later becomes a legally binding text it would be acceptable only with an inclusion of paragraph 2 of Article 4 of Protocol 7 ECHR.

AMENDMENT 195

Proposed amendment to Article: 11

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and the French Prime Minister

Proposed text:

Add "*and with the penal procedure of that State*" to this Article after "*in accordance with the law*".

Reasons:

This addition is in line with Article 4 of Protocol No 7 to the ECHR. It is essential in order to ensure that no court interprets this provision as prohibiting the application of both an administrative and a criminal penalty for one and the same offence.

AMENDMENT 196

Proposed amendment to Article: 11. Right not to be tried or sentenced twice for one and the same offence

Submitted by: Jordi SOLÉ TURA

Proposed text:

"No one shall be liable to be tried or sentenced again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law."

Reasons:

The term "sentenced" is more appropriate in law than "punished", which is a more general word, more often used outside the legal context. The amended title of the Article is clearer, since anybody can be tried and sentenced more than once for different offences.

AMENDMENT 197

Proposed amendment to Article: 11

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

“No one shall be liable to be tried or punished again in criminal proceedings ***within the same legal system*** for an offence for which he has already been finally acquitted or convicted ***in criminal proceedings*** in accordance with the law ***of that system.***”

Reasons:

Article 4 of Protocol No 7 to the ECHR, from which the present regulation draws inspiration, establishes the *non bis in idem* principle only for the jurisdiction of a single State. At present, international law allows one country to try for the same act a person who has already been tried and convicted in another country (e.g. in cases of international drug trafficking or counterfeiting of money). It is therefore proposed to specify that the prohibition of second trials applies only within a single "*legal system*". This expression is preferred to the word "State" used in Article 4 of Protocol No 7 to the ECHR to allow extension of the regulation to Union bodies in the event, rather remote in fact, that in the future the Union assumes direct powers in criminal matters. It also needs to be specified that the final judgment that prevents a second trial must be a judgment "*in criminal proceedings*".

^{*} The parts it is proposed to amend are indicated in bold.

AMENDMENT 198

Proposed amendment to Article: 11

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Insert “, under the jurisdiction of the European Union or of one of its Member States,” between “for which” and “he has already been finally”.

Reasons:

This proposed qualification, which is also included in the ECHR, is indispensable.

AMENDMENT 199

Proposed amendment to Article: 11

Submitted by: Pervenche BERÈS

Proposed text:

Heading: Right not to be tried or convicted twice

Reasons:

The term “conviction” is more accurate.

AMENDMENT 200

Proposed amendment to Article: 11

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Right not to be tried or **convicted** twice **in criminal proceedings for the same conduct**

No one shall be liable to be tried or convicted again in criminal proceedings for conduct for which he has already been finally acquitted or convicted in criminal proceedings.

or alternatively:

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 criminal proceedings in accordance with the law.

Reasons:

The fact that this Article applies only to criminal proceedings needs to be made clearer, thus leaving open the possibility of both a criminal and a disciplinary penalty for the same conduct. Spain has not ratified Protocol No 7 to the ECHR. The problem which this principle raises is its extension to disciplinary matters, prohibiting the imposition of both a criminal and an administrative penalty for the same conduct in the case of the special constraints which apply, for instance, to civil servants or others having particularly close links with the administration (for example, an employee of the authorities may receive a custodial sentence for murder from a criminal court and may subsequently, as a consequence of the criminal conviction, be dismissed from the administration by an administrative authority in disciplinary proceedings. Besides this, the first wording is preferred in this case as it more precisely confines the scope of the preclusion of double jeopardy to two criminal penalties for the same **conduct**, rather than offence, although an alternative draft accommodating the above comments is also proposed.

The reservations expressed by Spain are shared by other States in the Union.

A qualification must be attached to the renewed assertion in the statement of reasons that “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)”. At least in the case of the first decision, which it has been possible to consult, what it covers is a prohibition on double non-criminal disciplinary penalties (in the case in question, imposed by the Commission on a Community official) for the same conduct, a different matter from that considered here. In Spanish, the term [*sentencia*] “*firme*” (i.e. not open to any further appeal) is considered more technically correct than “*definitiva*” (i.e. not merely interlocutory) for “finally”.

AMENDMENT 201

Proposed amendment to Article: 11

Submitted by; Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“No one shall be tried or punished twice for the same criminal offence”

For Part B, “Definition of Rights”:

“The right in Article 11 is the right guaranteed by Article 4 of Protocol 7 to the ECHR. It does not prevent the reopening of the case in accordance with the law 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”

Reasons:

The Praesidium draft differs from the corresponding ECHR right because it is not confined to retrial in the same state and because it may prevent cases being reopened in circumstances where ECHR Protocol 7 would permit that. I do not believe that ECJ case law or the constitutional traditions common to the member states justify the Praesidium wording. My version ensures that Article 11 is understood within the meaning of Article 4 of ECHR Protocol 7 and the case law. It also makes clear, in Part B, that there are very significant qualifications.

AMENDMENT 202

Proposed amendment to Article: 11

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be tried or **convicted** again for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Reasons:

For reasons of legal exactitude, the phrase *punished in criminal proceedings* should be replaced by the word *convicted*.

AMENDMENT 203

Proposed amendment to Article: 11

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

After "acquitted or convicted", add "in criminal proceedings."

Reasons:

The double jeopardy principle relates solely to judgments in criminal cases (a disciplinary or administrative penalty is no obstacle to criminal proceedings for the same conduct).

AMENDMENT 204

Proposed amendment to Article: 11. Right not to be tried or punished twice

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings in a Member State of the European Union for an offence for which he has already been finally acquitted or convicted in a Member State of the European Union.

Reasons:

The existing version (CONVENT 28) implies that the jurisdiction of every other State in the world must be recognised. However, Article 4 of Protocol No 7 to the ECHR limits such recognition to jurisdiction within a State. The text proposed here occupies an intermediate position and extends the recognition of judgments in criminal cases to Member States of the European Union. The preclusion of double jeopardy then applies within this single judicial area.

AMENDMENT 205

Proposed amendment to Article: 11

Submitted by: Paul-Henri MEYERS, representative of the Luxembourg Government

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings by a court of a State for an offence for which he has already been finally acquitted or pardoned in accordance with the law of that State or of another State.

Reasons:

The absolute wording of the text is out of line with the provisions of the Rome Statute of the International Criminal Court, signed in Rome on 17 July 1998. In Article 20, the Statute expressly requires compliance with the double jeopardy principle (*ne bis in idem*). However, an exception to that principle is made in the same Article for instances where the aim of proceedings before another court was to shield a person from his criminal responsibility.

AMENDMENT 206

Proposed amendment to Article: 11

Submitted by: Simone BEISSEL

Proposed text:

“... finally acquitted or convicted in accordance with the law, **subject to the provisions concerning the jurisdiction and organisation of the International Criminal Court**”.

Reasons:

To avoid a conflict of texts.

Proposals for Article 12

AMENDMENT 207

Proposed amendments to Article: 12

Submitted by: Daniel TARSCHYS

Proposed text:

Merge this text with the present draft Article 13 (paragraph 1) and make sure that the wording corresponds to Article 8 of the ECHR.

Reasons:

Draft Article 12 is said to be based on Article 8 of the ECHR. That Article, however, refers to respect for private *and* family life. It is difficult to separate the two concepts. A single Article covering both aspects would be preferable.

The words "honour and reputation" have been added. It is not entirely clear how these terms should be interpreted. Concern has been expressed that this addition might entail limitations on the freedom of expression.

Paragraph 2 of Article 8 of the ECHR has not been included in draft Article 12. Instead there is a separate draft horizontal Article dealing with limitations in general terms. That Article speaks of legitimate interests, a term found in the case-law of the European Court. Unlike Article 8 (and also Articles 9, 10 and 11) it does not specify which those interests are. Exceptions from a right should be defined as precisely as possible. It is therefore preferable to have a special paragraph in this Article dealing with exceptions, as in the ECHR.

AMENDMENT 208

Proposed amendment to Article: 12

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 12. Respect for private life

**Everyone has the right to respect for his or her privacy, (delete: 5 words) home
(delete: 6 words) and communications.**

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."*

AMENDMENT 209

Proposed amendment to Article: 12

Submitted by: R. VAN DAM, MEP

Proposed text:

Add: No limitations on this right going beyond those possible under Article 8 of the ECHR shall be permitted.

Reasons:

This aligns the text more closely on the ECHR.

AMENDMENT 210

Proposed amendment to Article: 12

Submitted by: Win GRIFFITHS, MP

Proposed text:

Everyone has the right to respect for his/her privacy, his/her home and correspondence.

Reasons:

This is closer to the ECHR Article 8. This issue of honour and reputation would be better considered in the preamble if inclusion is thought to be essential

Strasbourg Court judgements have already determined, I believe, that correspondence covers all forms of modern communication such as e-mails.

AMENDMENT 211

Proposed amendments to Article: 12

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Delete “his honour and his reputation” and replace “geheim” (“secrecy”) in the Dutch text by “vertrouwelijkheid” (“confidentiality”).

Reasons:

The right to respect for honour and reputation has no need of protection as a fundamental right. Protection is already guaranteed by both the civil and the criminal law remedies which are available.

The equivalent of “confidential correspondence and communications” would be more natural in Dutch than “secrecy of correspondence” or “secrecy of communications”.

AMENDMENT 212

Proposed amendments to Article: 12

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Everyone has the right to respect for his privacy (5 words deleted), his home and the confidentiality of his correspondence and communications.

Reasons:

The addition of a right to the protection of honour and reputation goes beyond Article 15(2) of the ECHR and threatens to undermine freedom of expression and freedom of the press.

AMENDMENT 213

Proposed amendments to Article: 12. Respect for privacy

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

"Article 12: Respect for privacy

1. Everyone has the right to respect for his privacy, his personality (5 words deleted), his home and place of business and his communications, in particular the confidentiality of his correspondence and communication.
2. (new) Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.

Reasons:

Re the heading and paragraph 1:

The concept of "private life" appears to be too narrow in view of the risks facing modern man. "Privacy" is, therefore, a more appropriate term.

Both home and place of business need to be protected.

The insertion of the concept of "communications" is intended to cover new media developments, e.g. Internet communications.

Re paragraph 2:

Paragraph 2 has been taken from Article 19 on data protection, which is to be deleted, and in terms of both content and systematic arrangement belongs here.

AMENDMENT 214

Proposed amendment to Article: 12

Submitted by: Heinrich NEISSER

Proposed text:

Article 12. Respect for private life

*Everyone has the right to respect for his privacy, his honour and his reputation, his home and **his communications.***

Statement of reasons:

This Article is based on [...].

The term "honour" has been added [...].

This fundamental right has also to be weighed against other fundamental rights in individual instances, in particular the right to freedom of speech or of the press.

Reasons:

The English term "communications" is better rendered in German by the far more comprehensive term "*Kommunikation*".

Article 8 of the European Convention on Human Rights, on which this Article draws, does not include the terms "honour" and "reputation". Their inclusion in draft Article 12 could create the impression here that, in the event of a conflict of fundamental rights with the right to freedom of expression, the scales are being tilted against freedom of speech. The balance between respect for private life and freedom of speech should remain unaltered.

AMENDMENT 215

Proposed amendments to Article: 12

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

"Everyone has the right to respect for his privacy, his honour and his reputation; the right to the inviolability of the home and the confidentiality of communications, irrespective of the medium used, shall also be guaranteed ... The exercise of such rights may be limited by law for reasons of public policy and, where appropriate, subject to prior judicial authorisation."

Reasons:

The alternative version includes a reference to the limits on the exercise of this right. The non-compliance expressed in the previous amendments to the form in which rights and their limits are defined is thus repeated. The conviction that the limits on rights are part and parcel of their content and very definition must be added to all that has been previously stated. In some cases, as with the freedom of expression, the limit is established specifically in defence of other rights, such as the right to honour or privacy. In the case of those rights which apply also to private relationships, the idea that the statement of limits somehow deprives the right of any expressive force, when what it does is precisely the reverse, i.e. it guarantees such right, has to be resisted. The limitations are intended not so much for States as for the citizenry. In this case there has to be a reference to both the existence of limits on such rights (see Article 8 of the ECHR), and even the requirement that they be established by law, and their guarantee, with the requirement of limitation by judicial act.

AMENDMENT 216

Proposed amendments to Article: 12. Respect for private life

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 12: Respect for privacy

Everyone has the right to respect for his privacy, his honour and his reputation, his home and his communications, in particular the confidentiality of his correspondence and communications."

Reasons:

The notion of "private life" appears to be too narrow in view of the risks facing modern man. The term "privacy" is, therefore, proposed.

The adoption of the modern term "communications" – already originally provided for in CONVENT 13 – is designed to guarantee coverage of the entire Internet problem.

AMENDMENT 217

Proposed amendments to Article: 12

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

"Everyone has the right to respect for his privacy (*5 words deleted*), his home and the confidentiality of his correspondence and communications."

Reasons:

The explicit protection of a person's "honour and reputation" involves the risk of huge restrictions on the right of free speech, particularly in the case of criticism levelled at people in public life and at state institutions. Reference may also be made to Article 1, which expressly protects human dignity.

AMENDMENT 218

Proposed amendments to Article: 12

Submitted by: EINEM/HOLOUBEK

Proposed text:

"Everyone has the right to respect for his privacy, his honour and his reputation, his home and *the confidentiality of his information and communications (secrecy of correspondence and communications)*".

Reasons:

In order to give greater force to the idea, already tackled in the proposal of the Praesidium, that developments in means of communication be taken into account, we propose that a right to respect for the confidentiality of information and communications be fundamentally incorporated.

In the light of technical developments, it should be made clear at the outset that this Article extends protection to confidential information and communications, including if necessary the confidentiality of the sender or the recipient of such information or communications, irrespective of the means of communication selected. Such protection covers any information and communications intended by the sender not for general consumption but for a specific person or a limited, set number of persons, excluding third parties.

AMENDMENT 219

Proposed amendment to Article: 12

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the text of the Article with the following:

"Everyone has the right to respect for his privacy, his honour and his reputation, his home and for the freedom and confidentiality of his communications."

Reasons:

The rewording is intended to make the scope of the rule clearer.

AMENDMENT 220

Proposed amendment to Article: 12

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. Everyone has a right to respect for his privacy, including his personal data, his home, his correspondence and other confidential communications.
2. The right referred to in paragraph 1 may be limited only in accordance with the conditions laid down in Article 8(2) of the European Convention on Human Rights.

Reasons:

It is preferable to drop Article 19 and include the right to protection of personal data in the general article on privacy. The proposed Article 19, which grants everyone the right to determine for himself whether his personal data may be disclosed and how they may be used, is too broad in view of (recent) legislation in force in the Member States on data protection. The basic assumption is that personal data may be processed, provided this is for justified purposes and that processing takes place in an appropriate manner, that there is sufficient transparency towards those concerned and that, where appropriate, they are given the opportunity to protest against the processing of their data. The same basic assumption is central to the EC Directive on data protection (Directive 95/46/EC), on which Member States' data protection legislation is based. The provision in the EU Charter need go no further than recognition of the right of every individual to protection of his personal data. Moreover, it is important that the limitation clause in Article 8(2) of the ECHR also applies to the handling of personal data.

It would be preferable to use the expression “vertrouwelijke communicatie” (“confidential communications”). This wording fits in better with language usage than “communicatiegeheim” (“confidentiality of .. communications”). Furthermore, “reputation” does not need separate protection, since it is already included in “privacy”. Singling out reputation for separate protection could also conflict with freedom of expression.

AMENDMENT 221

Proposed amendment to Article: 12

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.”

For Part B, “Definition of Rights”:

“The right in Article 12 is the right guaranteed by Article 8 of the ECHR”

Reasons:

The Praesidium draft includes references to “honour”, “reputation” and “communication” which are not found in the relevant ECHR right; and it separates family life (see Article 13). I do not believe that the additional references are common to the constitutional traditions of the member states, or supported by ECJ case law, and I am concerned that they could entail new rights of uncertain meaning and application for the EU institutions and for member states when acting on their behalf. My version restores the meaning of the corresponding ECHR right. As regards “communication”, I believe, subject to the views of the Council of Europe representative, that the European Court of Human Rights has developed and continues to develop the meaning of “correspondence” in the light of its general jurisprudence – as it did in the Malone case, for example.

AMENDMENT 222

Proposed amendments to Article: 12

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Add a new paragraph reading:

"2. Everyone has the right to protect the confidentiality of his communications by means of encryption."

Reasons:

European and national governments have been unable and/or unwilling to protect their citizens' communications against uncontrolled tapping. Keyword: Echelon. Citizens and businesses should thus have the right to protect the confidentiality of their (digital) communications by cryptographic means. Promotion of the use of encryption to the point where it becomes a fundamental digital right is the logical end consequence of the developments of recent years, with national governments in the EU having eased and scrapped restrictions on the use of cryptography.

Compare the European Commission standpoint: "The public needs access to technical means providing effective protection against the violation of communications confidentiality. Data keying is often the only effective and affordable means of satisfying this need." (from European Commission document entitled "Towards a European Framework for Digital Signatures and Encryption" - COM (97) 503, October 1997).

Compare also the EP Resolution of 16 September 1998 on transatlantic relations/Echelon system : "considers that the increasing importance of the Internet and worldwide telecommunications in general and in particular the Echelon System, and the risks of their being abused, require protective measures concerning economic information and effective encryption."

AMENDMENT 223

Proposed amendments to Article: 12

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

Replace Article 12 with the following:

- “1. Everyone has the right to respect for his privacy, his honour and his reputation.
2. The home shall be inviolable.
3. The confidentiality of correspondence shall be respected and the law shall organise protection of other means of communication.
4. This Article may only be departed from by the law and for reasons of public policy.”

Reasons:

The proposed text wrongly covers situations which are different to the point of being contradictory. Thus, the confidentiality of correspondence remains the rule in the social life of today, while the general public wrongly believes that confidentiality is ensured in telecommunications.

It is important, therefore, to distinguish between the general principle (par. 1), the specific situation of the home (para. 2) and the confidentiality of communications (pars. 3 and 4).

The Charter must guarantee that principles may be departed from only by force of law, with the contradictory publicity which that entails. Furthermore, there can be legislation to that effect solely for reasons of public policy, far removed from the degrading rules and regulations established by authorities which are too often faceless and acting purely on budgetary grounds, as happens in Belgium (and elsewhere) in the treatment of welfare beneficiaries.

Proposals concerning the whole of Article 13

AMENDMENT 224

Proposed amendments to Article: 13

Submitted by: Peter ALTMAIER, Member of the Bundestag (German Parliament)

Proposed text;

Delete paragraph 1.

Paragraph 2 to become paragraph 1.

Paragraph 3 to become paragraph 2 and to read:

“Marriage and family shall enjoy respect and protection.”

Reasons:

Article 13 as it stands is unclear and repetitive. The proposed wording of paragraph 2 (new paragraph 2) dispenses with the need for paragraph 1. The inclusion in the protection prescribed in Article 13, alongside the family, of marriages entered into in accordance with the respective national provisions would also seem to be appropriate.

AMENDMENT 225

Proposed amendment to Article: 13

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Article 13

1. ...
2. Everyone has the right to marry according to the national laws governing the exercise of this right.
3. Everyone has the right to found a family according to the national laws governing the exercise of this right.
4. Present paragraph 3.

AMENDMENT 226

Proposed amendment to Article: 13. Family life

Submitted by: Georges BERTHU, MEP

Proposed text:

- “1. **The family, which brings up children, is the basic unit of society; it has the right to the protection of the public authorities and of society.**
2. Everyone has a right to respect for his family life.
3. **Men and women** have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

Reasons:

It should be remembered that the family is based on the union of a man and woman, who bring up any children. This wording is based on the Universal Declaration of Human Rights (Article 16(3)), which states that the family is the natural and fundamental element of society and has a right to the protection of society and of the State. The wording does not preclude the existence of other possible forms of union not resulting in the birth of children and ineligible, therefore, to claim the same protection from the public authorities as the family as such under this head.

The proposed amendment adds a new paragraph 1 defining the family and guaranteeing it the protection of the public authorities and of society (thereby making paragraph 3 of the basic text redundant).

AMENDMENT 227

Proposed amendment to Article: 13

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 13. Family life

(Delete: paragraph 1)

**1 (ex: 2). Everyone has the right to marry, to form a partnership and to found a family
(delete: 12 words).**

2 (ex: 3). The family shall enjoy legal, economic and social protection.

Reasons:

The first paragraph of this Article is based on Article 12(2) (delete: 8) of the European Convention on Human Rights (delete: 9 words), 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 partnerships refers to the contemporary practice of establishing households outside the definition of orthodox marriage, and is consistent with Article 13 of the Treaty establishing the European Community.

(Delete: 19 words) Paragraph 2 (delete: 3) applies to the Union when it adopts measures within its powers to take account of family protection needs. (Delete: 15 words)

AMENDMENT 228

Proposed amendment to Article: 13

Submitted by: Prof. Dr Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN

Proposed text:

Article 13. Marriage and family

1. Everyone has the right to marry and to found a family, according to national laws and with the free and full consent of the intending spouses.
2. Long-term partnerships shall have the right to protection against discrimination.
3. Marriage and the family shall enjoy special protection. The family shall enjoy legal, economic and social protection. Single parents, families with numerous children and families with disabled members shall be entitled to special social assistance from the public authorities.

Reasons:

The proposed amendment repeats, in a slightly amended form, the proposed amendment I submitted on 28 March (CONTRIB. 60) and clarifies my original draft for discussion (submitted on 6 January; CONTRIB. 2).

Protection of marriage and of family life is an essential fundamental and human right which must be taken into account in the Charter of Fundamental Rights.

Paragraph 1 firstly guarantees the right to marry freely and to found a family. Both rights represent rights of protection against State intervention.

This right is embodied in Articles 8 and 12 of the ECHR, in Article 16 of the Universal Declaration of Human Rights, in Article 23(2) and (3) of the International Covenant on Civil and Political Rights (ICCPR), in Article 6(1) of the (German) Basic Law and in numerous constitutions of the Member States.

The European Court of Justice has stated that the right to marry and the protection of the family already belongs to the fundamental rights recognised by Community law.¹ Even the European Court of Human Rights has repeatedly confirmed this principle.²

The restriction "according to national laws" is based on the identical provision in Article 12 of the ECHR. The aim is to avoid the Convention having to produce a Europe-wide definition of the term "marriage".

The statement "with the free and full consent of the intending spouses" takes over the corresponding wording of Article 23(3) of the ICCPR. This rule is also contained in the Universal Declaration of Human Rights (Article 16(2)), which conveys the rule's general recognition and esteem.

Paragraph 2 takes account of a sociological change in society which must be covered by a modern Charter of Fundamental Rights. The number of unmarried persons living together in Germany has increased more than six-fold between 1978 and 1998. Similar trends are to be noted in all European countries. Even conservative parties are therefore taking these sociological facts into account to an increasing extent.³

¹ See Wetter, Irmgard: *The Charter of Fundamental Rights of the European Court of Justice*. Frankfurt a.M. inter alia, 1998, pp. 168 et seq and the references to judgments of the European Court of Justice in the footnotes pp. 660 et seq.

² Frowein, Jochen Abr./Peukert, Wolfgang: *European Convention on Human Rights*, Strasbourg inter alia, 1996, pp. 421 et seq.

³ e.g. at the Small Party Congress of the German CDU, see *Frankfurter Allgemeine Zeitung* of 11.12.1999 "Small Party Congress discusses charity and family policy".

Even in new constitutions, for example in the Constitution of Brandenburg, the need for protection of long-term partnerships is recognised (Article 26(2)).

In addition, more and more Member States of the Union are also taking account of the rights of homosexuals by giving them the possibility of registering their partnership with the aim of preventing existing legal discrimination. While paragraph 2 is not intended to prompt any options in favour of a particular lifestyle, the ban on discrimination does, however, constitute a minimum requirement.

The second sentence of paragraph 3 takes over the wording adopted by the Praesidium. The third sentence of paragraph 3 places particular categories of families under the special protection of the Union. The protection of families with numerous children is embodied in the Constitutions of Greece (Article 21(2)), Italy (Article 31) and Poland (Article 71(1)). The Constitution of Brandenburg (Article 26(1)) also contains a protective rule concerning single parents and families with disabled members.

In accordance with the relevant case law of the European Court of Human Rights, Article 8 of the ECHR also protects single parents who come under general family protection.¹

Although the current proposal from the Convention (CONVENT 28) contains an explicit Article on the protection of children, it does seem appropriate at this point to place the sociological unit in which the majority of children live under special protection.

¹ Frowein, Jochen Abr./Peukert, Wolfgang: European Convention on Human Rights. Strasbourg, inter alia, 1996, p. 424.

AMENDMENT 229

Proposed amendment to Article: 13

Submitted by: Pervenche BERÈS

Proposed text:

1. Everyone has the right to respect for his life with his partner and for his family life.
2. Everyone has the right to marry and to found a family (eleven words deleted).
3. The family shall enjoy legal, economic and social protection.

Reasons:

Account should be taken of situations outside marriage.

In the second paragraph the reference to national law should be deleted so that third-country nationals do not follow practices which are contrary to the principles of the Member States of the Union (polygamy, etc.).

AMENDMENT 230

Proposed amendment to Article: 13. Family life

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. Everyone has the right to respect for and protection of his married and family life.
2. Men and women have the right to marry and to found a family, according to the national laws governing the exercise of this right.
3. Delete.

Reasons:

Re paragraph 1

Protection of the family is covered by the amended paragraph 1, which means that paragraph 3 can be deleted.

Re paragraph 2

The wording takes over the ECHR wording to a large extent.

AMENDMENT 231

Proposed amendment to Article: 13. Family life

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 13. Family life

1. Everyone has the right to respect for his family life.
2. Everyone has the right to marry or to found a family according to the national laws governing the exercise of this right."

Reasons:

The use of the word "or" instead of "and" should make it clear in paragraph 2 that founding a family may also be possible and permissible irrespective of whether people are married.

Moreover, the German Länder are in favour, at least at present, of deleting paragraph 3, since its current wording would confer a comprehensive right to benefits.

AMENDMENT 232

Proposed amendment to Article: 13

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Everyone has the right to respect for *his lifestyle*.
2. *Everyone has the right to chose his lifestyle freely and to found corresponding partnerships.*
3. *All lifestyles shall enjoy equal respect and legal, economic and social protection.*

Reasons:

This proposed amendment embraces everyone's right to marry and have a family. However, it also takes account of social trends towards a variety of lifestyles which means that, in accordance with individual Member States' laws, an individual's right to choose his lifestyle and partnership is to be guaranteed.

AMENDMENT 234

Proposed amendment to Article: 13

Submitted by: EINEM/HOLOUBEK

Proposed text:

- "1. Every *individual* has the right to respect for his family life.
2. Every *individual* has the right to marry and to found a family, according to the *Member States'* laws governing the exercise of this right. *No one shall be compelled to marry.*
3. The family shall enjoy legal, economic and social protection."

Reasons:

For reasons of clarity of terms it is proposed that "individual" be used, as only natural persons are meant.

The reference to the "Member States'" (instead of "national" in the draft) laws makes it clear that the Member States have jurisdiction over this matter.

The newly proposed second sentence of paragraph 2 is intended to make it clear that in particular even custom must not threaten the voluntary nature of marriage.

For the rest, the proposal takes over unchanged the draft text proposed by the Praesidium.

AMENDMENT 235

Proposed amendment to Article: 13

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right”

For Part B, “Definition of Rights”:

“The right in Article 13 is the right guaranteed by Article 12 of the ECHR”

Reasons:

The Praesidium formulation of the relevant ECHR right (in Article 13.2) is not identical with that accepted by parties to the ECHR, and fails to attract the case law. The accretion in 13.3 has no satisfactory legal base and is inappropriate. 13.1 is unnecessary if my proposal to restore it to Article 12 is followed (see above). My version of Article 13 ensures that the acceptable content of Article 13 is understood within the meaning of the relevant ECHR provision, and the case law.

AMENDMENT 236

Proposed amendment to Article: 13(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

(The change from “gezinsleven” to “familieleven” in the Dutch text does not affect the English version).

Reasons:

(Does not concern the English text).

Proposed amendment to Article: 13(3)

Proposed text:

Delete paragraph 3.

Reasons:

Paragraph 3 contains a vaguely-worded provision made redundant by the guarantee in paragraph 1.

AMENDMENT 237

Proposed amendments to Article: 13. Family life

Submitted by: Daniel TARSCHYS

Proposed text:

Merge paragraph 1 with Article 12.

Reasons:

Paragraph 1 is redundant as this right follows from other Articles (i.a. 3 and 12).

Paragraph 3 spells out an objective for public policy and is thus better placed in the preamble.

AMENDMENT 238

Proposed amendments to Article: 13

Submitted by: Jean-Maurice DEHOUSSE, Alternate Member of the Convention

Proposed text:

Replace Article 13 with the following:

1. Men and women of marriageable age have the right to marry and to found a family according to the procedures laid down by law.
2. The family shall enjoy, irrespective of its composition, legal, economic, social and fiscal protection.
3. Two persons, whether or not of the same sex, may enter into a long-term union the details of which are defined by law; the law shall also define the protection such a union is to enjoy.
4. Everyone has the right to respect for his family life.

Reasons:

Over the last half century, the situation described in this Article has evolved sufficiently for the wording of the Charter text to depart from the text of the European Convention in order to take account of that fact.

A single-parent family must, therefore, be protected in the same way as a traditional two-parent family.

Likewise, it is important to take account of changing habits regarding homosexuality.

Finally, measures applying to homosexual couples which have been recently introduced in several parts of Europe are proving useful in the case of couples whose homosexuality is a matter of fact, and not of love.

Experience also shows the value of including a fiscal chapter in family protection.

Proposals for Article 13(2)

AMENDMENT 239

Proposed amendments to Article: 13

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to respect for his family life.
2. **Everyone has the right, under the laws governing the exercise of this right and by mutual consent, to marry or cohabit and to found a family."**

Reasons:

AMENDMENT 240

Proposed amendments to Article: 13

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2: delete.

Reasons:

Paragraph 2 is unrelated to any Union powers.

AMENDMENT 241

Proposed amendments to Article: 13. Family life

Submitted by: Jordi SOLÉ TURA

Proposed text:

“2. Everyone has the right to found a family according to the national and Community laws governing the exercise of this right.”.

Reasons:

The word “**marry**” has been deleted since the family may or may not be founded on the basis of marriage, depending on the laws. the words “and **Community**” have been added in order to allow for European Union competence.

AMENDMENT 242

Proposed amendments to Article: 13(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Men and women have an equal legal right to marry and to found a family according to the national laws governing the exercise of this right.”

Reasons:

Wording in line with Article 8 of the European Convention on Human Rights.

AMENDMENT 243

Proposed amendment to Article: 13(2). Family life

Submitted by: Hubert HAENEL

Proposed text:

2. *Men and women* have the right to marry and to found a family, according to the national laws governing the exercising of this right.

Reasons:

Discussions within the Convention have made it clear that the article on family life should guarantee the possibility for men and women to marry and found a family as a fundamental right. That possibility is also guaranteed by Article 12 of the European Convention on Human Rights, and the proposed amendment accordingly follows the wording of that provision.

Proposed amendment to Article: 13(3). Family life

Proposed text:

3. *Marriage and* the family shall enjoy legal, economic and social protection.

Reasons:

Legislation should not regulate the different forms of couple, as that is a matter of personal choice and thus of individual freedom. However, it is only right that marriage should enjoy the same legal, economic and social protection as the family.

AMENDMENT 244

Proposed amendment to Article: 13(2) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

2. **Men and women have** the right to marry and to found a family, according to the national laws governing the exercise of this right.

Reasons:

To make it clear that marriage is understood as being between persons of different sexes. The proposed text makes it possible to reconcile Article 12 of the European Convention on Human Rights with present circumstances.

Proposals for Article 13(3)

AMENDMENT 245

Proposed amendment to Article: 13

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo Nikula

Proposed text:

It is proposed that Article 13(3) (“*The family shall enjoy legal, economic and social protection*”) be deleted on the grounds of being superfluous.

AMENDMENT 246

Proposed amendment to Article: 13(2) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

3. **Marriage and** the family shall enjoy legal, economic and social protection.

Reasons:

To make it clear that marriage is understood as being between persons of different sexes. The proposed text makes it possible to reconcile Article 12 of the European Convention on Human Rights with present circumstances.

AMENDMENT 247

Proposed amendment to Article: 13

Submitted by: R. VAN DAM, MEP

Proposed text:

3. The family, as a natural and social unit, shall enjoy legal, economic and social protection.

Reasons:

Paragraph 3 gives a more detailed definition of the position of the family. The family is described in similar terms in Article 16 of the Universal Declaration of Human Rights, Article 16 of the European Social Charter and Article 10 of the International Covenant on Economic, Social and Cultural Rights.

AMENDMENT 248

Proposed amendment to Article: 13. Family life

Submitted by: Daniel TARCHYS

Proposed text:

Merge paragraph 1 with Article 12.

Move paragraph 3 to the preamble.

Reasons:

Paragraph 1 is redundant as this right follows from other articles (i.e. 3 and 12).

Paragraph 3 spells out an objective for public policy and is thus better placed in the preamble.

AMENDMENT 249

Proposed amendment to Article: 13

Submitted by: Erling OLSEN

Paragraph 3 should be deleted.

Reasons:

Paragraph 3 sets out an objective, not a right.

AMENDMENT 250

Proposed amendment to Article: 13

Submitted by: Win GRIFFITHS, MP

Proposed text:

1 and 2 as written. Delete 3

Reasons:

The reasons for the existing text throw doubt on its (Article 3.3) place here and raise an issue of when it would be relevant for the European Union to regard it as a fundamental right. Further discussion is needed before a decision can be made on the appropriateness of its inclusion in the Charter.

AMENDMENT 251

Proposed amendment to Article: 13

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Delete paragraph 3 of the text in CONVENT 28.

Reasons:

The current formulation refers to an obligation which does not belong in this part of the Charter.

Proposals for Article 14

AMENDMENT 252

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Georges Berthu, MEP

Proposed text:

Every human being has the right to freedom of thought, conscience and religion. **This right includes freedom to change his religion or belief and freedom to manifest his religion or belief in worship, teaching and observance.**

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as 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 individuals.

Reasons:

This amendment incorporates the wording of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which seems preferable.

- Paragraph 1: it is necessary to point out that freedom of thought, conscience and religion is not an abstract right, but has practical consequences and outward manifestations (worship, teaching, practice, etc.).
- Paragraph 2: same reasons as for Article 2 of the Charter (paragraph 1a). The presence of a final horizontal clause referring to possible limitations in general terms is not adequate in most cases. Where the need arises, details must be added to each article concerned.

AMENDMENT 253

Proposed amendment to Article: 14

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 14. Freedom of thought, conscience and religion

1 (new). Everyone has the right to freedom of thought, conscience and religion.

2 (new). No one is obliged to disclose thought, religion or belief.

Reasons:

This wording (delete: 1 words) is based on 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.

Paragraph 2 accords inter alia with the principle of non-discrimination established by Article 13 of the Treaty establishing the European Community.

AMENDMENT 254

Proposed amendment to Article: 14

Submitted by: R. VAN DAM, MEP

Proposed text:

Add two new paragraphs:

2. This right includes the right to change religion and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance.
3. No limitations on this right are permissible other than those provided for in Article 9(2) of the ECHR.

Reasons:

These additions are essential if this right is to mean anything in practice. This text also corresponds more closely to the ECHR.

AMENDMENT 255

Proposed amendment to Article: 14

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The text in CONVENT 28 should be deleted and replaced by the full text of Article 9(1) of the ECHR.

Reasons:

Article 9(1) of the ECHR contains a comprehensive statement of freedom of religion.

AMENDMENT 256

Proposed amendment to Article: 14

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to freedom of thought, conscience and religion. No one may be compelled to participate in a religious or ideological act, or to take a religious oath. *This right includes the freedom to manifest ones religion or belief either alone or in community with others and in public or private.*
2. No one shall be obliged to disclose his religious or ideological views.
3. If a citizen of the Union is unable to fulfil any obligations imposed on him by a public authority because they conflict with his conscience, the community may, as far as it is able, substitute other obligations of equal value. This does not apply to taxes and similar charges.

Proposed text: Meyer; amendments by Voggenhuber in italics.

Reasons:

AMENDMENT 257

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Professor Dr. Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN

Proposed text:

- "1. Everyone has the right to freedom of thought, conscience and religion. No one may be compelled to participate in a religious or ideological act or to take a religious oath. Freedom of religion shall include the public and private, individual and communal manifestation of religion and the right of churches and religious communities to order and administer their affairs in accordance with the laws of the Member States.
2. No one shall be obliged to disclose his religious or ideological views.
3. If a citizen of the Union is unable to fulfil any obligations imposed on him by a public authority because they conflict with his conscience, the community may, as far as it is able, substitute other obligations of equal value. This does not apply to taxes and similar charges.

Reasons:

The proposed amendment repeats, in a slightly amended form, the proposed amendment I submitted on 28 March (Contrib. 60) and clarifies my original draft for discussion (submitted on 6 January; Contrib. 2).

The first sentence of paragraph 1 follows the Praesidium's proposal (Convent 28) and the identically worded first sentence of Article 9(1) of the ECHR.

The second sentence makes it clear that the rights mentioned constitute freedoms in the sense that no one may be compelled to take part in ideological, religious or ritual acts. There are comparable rules in the Constitutions of Belgium (Article 20), Denmark (§ 68), Finland (§ 9), Luxembourg (Article 20), Sweden (Chapter 2 § 2) and Germany (Article 4(1) of the Basic Law). The European Court of Human Rights has also acknowledged a negative freedom of religion in its interpretation of the first sentence of Article 9(1) ¹ and has spoken of protection for atheists, agnostics, sceptics and indifferent persons. ²

The third sentence of paragraph 1 incorporates a rule corresponding to Declaration no 11, which was adopted by the Intergovernmental Conference during the Amsterdam Summit.

Paragraph 2 is based on corresponding rules in the Constitutions of Portugal (Article 41(3)), Sweden (Chapter 2 § 2), Spain (Article 16(2)), Slovakia (Article 41(2)), Poland (Article 53(7)) and Brandenburg (Article 13(2)). Article 136 of the Weimar Constitution which, under Article 140 of the Basic Law, is an integral part of that Law, also contains the right not to express one's religious convictions. Such a right can also be deduced from Article 5(1) of the Basic Law. ³

Paragraph 3 gives substance to freedom of conscience. Since as a result of the Common Foreign and Security Policy a common defence policy (Article 17(1) TEU), which also includes combat forces (Article 17(2) TEU), will in future fall within the Union's sphere of competence, observance

¹ See in: Frowein, Jochen Abr./Peukert, Wolfgang: European Convention on Human Rights. Strasbourg inter alia, 1996, p. 371.

² Ibid., p. 368.

³ Maunz/Dürig/Herzog et al: Basic Law Commentary. Munich, 1991, Volume 1, (instalments 1-29), Article 5, NO 40.

of moral distress as a basic right must be incorporated in the Charter.

The right to conscientious objection as a possible, but not binding form of freedom of conscience, is recognised in the Constitutions of Germany (Article 4(3) of the Basic Law) and Portugal (Article 41(6)). Although the right to conscientious objection is not explicitly guaranteed in the ECHR (see Article 4(3)(b)), nevertheless Frowein/Peukert write in their ECHR comments on freedom of religion and conscience: "However, to expect that the State should take account of religion when determining obligations is an established right." ¹ To this extent the proposed wording would lead to affirmation of this right.

However, the restrictive wording "as far as it is able" and "this does not apply to taxes and similar charges" in paragraph 3 avoids a situation involving an arbitrary and excessive assertion of moral distress. The European Court of Human Rights has also consistently rejected corresponding attempts. ²

¹ Ibid., p. 378.

² Ibid., p. 376 et seq.

AMENDMENT 258

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Freedom of religion includes the manifestation of faith in public and private, individually and in community with others and the right of churches and religious communities to order and manage their affairs in accordance with the laws of the Member States.

Reasons:

Inherent in every religion is the shared belief of more than one person. Consequently, every religion feeds on joint observance. The current wording does not reflect that. On the other hand, freedom of thought and conscience are individual matters.

The European Union's action affects not only the individual in his exercise of his fundamental right to freedom of religion, but also religious bodies, in particular churches and established religious communities. The Commission on Human Rights has in principle granted churches and religious communities the automatic right to have recourse to Article 9 of the ECHR. The reference to national legislation in the second sentence is in line with subsidiarity and the diversity of circumstances in which national established churches find themselves. It also follows from the Declaration on the status of churches and non-confessional organisations attached to the Amsterdam Treaty.

If the right of churches could be reflected in a general right relating to legal persons, parts of the second sentence could still be revised.

AMENDMENT 259

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Heinrich NEISSER

Proposed text:

*"Everyone has the right to freedom of thought, conscience and religion. **This right includes the freedom of the individual to change his religion or belief and the freedom, alone or in community with others and in public or private, to practise his religion or belief in worship, teaching, prayer and observance.**"*

in eventu

*"Everyone has the right to freedom of thought and conscience and, **alone or in community with others, religion.**"*

Reasons:

Article 9 of the European Convention on Human Rights, on which this Article is based, contains a right to freedom of religion which is not only individual, but also collective. Under the ECHR, churches and religious communities may therefore also refer to freedom of religion. On the other hand, the CJEC judgment in the Prais case, referred to in the reasons in support of Article 14 of the draft, concerned only the individual's right to freedom of religion and a collective right to freedom of religion cannot be derived therefrom. To guarantee a collective right as well, it therefore seems

necessary to go back to the text of Article 9(1) of the European Convention on Human Rights.

With the second proposed wording, an attempt is made to enshrine this principle in concise terms.

AMENDMENT 260

Proposed amendment to Article: 14

Submitted by: Alvaro Rodriguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Addition of two paragraphs 2 and 3, reading as follows:

"2. The exercise of these rights shall be subject only to such limitations as are prescribed by law and are necessary and proportionate for the protection of public order, health and morals or for the protection of the rights and freedoms recognised in this Charter.

3. No one shall be compelled to make any statement about his ideology, religion or beliefs."

Reasons:

The limitations on this right, laid down in the second paragraph of Article 9 ECHR, which should be included in the Article, are omitted for the reasons already set out in previous amendments and which should be set out here too.

The addition of a new paragraph 3 aims to increase, by means of a general prohibition clause, the scope of this right to freedom, which is of fundamental importance for individual self-determination in a democratic society. This addition is particularly appropriate in view of the future enlargement of the European Union and the incorporation of new Member States with a complex social and religious structure and reality.

AMENDMENT 261

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

- "1. Everyone has the right to freedom of thought, conscience and religion.**
- 2. No one shall be compelled against his conscience to perform military service under arms."**

Reasons:

It seems appropriate to enshrine the right of conscientious objection also in the Charter by means of the proposed paragraph 2. In addition, it should be pointed out here that the freedom of religion granted in paragraph 1 at the same time comprises the exercise of religion in community.

Shortening by any other means the rule set out in Article 9 of the European Convention on Human Rights, on which this Article is based, would not be acceptable.

AMENDMENT 262

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

"1. Everyone has the right to freedom of thought, conscience and religion.

2. Everyone has the right to refuse to do military service."

Reasons:

With reference to the horizontal Article H.1 (Scope of the Charter), the scope of Article 14(2) applies to military operations within the context of the EU crisis forces agreed upon at the Helsinki summit and currently being set up. It does not touch upon national law. The basic right to conscientious objection is a vital component of the freedom of conscience of the individual, constituting freedom from State pressure to kill.

AMENDMENT 263

Proposed amendment to Article: 14

Submitted by: EINEM/HOLOUBEK

Proposed text:

"Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom of the individual to change his religion or belief and the freedom, alone or in community with others and in public or private, to practise his religion or belief in worship, teaching, prayer and observance."

Reasons:

The first sentence corresponds to the text of the draft proposed by the Praesidium. The first sentence reproduces word-for-word the relevant second sentence of Article 9(1) ECHR.

By taking over Article 9(1) ECHR in full, in the first place debate on potential differences between the Charter and the ECHR – for instance, with regard to the right to practice religion publicly – is avoided. Secondly, by describing the guaranteed right more precisely, it is immediately clear to the citizen what rights he can derive from Article 14. The Charter is thus made easier to understand, because the citizen does not first have to look up Article 9(1) ECHR.

AMENDMENT 264

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

Add a second sentence:

“This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and private, to manifest his religion or belief, in worship, teaching, practice and observance.”

Reasons:

This addition, which takes over the wording of Article 9 of the ECHR, is particularly significant in that it enshrines the freedom to manifest religion or belief, as well as the collective dimension of the freedom of religion. These two aspects of religious freedom are of great importance in modern society, which is becoming increasingly multicultural. The addition is also justified by a desire to ensure consistency between Article 14 and Article 15 (Freedom of expression): in the latter, the second sentence of the corresponding Article of the ECHR, explaining the contents of the right (“This right shall include ...”), has been taken over. If the corresponding sentence on the subject of freedom of religion is not used this might give the impression of a weakening in the freedom of religion.

AMENDMENT 265

Proposed amendment to Article: 14

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Everyone has the right to freedom of thought, conscience and religion. **As regards religion, this right also includes public or private, individual or collective manifestations of religious communities.**

Reasons:

It is necessary to supplement the right to freedom of religion by freedom of worship.

AMENDMENT 266

Proposed amendment to Article: 14

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text, as follows:

For Part A, “Proclamation of Rights”

Add: “Limitations can be placed on this right only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 14 is the right guaranteed by Article 9 of the ECHR”

Reasons:

The limitations explicit in the relevant ECHR right are of fundamental importance. I do not believe they can be dealt with satisfactorily in a general horizontal article. They are integral to the right. My amendment also ensures that Article 14 is understood within the meaning of ECHR Article 9 and associated case law.

AMENDMENT 270

Proposed amendments to Article: 14. Freedom of thought, conscience and religion

Submitted by: Daniel TARSCHYS

Proposed text:

Adapt current draft to the language of Article 9 ECHR.

Reasons:

Draft Article 14 is said to reproduce Article 9 of the ECHR but it fails to state what the right includes, nor does it contain a clause on limitations. It is difficult to see why draft Article 14 does not state the content of the right when draft Article 15 does so with respect to freedom of expression. As regards limitations, see my comments on draft Article 12. The complete text of Article 9 ECHR should be confirmed in a part B of the Charter.

AMENDMENT 271

Proposed amendment to Article: 14

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Add the following paragraph:

"2. Freedom of individual and collective practice of religious belief shall be guaranteed."

Reasons:

The proposed paragraph guarantees the specific form of exercise of the religious freedom stipulated in the first paragraph: individually and collectively.

AMENDMENT 272

Proposed amendment to Article: 14

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed addition of a second sentence:

This right includes freedom, either alone or in community with others and in public or private, to manifest a religion or belief, in worship, teaching, practice and observance.

Reasons:

This addition is taken from Article 9 of the ECHR. It is geared in the main to European culture and should not be seen as arising from the horizontal provisions.

AMENDMENT 273

Proposed amendment to Article: 14

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Add the following to the proposed text:

Everyone has the right to freedom of thought, conscience and religion, to the extent that thought, conscience and religion observe the principles of tolerance and democracy.

Reasons:

In an area as delicate and explosive as this, reference to the general limitation clause is not sufficient.

Proposals for Article 14a

AMENDMENT 274

Proposed amendment to Article: 14

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Insert the following after Article 14:

"Article 14a. Freedom of research.

1. There shall be freedom of research.
2. Everyone has the right to be able to benefit from the results of research."

Reasons:

The Article plugs a gap in the text proposed by the Praesidium, by asserting freedom of research as a fundamental right.

Proposals for Article 15

AMENDMENT 275

Proposed amendment to Article: 15 Freedom of expression

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone has the right to freedom of expression **of his opinions and** freedom to receive and impart information (...).

These rights shall be exercised within the framework of any moral duties and responsibilities which the law may prescribe in accordance with the European Convention on Human Rights and Fundamental Freedoms.

Reasons:

The text of the basic Article has been shortened. A reference has been added to the limitations which already exist in the ECHR as the wording as it stands might give the false impression of conferring an absolute right.

AMENDMENT 276

Proposed amendment to Article: 15

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 15. Freedom of expression

1 (new). Everyone has the right to freedom of expression and to receive, hold and impart ideas and information. (Delete: 25 words)

2 (new). Expressions of cultural, national and regional diversity as well as plurality of opinion shall be respected.

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).

Paragraph 2 is intended to reflect Article 151 of the Treaty establishing the European Community and its Protocol on the System of Public Broadcasting in the Member States of the Treaty of Amsterdam.

AMENDMENT 277

Proposed amendment to Article: 15. FREEDOM OF EXPRESSION

Submitted by: Jordi SOLÉ TURA

Proposed text:

“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 authorities and regardless of frontiers.”

Reasons:

No change in meaning but better Spanish syntax.

AMENDMENT 278

Proposed amendment to Article: 15

Submitted by: Win GRIFFITHS, MP

Proposed text:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinion 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.

Reasons:

It is better to include the whole of the ECHR Article 10.1 for the avoidance of doubt on the licensing issue.

AMENDMENT 279

Proposed amendment to Article: 15

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

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. **Freedom of the press and reporting freedom shall be guaranteed. The bodies of the Union shall be under an obligation to provide the press with information.**
3. *Diversity of opinion shall be safeguarded.*
3. Art, science, research and teaching shall be free of constraint.

(Basic text = Meyer, addition in italics = Voggenhuber)

Reasons:

AMENDMENT 280

Proposed amendment to Article: 15

Submitted by: Prof. Dr Jürgen MEYER/Jo LEINEN/Hans–Peter MARTIN/Ieke VAN DEN BURG

Proposed text:

Article 15. Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Freedom of the press and broadcasting and reporting freedom shall be guaranteed. The bodies of the Union shall be under an obligation to provide the press and broadcasting services with information.**
3. **Art, science, research and teaching shall be free of constraint.**
4. **The powers of the Member States to ensure public broadcasting services shall not be affected.**

Reasons:

This proposed amendment repeats, in a slightly altered form, the proposal I submitted on 28 March (Contribution 60) and clarifies my original discussion draft (submitted on 6 January; Contribution 2).

Paragraph 1 retains the wording proposed by the Praesidium.

Paragraph 2 adds a new right not hitherto covered. It is, however, an undoubted fact that press and broadcasting freedom is one of the most important rights in a democratic policy governed by the rule of law. Such freedom forms part of the lifeblood of democracy. That is the reason for its inclusion in nearly all the Constitutions of the Member States.

The obligation to provide information covered in the second sentence is guaranteed in the Federal Republic of Germany by straightforward laws in the individual Länder. Although no State obligation on the press to provide information can be derived from Article 5(1), second sentence, of the German Basic Law, Maunz/Dürig/Herzog conclude in their commentary on the Basic Law that any Government or administration which has demonstrably laid itself open to the charge of hostility to the press must inevitably expect to be asked whether its behaviour is prompted exclusively by a quite acceptable circumspection vis-à-vis the press or whether it rather constitutes a general aversion to publicity, which runs counter to the principle of democracy.¹ It is particularly important for the Union to respect this principle since only now can a spirit of openness be said to be emerging.

Paragraph 3 adds a new right to the Praesidium proposal which was included in the previous Presidency proposal (CONVENT 13) and supplemented at the time by the word “teaching” at my suggestion.

Since the right expressed in paragraph 3 is included in nearly all the Constitutions of the Member States and applicant countries, it is difficult to understand why this paragraph has been removed from the present Presidency proposal (CONVENT 28). This right is, for example, included in Article 5(3), first sentence, of the German Basic Law, Section 13(3) of the Finnish, Article 16(1) of the Greek, Article 33(1), first sentence, of the Italian, Article 42(1) of the Portuguese, Article 20(1) of the Spanish, Article 59 of the Slovenian, Article 73 of the Polish and Article 70G(1) of the Hungarian Constitutions. It is also included in the Constitutions of Brandenburg (Article 31(1)), Mecklenburg-Western Pomerania (Article 7(1)) and Saxony (Article 21).

Freedom of research and teaching is an undisputed human right, which is to be found inter alia in Article 15 of the International Covenant on Economic, Social and Cultural Rights.

¹ Maunz/Dürig/Herzog et al.: Grundgesetz Kommentar [Basic-Law Commentary]. Munich, 1991, Volume 1 (Parts 1-29), Article 5, No 138.

Paragraph 4 provides a permanent guarantee for public broadcasting. This paragraph is in line with Protocol 23 to the Amsterdam Treaty and is moreover included as a principle in individual Constitutions of the Member States (Article 38(5) Portugal) and in some of the Constitutions of the East German Länder (Article 19(4), Article 20(2)).

The whole of Article 15 is accompanied by a limitation clause in many Constitutions and Human Rights Agreements. Given the stage reached in the Convention's discussions, such a limitation is not yet being formulated here since we must first be clear on the rights being included before considering limitations. It can however already be said that there could be a general limitation clause based on Article 20(2) of the International Covenant on Civil and Political Rights.²

² “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

AMENDMENT 281

Proposed amendment to Article: 15

Submitted by: Pervenche BERÈS

Proposed text:

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 freedom does not authorise racist or xenophobic propaganda. It does not prevent public authorities from putting in place licensing schemes for radio, television and cinema, or machinery to guarantee the pluralism of information.

Reasons:

Pluralism must be guaranteed if there is to be freedom of expression.

AMENDMENT 282

Proposed amendment to Article: 15 Freedom of expression

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Article 15. 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. Freedom of the press, broadcasting, cinema and other public media is guaranteed.
3. Art, science, research and teaching shall be free of constraint.

Reasons:

Title:

Freedom of information should be mentioned in the title.

Paragraph 2:

The right formulated in par. 1 may be interpreted as including freedom of the press, broadcasting and cinema.

However, for the sake of clarity, it is important to mention media freedom specifically, on the understanding that this does not mean any new powers for the EU, but recognition of Member States' powers, and that the dual system of public/private broadcasting services will continue. Express mention of freedom of the media would not only serve to show that the lessons of Germany's past have been learnt, but would also be a gesture towards the applicant countries, which were likewise deprived of media freedom for a long time.

Paragraph 3:

Express safeguards for art, science, research and teaching should be incorporated.

AMENDMENT 283

Proposed Amendment to Article: 15

Submitted by: Heinrich NEISSER

Proposed text:

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. **This Article shall not prevent Member States from requiring the licensing of broadcasting, television or cinema enterprises.***

Reasons:

The new sentence reproduces the 3rd sentence of Article 10(1) of the ECHR. The European Court of Human Rights has ruled that this sentence allows Contracting States to use licensing procedures to pursue goals relating specifically to broadcasting policy that are not included among the grounds for intervention listed in Article 10(2) of the ECHR, such as pluralism, objectivity, quality and balanced programming. During discussion of this draft Article it was argued, broadly speaking, that this sentence has no individual significance any more, not least owing to the "Television without frontiers Directive", which guarantees the freedom to broadcast across borders. However, it might be countered that the Directive covers only advertising, sponsorship, protection of young people and basic programme requirements (e.g. no violence), thus leaving areas in which there is no Community harmonisation. Member States' power to pursue specifically broadcasting-policy goals should not be minimised here. However, under no circumstances should these state licensing procedures call into question the core of this right to freedom of expression.

AMENDMENT 284

Proposed amendment to Article: 15

Submitted by: Guy BRAIBANT, personal representative of the President of the Republic and of the French Prime Minister

Proposed text:

Add, at the end of the Article "*it shall be exercised with due regard for the principles of financial transparency and political pluralism*".

Reasons:

This addition is in keeping with proposals from a number of Convention members. It spells out the scope of the right to freedom of expression and brings it up to date.

AMENDMENT 285

Proposed amendment to Article: 15

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

In Portuguese, “*ideais*” (ideals) should be replaced by “*ideias*” (ideas) (English unaffected).

AMENDMENT 286

Proposed amendment to Article: 15

Submitted by: R. VAN DAM, MEP

Proposed text:

Add the following new paragraph:

2. This right shall not be subject to any limitations beyond those possible under Article 10(2) of the European Convention on Human Rights.

Reasons:

The text would thus reflect the ECHR more closely.

AMENDMENT 287

Proposed amendment to Article: 15

Submitted by: Piero MELOGRANI

Proposed text *:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to **seek**, receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Art, science and research shall be free of constraint.**

Reasons: The proposal is to specify that freedom of expression includes freedom to seek information. Furthermore, it is deemed necessary to insert a second paragraph confirming the freedom of art, science and research which, moreover, was contained in Article 15 of working document CONVENT 13.

* Proposed amendments are in bold.

AMENDMENT 288

Proposed amendment to Article: 15

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add a paragraph 2, reading as follows:

2. The exercise of these rights shall be limited by observance of those rights recognised in this Charter, those established by the laws implementing them, those deriving from public safety, and in particular, the right to a good name, privacy and protection of children and young people.

Reasons:

In this case, perhaps more clearly than in any other case, there is a need to refer expressly to the limits of these rights, in accordance with the wording of previous amendments concerning this question.

AMENDMENT 289

Proposed amendment to Article: 15. Freedom of expression

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

- “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. *Freedom of the press and of broadcasting shall be guaranteed.*
2. *Art, science, research and teaching shall be free of constraint.*”

Reasons:

Although, in some Member States, the right to freedom of expression does cover freedom of the press and of broadcasting, a corresponding passage should be inserted into the Charter in order to make it clear that these fundamental rights are protected throughout Europe. Press and radio/television serve the purposes of information by comprehensive and truthful reporting and by disseminating ideas. They contribute to education and entertainment and are both a medium and a factor in the free formation of opinions. They take account of cultural diversity in Europe and promote European integration.

Member States' right to guarantee the continuing existence and development of public broadcasting services remain unaffected.

In addition, the German Länder think it essential that the Charter should include specific safeguards for art, science, research and teaching. This is also broadly in line with previously submitted suggestions for Article 15 in CONVENT 13.

AMENDMENT 290

Proposed amendment to Article: 15

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

The text of the Article should be replaced by the following:

- "1. *Everyone has the right to freedom of expression.*

2. *This right shall include freedom to hold opinions and to seek, receive and impart information and ideas without interference by public authority, regardless of frontiers, and without conditioning resulting from large media conglomerates.*

3. *The cultural and political pluralism of the mass media shall be guaranteed."*

Reasons:

Given the invasive power of modern mass media, the Article should be redrafted in terms which offer the citizen an effective guarantee against manipulation and conditioning.

AMENDMENT 291

Proposed amendment to Article: 15. Freedom of expression

Submitted by: Daniel TARCHYS

Proposed text:

Adapt the current draft to the language of Article 10 ECHR.

Reasons:

The draft purports to reiterate the principles of Article 10 ECHR. In fact the draft Article 11, para. 1 has omitted the last sentence of the ECHR, namely: “This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.

Draft Article 15 may create the impression that no limitations are permitted. It is important to reproduce the limitations in the ECHR here and not in a horizontal article (cf. comments under Art. 12).

AMENDMENT 292

Proposed amendment to Article: 15

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed text for a new title:

Freedom of expression and information

1. In the second sentence the term "**interference by public authority**" should be replaced by "**ensorship**".
2. The following two sentences should be added to the Article:

Everyone shall have the right to obtain information, without hindrance, from generally accessible sources. The freedom of dissemination of information shall be guaranteed.

Reasons:

The right to obtain information freely is the logical counterpart to freedom of expression and a basis for civic electoral choice.

The freedom of information logically also requires the dissemination of information to be protected as a fundamental right, not only by press, radio and film but by all possible technical media both present and future. This is why the general term "dissemination of information" should be used.

AMENDMENT 293

Proposed amendment to Article: 15

Submitted by: Frits KORTHALS ALTES

Proposed text:

The following new paragraph 2 should be added:

2. The right referred to in paragraph 1 may be limited only in accordance with the conditions laid down in Article 10(2) of the European Convention on Human Rights.

Reasons:

In view of the system proposed as regards limitations, the article should include a separate paragraph referring to Article 10(2) of the ECHR.

AMENDMENT 294

Proposed amendment to Article: 15

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend text to produce two-part text, as follows:

For Part A, “Proclamation of Rights”

Add to existing text: “Formalities, restrictions, conditions or penalties can be placed on this right only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 15 is the right guaranteed by Article 10 of the ECHR”

Reasons:

My amendment would ensure that Article 15 is understood within the meaning of the relevant ECHR right and its case law. I am also proposing a reference to the limitations in Part A, for much the same reasons I offered in relation to Article 14. In both cases I think it important to reflect the different wording of the limitations in the individual ECHR right. This could not be achieved in a single horizontal article as is proposed by the Praesidium.

AMENDMENT 295

Proposed amendment to Article: 15

Submitted by: Jean-Maurice DEBOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. The following should be added to the existing text after the phrase "interference by public authority":

... except in order to protect democracy, fundamental rights and the young.

2. The text as amended above becomes §1, with insertion of the following paragraphs:

. § 2: Freedom of expression implies the right to speak one's own language.

. § 3: Where one or more administrative languages have to be chosen for the sake of an efficiently functioning society, the choice must be made by law.

. §4 : Where an indigenous language is not an administrative language, it shall nevertheless remain a fundamental cultural feature contributing to Europe's rich cultural heritage.

. §5 : By this token, any indigenous language which is a regional language within the meaning of the European Charter of Regional or Minority Languages deserves respect, protection and aid. The detailed rules for implementing this principle shall be determined by law, whereby the requirements of efficiency must not be allowed to infringe fundamental rights and freedoms.

3. Insertion of a new Article 15a, reading as follows

The press, radio and television are part of freedom of expression. However, this freedom must take account of the essential need to protect the young, the general ban on any apology for violence and any statement of opinion capable of infringing human dignity. No other restriction may be formulated other than by law.

Reasons:

Re 1: In an area as difficult as this, giving rise to such strong emotions, it is no longer enough merely to refer to the general limitations clause.

Re 2: Problems in this regard are bad enough in the existing Member States, but it is well known that most of the applicants for enlargement have much more serious problems and many more of them too. The Convention cannot neglect the problem, either in principle or in practice.

Re 3 : With the press so essential in a democratic society, and with the growing social impact of television, it is necessary both to affirm a fundamental liberty and to define its limits.

Proposals for Article 16 as a whole

AMENDMENT 296

Proposed amendment to Article: 16

Submitted by: R. VAN DAM, MEP

Proposed text:

Delete Article 16.

Reasons:

This Article has no bearing on the powers of the Union's institutions or bodies.

Moreover, the organisation and funding of schools are matters closely bound up with national identity.

AMENDMENT 297

Proposed amendments to Article: 16. Right to education.

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the whole Article or align it with the ECHR (First Protocol Article 2)

Reasons:

Since the right to education can be assured only by Member States my first preference is to delete the draft Article.

If a revised text is nevertheless kept, I have the following suggestions: In draft paragraph 1 the link between the first and second sentence is weak. Vocational and continuing education are not compulsory.

Concerning draft paragraph 2: The establishment of schools is not limited under Swedish law but if a school seeks financial aid or the right to award degrees/certificates, certain conditions apply. Similar rules probably apply in other Member States. The present draft may be misinterpreted to imply changes in this respect.

Finally, concerning draft paragraph 3, I would suggest a closer alignment with the text of Article 2 of the first additional Protocol to the ECHR which has been ratified by most EU Member States, albeit with reservations/declarations. Attention should also be given to the right of adolescents to influence their own education.

AMENDMENT 298

Proposed amendment to Article: 16 - Right to education

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Deletion of this Article.

Reasons:

This provision would breach the current division of responsibilities between the Union and the Member States. Pursuant to Article 149 of the TEC, "the Community..." fully respects "the responsibility of the Member States for the content of teaching and the organisation of education systems".

AMENDMENT 299

Proposed amendment to Article: 16

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 16. Right to education and training

- 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 (delete: 1 word) independence of educational establishments shall be (delete: 2 words) respected.**
- 3. The right of parents to have their children (delete: 2 words) taught in accordance with their own 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. (Delete: 16 words)

The competence of the European Union in education policy is established under Article 149 of the Treaty establishing the European Community, and in vocational training under Article 150. The Union must respect the practice of free compulsory education (delete: 9 words).

The principle of academic freedom is not included in the Charter, 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.

AMENDMENT 300

Proposed amendment to Article: 16. Right to education

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. No person shall be denied the right to education (16 words deleted). This right includes the right to receive free compulsory education.
2. (new) There shall be equal access to state education facilities.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.

Reasons:

Paragraph 1:

The wording has been taken from Article 2(1) of the Additional Protocol to the ECHR. The Union has neither the power nor the budgetary resources to grant a subjective right to education or a right of access to vocational and continuing training. Setting the state a goal of this type seems inappropriate, and would anyway belong in the field of social rights.

Re paragraph 2:

The current paragraph 2 is now covered by Article 15(3) (freedom of teaching).

The new wording of paragraph 2 makes clear that the most that can be guaranteed is equal access to state educational institutions, not any more far-reaching subjective right.

AMENDMENT 301

Proposal for amendment to Article: 16

Submitted by: Pervenche BERÈS

Proposed text:

Title : [change affecting French text only]

1. Everyone has the right to education [change affecting French text only] 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, unless these are prejudicial to the child's development or socialisation.
4. State education must respect the principle of secularism.

Reasons:

In the French text, the word "education" should be replaced by "instruction" in order to establish a right/claim requiring positive action by the State.

AMENDMENT 302

Proposed amendment to Article: 16

Submitted by: Win GRIFFITHS, MP

Proposed text:

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.

Reasons:

I prefer the brevity of Article 2 of the Additional Protocol to the ECHR.

AMENDMENT 303

Proposed amendment to Article: 16. Right to education

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 16. Right to education

1. Everyone has the right of access to existing educational establishments. This right includes the right to receive free compulsory education.
2. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected."

Reasons:

The new wording of the first sentence of Article 16(1) makes clear that the duty on Member States to guarantee fair and equal access to educational institutions refers only to the capacity available. There is no question of any obligation to create new, additional capacity.

The objections to par. 2 are so serious as to require deletion. As currently worded, it would mean taking the founding of educational establishments out of all State control. However, this could not apply to private higher-education institutions, for example, where state authorisation will continue to be needed in order to guarantee that the education provided and the degrees awarded come up to minimum standards.

This makes the current paragraph 3 into paragraph 2. It is regarded as important that there must be no abuse of parental rights.

AMENDMENT 304

Proposed amendment to Article: 16. Right to education

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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 right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.

Reasons:

To keep the text of the Charter as close as possible to the text of Article 2 of the First Protocol to the European Convention on Human Rights, the second paragraph of the version in CONVENT 28 ["2. *The founding of educational establishments shall be free of constraint.*"] should be deleted.

AMENDMENT 305

Proposed amendment to Article: 16

Submitted by: François LONCLE

Proposed text:

Article 16:

Word paragraph 1 of this Article as follows:

Everyone has the right to education. This right includes the right to receive free compulsory education.

Reasons:

The reference to vocational training belongs with economic and social rights.

II. Proposed text:

Delete paragraph 2 of this Article.

Reasons:

In the interests of readability, it seems preferable that this Article should concentrate on the child's right to education, without any interference from questions relating to the founding of educational establishments. In any case, the founding of such establishments is not an absolute right.

AMENDMENT 306

Proposed amendment to Article: 16

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

- “1. Every child has the right to free compulsory basic education within age limits set by national legislation.
2. There shall be freedom of choice of educational establishment.
3. The right of parents or legal guardians to have their children educated in accordance with their religious or philosophical convictions shall be respected.”

Reasons:

This form of words reflects individual Member States' educational systems more closely. Given the potential restrictions on persons residing unlawfully in a country, universal entitlement to education ceases above the compulsory school age. Regarding paragraph 2, it should be noted that freedom of choice does not imply any right to be admitted.

AMENDMENT 307

Proposed amendment to Article: 16

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“No one shall be denied the right to education”

For Part B, “Definition of Rights”:

“The right in Article 16 is the right guaranteed by Article 2 of the First Protocol to the ECHR, read with any reservation made in respect of it”

Reasons:

The Praesidium draft contains provisions not found in the relevant ECHR right. In my opinion these accretions are unnecessary and I am told that they would have potentially very significant financial and other implications for EU institutions and for the Member States when acting as their agents.

The UK maintains an important reservation to the ECHR right: “The principle affirmed in the second sentence of Article 2 ECHR is accepted by the UK only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.” Other Member States have similar reservations.

My version ensures that Article 16 is understood within the meaning of Article 2 to Protocol 1 of the ECHR, associated case law, and any national reservations. The latter consideration reflects the principles of subsidiarity and national diversity. These seem highly appropriate in this area. It also ensures that parents’ rights, as so understood, are covered.

Community competence on vocational training is limited to supporting and supplementing Member States’ action (Article 140 and 150 TEC).

AMENDMENT 308

Proposed amendment to Article: 16

Submitted by: Heinrich NEISSER

Proposed text (relates solely to the statement of reasons):

Article 16. Right to education

1. *Everyone has the right to education ... [unchanged]*

Statement of reasons

This Article is based [...]

It was considered useful [...]

The principle of free education relates only to the attendance of classes; any additional services (textbooks, accommodation, etc.) may be provided in return for payment. Moreover, this Article does not in any way provide a basis for entitlement to the payment of an educational grant or scholarship. The principle of academic freedom [...]

Reasons:

The addition of these two sentences to the statement of reasons for Article 16 clarifies that not all services connected with compulsory education have to be free of charge - only the provision of education itself.

AMENDMENT 309

Proposed amendment to Article: 16. Right to education

Submitted by: Ben FAYOT

Proposed text:

1. Everyone has the right to education and the right to initial and continuing training. These rights include the right to receive compulsory education.
2. (to be deleted).
3. The right of parents to have their children educated in accordance with their philosophical convictions and in compliance with the laws of the country shall be respected.

Reasons:

Re 1. The first amendment is a matter of wording (dropping access to and adding initial).

Re 2. The Luxembourg Constitution does not proclaim freedom to dispense education. As it stands, the proposed text thus runs counter to our constitutional tradition and cannot be accepted.

Re 3. It would be useful to specify that this concerns the education of children in a general sense rather than teaching; thus and taught should be deleted.

This right should be respected but it is important to stress the significance of national laws in protecting children.

AMENDMENT 310

Proposed amendment to Article: 16

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace as follows:

1. Everyone has the right to equal and free access to schools providing compulsory education, which means that the public authorities must ensure that such schools exist in sufficient number.
2. The right of parents and subsequently of children to a free choice of school shall be respected.
3. It follows that the founding of educational establishments shall be free of constraint.
4. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be exercised while respecting the principle of tolerance and the principle of democracy, which include the setting out by the public authority of programmes leading to approved diplomas which may be recognised as equivalent throughout the European Union.
5. The existence and future development of the Union, on the one hand, and the interest of each child considered individually, on the other, are combined factors making necessary the systematic and progressive teaching of three languages which shall commence as soon as possible.

Reasons:

Re 1. Freedom of access to education and even more so the obligation to provide free education will remain mere wishful thinking unless someone takes care of the necessary expenditure.

Re 2. At a time when considerable pressure is being exercised for a return to separate education for girls and boys or to urge that each school of thought (and in practice every sect) be guaranteed respect for its beliefs, to the extent of undermining the child's right to health, it is essential that a distinction be made between the free choice of educational establishment and the necessary compliance with basic programmes.

Re 4. The requirements for the equivalence of diplomas also strengthens the need to guarantee the quality of such diplomas.

Re 5. Insofar as the diversity of languages should be considered a crucial component

of the European cultural heritage, which includes endogenous languages, the multicultural reality of Europe requires an effort to bring people closer.

Benjamin FRANKLIN wrote a little over two centuries ago that knowing and understanding ourselves better was the price we pay for peace.

This reflection remains entirely relevant and in today's Europe finds a particularly fertile field of application.

AMENDMENT 311

Proposed amendment to Article: 16

Submitted by: Simone BEISSEL

Proposed text:

The founding of educational establishments shall be subject to approval by the competent authority of the Member State on whose territory they are situated.

Reasons:

In order to avoid the setting up of establishments under the direction and/or management of sects or similar associations which represent a risk to the moral and psychological balance of young people.

Proposals for Article 16(1) and (1a)

AMENDMENT 312

Proposed amendment to Article: 16(1) and (2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to education. This right includes the right to receive free compulsory education.

Reasons:

The wording of the rule must be expressed positively in the Spanish version, as in the French version of the text. On the other hand, the reference to "vocational and continuing training" should be deleted since that is a social right, unlike the right to education. The fact that the right to education and to compulsory schooling includes the right to formal vocational training is a different matter since that is training which forms part of the educational system as an alternative to secondary education to minimum school-leaving age.

AMENDMENT 313

Proposed amendment to Article: 16

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

At the end of the first paragraph, add: "*the neutrality of which is guaranteed*".

Reasons:

It is essential to balance recognition of freedom to found educational establishments against assertion of the duty of neutrality of free and compulsory education.

AMENDMENT 314

Blank

AMENDMENT 315

Proposed amendment to Article: 16

Submitted by: Ieke VAN DEN BURG

Proposed text:

Article 16(1):

Everyone has the right to education and the right of access to vocational training throughout his working life (instead of "and continuing training") etc.

Reasons:

This addition flows from the right proposed in Article X in CONVENT 18. The French and English versions speak of "vocational and continuing". In Dutch, following on from the wording used in the earlier text, this is better expressed by "gedurende het gehele beroepsleven".

AMENDMENT 316

Proposed amendment to Article: 16

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

After the first paragraph, add the following:

"1a. Education aims not only to diffuse knowledge, but also to foster understanding between different cultures".

Reasons:

This amendment is based on the fundamental requirement within the Union for coexistence and mutual understanding between different cultures.

Proposals for Article 16(2)

AMENDMENT 317

Proposed amendment to Article: 16(1) and (2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. The founding of educational establishments shall be free of constraint, whilst respecting democratic principles and complying with national law.

Reasons:

It seems advisable to assert respect for democratic principles in the exercise of the right to found educational establishments, and to refer to the legislation of each Member State.

AMENDMENT 318

Proposed amendment to Article: 16

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

At the beginning of the second paragraph, add: "within the scope of the laws regulating the question".

Reasons:

It is essential to balance recognition of freedom to found educational establishments against assertion of the duty of neutrality of free and compulsory education.

In the second paragraph, a reference to the scope of the law is necessary in the name of the principle of subsidiarity.

AMENDMENT 319

Proposed amendment to Article: 16

Submitted by: Erling OLSEN

Proposed text:

Paragraph 2 should be deleted.

Reasons:

Paragraph 2 is not sufficiently precise to constitute a right. It could moreover lead to misunderstanding about the scope of paragraph 3.

AMENDMENT 320

Proposed amendment to Article: 16

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Paragraph 2 should be replaced by: "The freedom to found educational establishments shall be guaranteed".

Reasons:

The wording "free of constraint" is too vague. The proposed wording makes it clear that this is an obligation on the authorities.

AMENDMENT 321

Proposed amendment to Article: 16(2)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

The right to found educational establishments and to academic freedom shall be recognised.

Reasons:

Academic freedom is an essential element of educational freedom.

Proposals for Article 16(3)

AMENDMENT 322

Proposed amendment to Article: 16

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace paragraph 3 by the following:

"3. Parents have the right to educate and teach their children in accordance with their own convictions and respect for the persons of minors".

Reasons:

This is intended to take account of the rights of minors.

AMENDMENT 323

Proposed amendment to Article: 16

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:

Article 16. Right to education

3. The right of parents to have their children educated in accordance with their religious and philosophical convictions shall be respected. *Children's views should be taken into account in accordance with their age and level of development.*

Reasons:

The parents' right to decide their children's education and teaching is not absolute, but includes their obligation to take into account children's own views on any decisions taken concerning them, in accordance with the children's level of intellectual development. Article 16 in its proposed new form is most in line with Article 23 – relating to children's rights – of the Charter of Fundamental Rights and Articles 12 and 14 of the Convention on the Rights of the Child.

Proposals for Article 17

AMENDMENT 324

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association (remainder deleted).

Reasons:

The explicit reference to political parties in a Charter intended to be applied to the European Institutions could mean the recognition of European political parties. This would amount to an amendment to the Treaties, which goes beyond the instructions given by the Cologne Council.

AMENDMENT 325

Proposed amendment to Article: 17

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 17: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly (delete: 3 words) and association (delete: 2 words), including the right to form and to join trade unions, professional or voluntary organisations, (delete: 1 word) and 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.

Title VIII of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, recognises the formal role of management and labour in the conduct of social policy, including the representation and collective defence of workers and employers. Moreover, the Economic and Social Committee has been officially comprised of representatives of the various categories of economic and social activity since its foundation in 1958 (Article 257).

AMENDMENT 326

Proposed amendment to Article: 17. FREEDOM OF ASSEMBLY AND ASSOCIATION

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Everyone has the right to freedom of peaceful assembly and to freedom of association for civic or political purposes or in trade unions.”

Reasons:

This Article overlaps with Article 24 and gives rise to confusion. For example, Article 24 states that “Every citizen has the right to form a political party at the level of the Union ...”, whereas Article 17 recognises that “everyone” has this right, which may be interpreted as “everyone at any level”, extending beyond the Union and the citizens and countries constituting it. Furthermore, it makes no sense for the same concept – forming political parties – to be recognised in two Articles of the Convention.

AMENDMENT 327

Proposed amendment to Article: 17

Submitted by: Win GRIFFITHS, MP

Proposed text:

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.

Reasons:

It is not necessary to add political parties to the ECHR Article 11 text as political parties are a classic expression of the right to freedom of association and the issue of political parties organised at the European Union level is dealt with in Article 24.

AMENDMENT 328

Proposed amendment to Article: 17

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to freedom of peaceful assembly, (4 words deleted) cultural expression and association with others, including the right to form and to join trade unions or political parties.

Reasons:

AMENDMENT 329

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

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 (*next three words to be deleted*) and coalitions.

Reasons:

Separate Article concerning political parties – see Article 24.

Article 34 also refers to employers and employees.

AMENDMENT 330

Proposed amendment to Article: 17

Submitted by: Heinrich NEISSER

Proposed text:

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~~].

Reasons:

The right to form and to join political parties is already included in Article 24 of the draft, which did not yet exist when the present Article was being discussed. The reference to political parties in Article 17 is therefore unnecessary.

AMENDMENT 331

Proposed amendment to Articles: 17 and 24

Submitted by: Ben FAYOT

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right *at both national and European level* to form and to join trade unions or political parties. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

It seems pointless to make a distinction between national level in Article 17 and European level in Article 24.

It also seems pedantic to make a distinction at European level between a citizen (having the right to form a party) and a simple resident (having the right to join one). Existing European parties do not in any case have individual membership but only party membership, i.e. parties of parties.

AMENDMENT 332

Proposed amendment to Article:

Submitted by: R. VAN DAM, MEP

Proposed text:

Add the following new paragraph:

2. This right shall not be subject to any limitations beyond those possible under Article 11(2) of the European Convention on Human Rights.

Reasons:

The article would thus reflect the ECHR more closely.

AMENDMENT 333

Proposed amendment to Article : 17 Freedom of assembly and association

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right **to form, to join or not to join** trade unions or political parties.

Reasons:

Even though the freedom to refrain from doing something is implicit in “freedom”, that negative freedom should be expressly included in order to avoid any misunderstanding.

AMENDMENT 334

Proposed amendment to Article: 17

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to freedom of peaceful assembly and demonstration without prejudice to the restrictions imposed to safeguard public order.
2. Everyone has the right to form and to join associations or trade unions, except where they pursue unlawful aims or use unlawful means. This right may be subject to restrictions for members of the armed forces, armed corps or civil service.

Reasons:

The extension of the right to form political parties in Spain to those not possessing Spanish nationality does not comply with the internal system of Spanish law as such persons do not have the right to vote or to stand as candidates. This rule contradicts Article 24, which limits this right, at the level of the Union, to "citizens" of its Member States.

On the other hand, the omission of the limits of this right requires that, in accordance with Article 11 of the ECHR, express provision be made therefor in the Charter.

AMENDMENT 335

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"17. Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and association with others, including the right to form and join trade unions. Associations must respect the rights and freedoms guaranteed by this Charter."

Reasons:

The current wording, granting the right to freedom of peaceful association but merely to freedom of association without mentioning that it should be "peaceful", could lead to misunderstandings. It is surely not intended that association should not be peaceful.

Furthermore, all provisions on political parties should be concentrated in Article 24. In addition, the right of parties to decide themselves on the admission of new members must remain unaffected. Any claim to admission should be rejected.

Finally, it would seem useful to incorporate an anti-abuse clause here too. Extremist associations can generate the same threats as extremist parties.

AMENDMENT 336

Proposed amendment to Article: 17

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Delete “or political parties” and add “for the protection of his or her interests. These rights may be restricted only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 17 is the right guaranteed by Article 11 of the ECHR”

Reasons:

The right to form and to be free to join political parties is contained within the relevant ECHR right. Referring to it in Article 17 may have the undesirable effect of casting doubt on other features of the ECHR right which are not specified in the Article itself. I am also concerned that CONVENT 28 drafting implies that the state should guarantee the right for everyone to join any political party. I consider that this could interfere with the ability of political parties to determine qualifications for entry. My version ensures that Article 17 is understood within the meaning of ECHR Article 11 and the case law. Consistent with my general approach I consider that specific reference to restrictions must be made in the proclamation of the right itself.

AMENDMENT 337

Proposed amendment to Article: 17

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association.

Reasons:

The proposal to delete the final clause referring to political parties is because it is also in Article 24.

AMENDMENT 338

Proposed amendment to Article: 17

Submitted by: RODOTA' and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

"Everyone has the right to assemble peacefully, associate with others, form parties and trade unions and join them or not".

Reasons:

More precise and effective terms are used in this Article in order to assert a fundamental right which, in our view, renders Article 24 superfluous.

AMENDMENT 339

Proposed amendment to Article: 17

Submitted by: Ieke VAN DEN BURG

Proposed text:

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, political parties or non-governmental organisations. The European Union shall foster dialogue with social partners and non-governmental organisations.

Reasons:

The words "with others" should be included in the first part of the sentence (as in other language versions).

Non-governmental organisations have been added because of the increasingly important part they play in European policy-making.

The Social Dialogue with social partners and the Civil Dialogue with NGOs are an essential instrument of EU policy and should therefore be mentioned in the Charter.

AMENDMENT 340

Proposed amendment to Article: 17

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Everyone has the right to freedom of assembly and to freedom of association with others, including the right to form and to join trade unions or political parties. *This right may be limited only in accordance with the conditions laid down in Article 11(2) of the European Convention on Human Rights.*

Reasons:

As in the ECHR, it is preferable to specify for each right the conditions under which that right may be limited. The article has therefore been supplemented with a reference to the limitations listed in Article 11(2) of the ECHR. See also the reasons given for the amendment to Article 3.

AMENDMENT 341

Proposed amendment to Article: 17

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1. ... (identical to the form of words proposed for the article as a whole).

2. **Any Union citizen residing in a Member State other than that of which he is a national shall enjoy the rights referred to in paragraph 1 under the same conditions as nationals of that other Member State.**

AMENDMENT 342

Proposed amendment to Article: 17

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

In the second line of the text, insert "democratic" before "parties".

Reasons:

The Charter cannot encourage the formation of anti-democratic institutions.

Proposals for Article 18

AMENDMENT 343

Proposed amendment to Article: 18. Right of access to documents

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Delete.

Reasons:

Access to documents is not traditionally a fundamental right.

Article 255(1) of the EC Treaty adequately covers access to documents.

AMENDMENT 344

Proposed amendment to Article: 18

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 18. Right of access to documents

Everyone (delete: 10 words) **has a right of access to the documents of the institutions of the European Union and of subsidiary bodies and agencies established by the institutions and by the Treaty on European Union.** (delete: 8 words)

Statement of reasons

This Article is based on Article 255 of the EC Treaty, but ends the anomaly whereby only the Commission, Council and Parliament are specified. The reference to the TEU is intended to include any bodies created under the second or third pillars. The conditions and limits described in the remainder of Article 255 are still extant, and, for the other institutions, agencies and bodies, where relevant codes of conduct exist they will be respected.

Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, says that "... decisions are taken as openly as possible ..".

AMENDMENT 345

Proposed amendment to Article: 18

Submitted by: Erling OLSEN

Proposed text:

The following new paragraph should be added: "This right shall be exercised subject to the conditions and limitations laid down in the EC Treaty".

Reasons:

AMENDMENT 346

Proposed amendment to Article: 18

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace the present text by: "Everyone has a right of access to documents and information from the institutions and other bodies of the Union in all areas for which the Union has competence. That right may be limited in accordance with the limitations applicable to it in Community law and Union law".

Reasons:

There is no justification for limiting the right of access to documents to citizens of the Union or persons residing in the Union or to specific institutions of the Union. The proposed amendment refers, moreover, to the possibility of limitations being applicable in Community law (Article 255 of the EC Treaty) and in Union law. Such limitations are to be laid down in Community law and Union law.

AMENDMENT 347

Proposed amendment to Article: 18

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

“Everyone has a right of access to the information held by the institutions and bodies of the European Union.”

Reasons:

The scope of the fundamental rights should not be restricted needlessly as regards the persons covered. This was rightly not done in the case of Article 27 (Relations with the administration). Persons outside the Union, too, may have an interest in access to the European Union’s information.

“Information” is preferable to “documents”, because it also includes items such as databases.

The force of Article 1 of the TEU, which states that decisions are to be taken as openly as possible and as closely as possible to the citizen, is not confined to the European Parliament, the Council and the Commission. In order to ensure that the other EU institutions and bodies also heed this principle, it would be desirable for the Charter to show some ambition and widen the right of access to information to cover all EU institutions and bodies. Thanks to the European Ombudsman’s efforts, most of those institutions and bodies already have a procedure for access to their information.

The proposed amendment improves the article’s readability.

(This amendment obviously also involves a change to Article 48, as set out in CHARTE 4316/00 CONVENT 34, which should be converted from a non-progression clause into a non-regression clause.)

AMENDMENT 348

Proposed amendment to Article: 18

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add at the end: “This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community”.

Reasons:

Without prejudice to any references made in the horizontal clause, there is a need to make express reference here to the Article of the Treaty establishing the European Community which regulates the right in question; that reference was also included in earlier drafts (see Article 14 in CONVENT 8).

AMENDMENT 349

Proposed amendment to Article: 18. Right of access to documents

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

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

Reasons:

This clarification is in line with the proposal for a Regulation forwarded by the Commission to the Council on 28 January 2000 on the basis of Article 255 of the EC Treaty.

AMENDMENT 350

Proposed amendment to Article: 18

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Retain proposed text

For Part B, “Definition of Rights”:

“The right in Article 18 is the right guaranteed by Article 255 of the Treaty establishing the European Community and shall be exercised in accordance with the conditions and subject to any limitations made under and in accordance with that Treaty provision”

Reasons:

I am happy with the Praesidium draft text so far as proclaiming the right is concerned. The proposed part B ensures that Article 18 is understood within the meaning of the relevant treaty provision. The conditions and limitations described in Article 255 cannot be covered appropriately by a horizontal clause, as proposed by the Praesidium.

AMENDMENT 351

Proposed amendment to Article: 18

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

"Everyone has a right of access to the documents of the European Institutions".

Reasons:

The right of access to documents has been confirmed at length, with reference to both the subject-matter covered and the Institutions involved, in the Community regulations and case law which preceded the Treaty of Amsterdam.

AMENDMENT 352

Proposed amendment to Article: 18

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

"Every citizen of the Union has a right of access to information available from the bodies and other Institutions of the European Union".

Reasons:

The possibility of asserting the right of access to information should not be confined to the European Parliament, the Council and the Commission. The obligation to allow access to information should rather apply to every department of all bodies of the European Union and all other EU Institutions, e.g. the European Environment Agency, the Committee of the Regions, etc.

The object of this right should be based on a comprehensive definition of information, which is not adequately provided by the term "document" given developments in information technology. This should rather be a right which covers information not only in written form but also in the form of pictures, sound, EDP, etc., i.e. in all conceivable types of information storage, in order to preclude any circumvention of the provision through use of a means of information storage that is not covered and also to allow for future technological developments.

A limitation on persons enjoying this right should only come into play where the need for information is no longer justified by the democratic basis of citizenship of the Union. If there were plans to make this a universal right applicable not only to citizens of the Union but also to all non-EU citizens residing or legal persons having their registered offices in a Member State of the European Union, such a solution would run counter to the justification of a right of access to information on the basis of democratic principles. Non-EU citizens should not therefore enjoy this right of access. Nor should legal persons unless they are involved in or monitoring the democratic process as a group of citizens of the Union, e.g. citizen's initiatives and the like.

AMENDMENT 353

Proposed amendment to Article: 18

Submitted by: Mr Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Everyone has a right of access to the documents and information of the institutions and other bodies of the Union in all areas falling within the competence of the Union. This right may be limited in accordance with the relevant restrictions applicable under Community law.

Reasons:

There is no reason to restrict the right of access to documents to Union citizens or persons residing in the Union, or in relation to certain Union institutions. The proposal further refers to the possibility of imposing restrictions applicable under Community law (see also Article 255 EC). Such restrictions need to be laid down in Community law.

AMENDMENT 354

Proposed amendment to Article: 18

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every citizen of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, the Council and the Commission **and of the Member States where implementing Community legislation.**

AMENDMENT 355

Proposed amendment to Article: 18

Submitted by: Jean-Maurice DEBOUSSE, MEP, Alternate Member of the Convention

Proposed text:

- Incorporate Article 18 (Right of access to documents) into Article 27 (Relations with the administration).
- Alternative amendment: convert Article 18 into Article 27a.

Reasons:

To improve the Charter's readability and bring together in the same section two articles both dealing with relations between citizens and the Union's bodies.

AMENDMENT 356

Proposed amendment to Article: 18

Submitted by: Simone BEISSEL

Proposed text:

“... a right of access to the **official** documents of the European Parliament, of the Council and of the Commission.”

Reasons:

There is a risk that the confidentiality of communications and of internal documents might be breached, thereby causing major damage to the proper conduct of the European Union's affairs.

Proposals for Article 19

AMENDMENT 357

Proposed amendments to Article: 19. Data protection

Submitted by: Daniel TARSCHYS

Proposed text:

Rephrase this Article completely.

Reasons:

Personal data protection is a very sensitive field where the rights of the individual need to be balanced, i.a. against the freedom of expression, the need for transparency in public affairs and the need to protect public health and public order. The careful considerations contained in the Council of Europe's Convention on the protection of personal data and in national legislation is not adequately reflected in the draft Article.

Finally, the heading is too broad and should read "Personal data protection".

AMENDMENT 358

Proposed amendment to Article: 19. Data protection

Submitted by: Ingo FRIEDRICH

Proposed text:

Delete.

Reasons:

The text of this Article should be added to Article 12 as paragraph 2, on substantive and systematic grounds.

AMENDMENT 359

Proposed amendment to Article: 19

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 19. Data protection

Everyone has the right to determine the use and disclosure of (delete: 4 words) personal data (delete: 9 words).

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.

AMENDMENT 360

Proposed amendment to Article: 19

Submitted by: Erling OLSEN

Proposed text:

The following words should be added to this provision: "subject to the conditions laid down in Community legal acts pursuant to Article 286 of the EC Treaty".

Reasons:

AMENDMENT 361

Proposed amendment to Article: 19. Data protection

Submitted by: Jordi SOLÉ TURA

Proposed text:

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

Reasons:

The first part of the sentence reverts to the original thrust of this Article and is added to the existing text, where the words "his personal data" are replaced by "they" in order not to repeat the phrase.

AMENDMENT 362

Proposed amendment to Article: 19

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Add "... without prejudice to the powers of law-enforcement agencies to compile and use data in the cases provided for by law".

Reasons:

The right of everyone to determine for himself whether his personal data may be disclosed and how they may be used is not an absolute right.

AMENDMENT 363

Proposed amendment to Article: 19

Submitted by: Win GRIFFITSH, MP

Proposed text:

Everyone has the right to determine for himself/herself whether his/her personal data may be disclosed and how they may be used except in circumstances prescribed by law in connection with established infringements of the law.

Reasons:

On its own the original text would appear to give convicted criminals the right to decide whether their personal data ought to be published in the public interest.

AMENDMENT 364

Proposed amendment to Article: 19

Submitted by: Piero MELOGRANI, who wishes to endorse the amendment replacing Article 19 submitted by Professor RODOTA'

Proposed text:

(Text proposed by Professor Rodota':

1. Everyone has the right to respect for the confidentiality of personal data as part of their own identity.
2. Personal data may be collected only for legitimate purposes and subject to the principle of proportionality.
3. Everyone has the right to determine freely whether their personal data may be collected, used and transmitted, to be informed about the purposes and methods of processing, to have access to the information collected and to seek independent verification.
4. No one shall be subjected to checks by surveillance technologies which may be prejudicial to human dignity, rights or freedoms.)

AMENDMENT 365

Proposed amendment to Article: 19

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

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

Reasons:

In order to ensure completeness.

AMENDMENT 366

Proposed amendment to Article: 19

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.
2. Everyone has the right to know the data collected on him and, where appropriate, to request that corrections be made.

Reasons:

AMENDMENT 367

Proposed amendment to Article: 19

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to authorise the disclosure and use of data concerning himself.

Reasons:

AMENDMENT 368

Proposed amendment to Article: 19. Data protection

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Everyone has the right to determine for himself/herself whether his/her personal data may be disclosed and how they may be used, **including proprietary information and business secrets.**

Reasons:

The owner of the information should be able to decide whether to restrict its use, or to disclose it to third parties.

AMENDMENT 369

Proposed amendment to Article: 19

Submitted by: Heinrich NEISSER

Proposed text:

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, **insofar as he has an interest therein which should be protected.***

Reasons:

In the current version, the basic right to data protection seems to be worded in terms that are too absolute. It is also possible to conceive of situations in which the data subject should not have full freedom of decision-making. This manner of looking at such situations in relative terms is expressed by the second half of the sentence, which has also, for the past 20 years or so, formed part of the Austrian constitutional acquis (Section 1(1) of the Austrian Data Protection Act states that everyone is entitled to the confidentiality of the personal data concerning him, insofar as he has an interest therein that is worth protecting, particularly with regard to respect for his private and family life).

AMENDMENT 370

Proposed amendment to Article: 19

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Every natural person shall have a right to protection for his personal data.

Reasons:

1. Entitlement to this right, which forms part of the right to privacy, refers to natural persons.
2. It is not admissible for the disclosure and use of personal data to be in all cases subject to the consent of the data subject. Even if that is generally the case, in cases where data are obtained by the public administration for the performance of its duties, the use of the data in its possession cannot be subject to the consent of the data subject. Examples are the computerised records for tax, police and judicial purposes, etc. Respect for privacy and data confidentiality are a separate issue.
3. It is therefore proposed to revert to the wording of the previous text (CONVENT 8, Article 15).

AMENDMENT 371

Proposed amendment to Article: 19. Data protection

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 19. Data protection

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

Reasons:

From the point of view of the German *Länder*, it is imperative that the citizen should be thoroughly protected as early as the data collection stage.

Furthermore, on terminological grounds the German term "personenbezogen" would be preferable.

AMENDMENT 372

Proposed amendment to Article: 19. Data protection

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"Everyone has the right to determine for himself whether personal data *concerning him* may be *collected* and disclosed and how they may be used."

Reasons:

It is important to make clear that this provision applies from the time of collection of data by third parties. It should also be made clear that it applies to data concerning the person.

AMENDMENT 373

Proposed amendment to Article: 19

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

- "1. Everyone has the right to respect fro the confidentiality of personal data as part of their own identity.
2. Personal data may be collected only for lawful purposes and in compliance with the principle of proportionality.
3. Everyone has the right to determine freely whether personal data may be collected, used and transmitted, to be informed about the purposes and methods of processing, to have access to the information collected and to seek independent verification.
4. No one shall be subjected to checks by surveillance technologies which may be prejudicial to human dignity, rights or freedoms."

Reasons:

In accordance with the criteria laid down in European Directives (in particular 95/46/EC), this proposal makes clearer the scope of the protection necessary to safeguard the fundamental right to confidentiality.

AMENDMENT 374

Proposed amendment to Article: 19. Data protection

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Respect for the rights and freedoms laid down by this Charter, in particular the right to privacy, shall be guaranteed with regard to the processing, by whatever means, of any information concerning an identified or identifiable natural person. The information must be processed fairly and for specified purposes, and subject to the data subject's consent or to any other legitimate basis specified by law.

Reasons:

The alternative text proposed in the statement of reasons (CONVENT 8 version) is preferable. The text of the CONVENT 28 version is in any case too generally worded and does not allow for exceptions. The alternative text states the essence of the basic right and thus offers more effective protection of personal data.

AMENDMENT 375

Proposed amendment to Article: 19

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 19 to be deleted.

Reasons:

See the amendment to Article 12, which regulates data protection as part of the protection of privacy.

AMENDMENT 376

Proposed amendment to Article: 19

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone, **including legal persons**, has a right

AMENDMENT 377

Proposed amendment to Article: 19

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every natural person has a right to protection for his or her personal data”

For Part B, “Definition of Rights”:

“The right in Article 19 is the right under Article 286 TEC and Community Directives on data protection and is subject to the conditions and limitations laid down in them”

Reasons:

I do not consider that the “general rule” proposed by the Praesidium is justified by the relevant treaty provisions or the ECHR or as a result of the common constitutional positions of the member states. My version ensures that Article 19 is understood within the meaning of the relevant Council of Europe provision and Community Directives. To the extent that this right is “an aspect of respect for privacy”, it is already covered by Article 12 above.

AMENDMENT 378

Proposed amendment to Article: 19

Submitted by: Jean-Maurice DEBOUSSE, Alternate Member of the Convention

Proposed text:

The proposed text should be replaced by the following:

1. Everyone has the right to establish what data concerning him/her are held on any data file of which he/she is aware.
2. Everyone has the right to have errors in data concerning him/her rectified.
3. No personal data may be made public without the authorisation of the data subject.

Reasons:

With all due respect for the authors of the proposed Article, I feel that a provision of this type is pointless in an age when it is well known that personal data files (for example on people's buying, travelling, transport and reading habits, etc.) are bought and sold.

Furthermore, the proposed Article does not contain two rights whose usefulness seems beyond dispute, viz., the right to establish the existence of a data file and to rectification of any errors it may contain.

Lastly, the proposal that publication should be subject to authorisation seems more realistic than others, given the highly public nature of publication, if I may put it in those terms.

Proposals for Article 19a

AMENDMENT 379

Proposed amendment to Article: Insertion of a new Article after Article 19

Submitted by: Peter ALTMEIER, Member of the German Bundestag

Proposed text:

Article 20/Primacy of private action

"The European Union shall abide by the principle that private action must take precedence. In the areas within its competence, it shall take action only if and in so far as the objectives of the proposed action cannot be achieved, or cannot be sufficiently achieved, by private action.

Reasons:

The principle of the primacy of private action is a development of the general principle of subsidiarity and also of the principle of the protection of human dignity; the intention is that the scope for private action and enterprise should not be unduly restricted by European rules. It is also designed to prevent national efforts to expand the private sector through privatisation and deregulation from being frustrated at European level.

Proposals for Article 20

AMENDMENT 380

Proposed amendment to Article: 20. Right to property

Submitted by: Georges BERTHU, MEP

Proposed text:

Every person has the right to own, use, dispose of **and bequeath** lawfully acquired possessions. No one may be deprived of his possessions, **nor of a basic right of use**, except in the public interest and in the cases and under the conditions provided for by the law, **subject to fair and prior compensation.**

Reasons:

The right to property normally comes under national law. However, as it may be affected or even truncated by many Community measures, its inclusion in the Charter is acceptable.

We would therefore propose three amendments to the basic article:

- an explicit reference to the right to bequeath appears necessary, to avoid the right being undermined by indirect measures at the time of death;
- the reminder that the withdrawal of the right of use is tantamount to the withdrawal of the right to property; this aspect seems particularly significant in relation to Community activities;
- the specification that compensation must be paid before the expropriation takes place (not just a promise of compensation).

AMENDMENT 381

Proposed amendment to Article 20

Submitted by: Erling OLSEN

Proposed text:

The provision should be worded in accordance with Article 1 of the Additional Protocol to the ECHR. The words “a prior guarantee of” should in any case be deleted.

Reasons:

The wording proposed by the Praesidium leaves its interpretation open to doubt in a not insignificant way (for example the words “prior guarantee of fair compensation”), and may also give rise to uncertainty as to the scope of the obligation. I therefore prefer the wording in the Additional Protocol. Moreover, the question of fair compensation in the case of deprivation of property is included in the Court of Human Rights’ evaluation of whether the deprivation may be seen as a proportionate action. Part B should refer to the practice of the Court of Human Rights in this area.

AMENDMENT 382

Proposed amendment to Article: 20. Right to property

Submitted by: Jordi SOLÉ TURA

Proposed text:

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

Reasons:

The word “poseer” in the Spanish text is replaced by “propiedad” so as not to confuse the legal concepts of possession and ownership. At the end of the second sentence, the word “prior” is deleted because it imposes a constraint which not all EU Member States are in a position to accept. For instance, Article 33(3) of the Spanish Constitution refers to “compensation”, leaving it to the legislation to determine whether it is prior or subsequent.

AMENDMENT 383

Proposed amendment to Article: 20

Submitted by: Piero MELOGRANI

Proposed text * :

Every *natural or legal person* has the right ***to the enjoyment of his possessions, and to use and dispose of them within the limits and under the conditions laid down in national and Community law in accordance with the general interest.*** 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 ***or Community law*** and subject to a prior guarantee of compensation ***commensurate with the presumed trade value of the possessions.***

Reasons:

The right to property should be extended to legal persons and not be limited to individuals. The deletion of “*lawfully acquired*” is proposed (as it seems pleonastic, since the concept of property implies a lawful situation) as is the replacement of the expression “*enjoyment of his possessions*” used in Article 1 of the Additional Protocol to the ECHR. This offers the advantage of covering every type of violation of the freedom enjoy one’s possessions.

It should also be noted that the wording proposed by the Presidency makes no mention of limitations to the right to property, taken into account in Article 1(2) of the Additional Protocol to the ECHR, which refers to the many cases where state intervention does not involve the loss of that right, but rather restricts the owner’s powers in such a way as substantially to reduce the enjoyment of the possessions. It is therefore proposed to refer to the power to use and dispose of the possessions, while making it clear that it may be restricted by law and by Community law only in accordance with the general interest.

Finally, the concept of “*fair compensation*” should be replaced by that of “*compensation commensurate with the presumed trade value of the possessions*”, an expression which, without obliging to a *restitutio ad integrum*, has the advantage of anchoring the compensation for the loss of property to an objective parameter.

* The proposed amendments are shown in boldface.

AMENDMENT 384

Proposed amendment to Article: 20

Submitted by: Win GRIFFITHS, MP

Proposed text:

Every natural or legal person is entitled to the peaceful enjoyment of his/her possessions. No one shall be deprived of his/her possession except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.

Reasons:

I prefer to keep to Article 1 of the Additional Protocol to the ECHR.

AMENDMENT 385

Proposed amendment to Article: 20

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The present text should be deleted and replaced with the verbatim text of the ECHR.

Reasons:

Unnecessary departures from the ECHR should be avoided.

AMENDMENT 386

Proposed amendment to Article: 20

Submitted by: Pervenche BERÈS

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions. Use of these possessions must not conflict with the public interest. 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.

Reasons:

AMENDMENT 387

Proposed amendment to Article: 20. Right to property

Submitted by: Dr. Ingo FRIEDRICH

Proposed text:

First sentence: Every person has the right to own, use, inherit and dispose of lawfully acquired possessions. Use of these possessions must not conflict with the public interest. 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.

Reasons:

The incorporation of the law of succession in the guarantee laid down in the first sentence of the first paragraph serves to ensure that Article 1 of the Additional Protocol to the ECHR is unanimously regarded as also protecting the entitlement of the heir testamentary or legal heir to universal succession.

AMENDMENT 388

Proposed amendment to Article: 20. Right to property

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

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

AMENDMENT 389

Proposed amendment to Article: 20

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

The right to property is guaranteed (or, alternatively, every person has the right to enjoy his possessions), in accordance with its (their) social function and the general interest. No one may be deprived of their property except in the public interest and in the cases and subject to the conditions provided for by law and in return for fair compensation.

Reasons:

The first sentence in Spanish is technically unsound as it confuses the right to property with the right to possession, two different concepts which are not interchangeable. The reference to “lawfully acquired” possessions raises problems of interpretation for countries where the statute of limitation exists. The cases where property is acquired by criminal means must be dealt with under the Criminal Codes.

On the other hand, it is essential, as is done in the ECHR, to mention the limitations to the right to property derived from its social function, since the absolute right of Roman Law (“*ius utendi, fruendi et abutendi*”) has now been replaced by a right to property defined by its social function and its subordination to the general interest or common good.

Finally, the requirement that the compensation be calculated or be paid **prior** to the occupation of the expropriated possession is not compatible with Article 33 of the Spanish Constitution. Such a wording would make the Spanish Constitution incompatible with the Charter, requiring a constitutional amendment. Furthermore, as became clear at the meetings of the Convention, the prior character of compensation for expropriation is not a principle common to all Member States according to their constitutional traditions.

The somewhat clumsy wording proposed in the Praesidium’s text to overcome this objection [“subject to a prior guarantee of fair compensation”] does nothing to change our minds about rejecting the text, since it still requires that fair compensation be guaranteed prior to the beginning of the expropriation proceedings, which comes down to the same thing in the end.

It is worth noting that the ECHR says nothing about the prior nature of compensation.

AMENDMENT 390

Proposed amendment to Article: 20. Right to property

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 20. Right to property

1. Possessions and the law of succession shall be respected. Substance and limits shall be determined in accordance with national law. Possessions that derive from serious infringements of tax liability or from criminal offences or which are to be used for such purposes shall not be protected.
2. Use of these possessions must not conflict with the public interest.
3. Expropriation or a similar measure is permissible only if it is in the public interest and subject to compensation and only in the cases and subject to the conditions provided for by law. In order to protect the person concerned, provisions governing the nature and the degree of compensation should be laid down in this Charter. The compensation must be fair.”

Reasons:

The incorporation of the law of succession in the guarantee laid down in the first sentence of the first paragraph serves to ensure that Article 1 of the Additional Protocol to the ECHR is unanimously regarded as also protecting the entitlement of the heir testamentary or legal heir to universal succession, even if Article 1 of the Additional Protocol does not explicitly refer to the law of succession. The verbs “respect” and “guarantee” both ensure that the Charter contains a fundamental decision regarding property and the law of succession. However, it follows the wording of Article 1 of the Additional Protocol to the ECHR, thus making the proposal more acceptable.

Paragraph 1, second sentence contains two statements. Firstly, the provision leaves it to the Member States to determine the substance and the limits of the law. Secondly, it states that substance and limits with regard to property and the law of succession shall be laid down by law.

Paragraph 1, sentence 3 contains a clarification and sends a signal a barrier at European level against drugs trafficking and other forms of organised crime. This addition to the text stems from

the SPS parliamentary party's draft legislation of 4 February 1994 relating to Article 14 GG (BT-Drucks. 12/6784; see also Jürgen Meyer/Wolfgang Hetzer ZRP 1997, 13; and Jürgen Meyer in Article 10 of his discussion draft of 6 January 2000 which was submitted to the Convention – CHARTE 4102/00).

Paragraph 2 is the basis of the social cohesion demanded by all Convention members. As the Charter of Fundamental Rights contains no value judgement regarding the social state principle (which under Germany's Basic law forms the antithesis of the existing system of property ownership), the emphasis on social cohesion is of particular importance.

Paragraph 3 does not adopt the distinction between “deprived of his possessions” and “control the use of property” contained in Article 1 of the Additional Protocol to the ECHR. Rather, it takes the terminology of the Basic Law and makes the qualitative assessment of a measure such as expropriation (subject to compensation) or the determination of substance and limits dependent on the way in which the law is applied. For the purposes of the ECHR, “deprived of his possessions” essentially means formal deprivation. This (and this alone) involves obligatory compensation. This is not without problems, since restriction of the rights of property owners that involves deprivation can also take place outside the framework of formal expropriation proceedings. Moreover, the term “deprivation of property” (as defined by the Federal Constitutional Court) extends only to loss of property as the severest form of expropriation. Below this threshold, however, further restrictions on the rights of property owners that involve deprivation are possible.

Paragraph 3, first sentence also mentions a measure similar to expropriation (“a similar measure”). Rather than follow the Praesidium's proposal and cause confusion by introducing a second expression (“aus Gründen des öffentlichen Interesses”), the provision follows on from paragraph 2 by repeating the phrase “in the public interest” (“zum Wohl der Allgemeinheit”)¹. The proposed text (“by law”) ensures that administrative as well as legal expropriation is permissible. This obviates the need to supplement the provision with the phrase “or pursuant to a law”.

Paragraph 3, second sentence should replace the text proposed by the Praesidium, which requires expropriation to be preceded by an undertaking to pay compensation. Admittedly, this proposal moderates the first version of the draft, which required prior compensation. However, it still falls short of practical needs. In many Member States it is possible to go to law to contest the amount at which compensation is fixed. Promises cannot be given here, least of all before expropriation. Paragraph 3, second sentence emphasises (as a point against) the protection of the individual because it compels national law to be clear about whether the seizure of property itself is an act which constitutes expropriation and what compensation (paid from the public purse) it considers fair.

¹ Not applicable in the English version

AMENDMENT 391

Proposed amendment to Article: 20

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Everyone is entitled to the peaceful enjoyment of his or her possessions. Public bodies may interfere with possessions or the way they are used only in specified, limited circumstances”

For Part B, “Definition of Rights”:

“The right in Article 20 is the right in Article 1 of the Additional Protocol to the ECHR”.

Reasons:

I am not in favour of an approach which seeks to “update the wording of the Convention”. The Convention is a living document and kept up to date by the jurisprudence of the Strasbourg Court. I consider that unnecessary and likely to produce new and uncertain obligations, potentially inconsistent with the ECHR, for the EU institutions and Member States acting on their behalf. My version ensures that Article 20 is understood within the meaning of the relevant ECHR right and associated case law.

AMENDMENT 392

Proposed amendment to Article: 20

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be deprived of the property of lawfully acquired possessions, except in the public interest and in the cases and subject to the conditions provided for by law and in return for fair compensation.

Reasons:

To eliminate the confusion in the draft between property and possession.

To remove the reference to “prior” compensation.

AMENDMENT 393

Proposed amendment to Article : 20

Submitted by: Daniel TARCHYS

Proposed text:

Delete “prior”.

Reason:

There is no such provision in the national legislation of many Member States, including Sweden.

AMENDMENT 394

Proposed amendment to Article : 20

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace Article 20 by the following :

- “1. Every person has the right to own lawfully acquired possessions.
2. The right to property may be restricted by law in the general interest and in order to ensure the social function of property.
3. 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, without prejudice to the exceptions laid down by criminal law.”

Reasons:

This text aligns the rules on the right to property on those in the Member States' Constitutions.

AMENDMENT 395

Proposed amendment to Article: 20. Right to property

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Every natural or legal person is entitled to the peaceful enjoyment of his 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.

Reasons:

The first sentence takes over the text of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

AMENDMENT 396

Proposed amendment to Article: 20

Submitted by: Paul-Henri MEYERS, representative of the Luxembourg Government

Proposed text:

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 the prior granting of fair compensation.

Reasons:

The term "guarantee" leaves open the amount of compensation to be awarded in the case of expropriation. Replacing "guarantee" by "granting" makes it clear that the expropriated person must have a decision on the amount of the compensation and the deadline for its payment.

AMENDMENT 397

Proposed amendment to Article: 20

Submitted by: Ieke VAN DEN BURG

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions within the limitations that may be imposed by the authorities in the general interest, etc.

Reasons:

The second paragraph of Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedom states that an authority must also be able to enforce laws in the general interest which may limit the exercise of property rights. This is made clear in the statement of reasons but in the text the general interest is mentioned only in connection with possible expropriation. In (national and European) practice, legal conflicts arise more frequently in connection with this limitation of the exercise and utilisation of property rights.

It is therefore important to include that element explicitly in the text of Article 20.

AMENDMENT 398

Proposed amendment to Article: 20

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the cases referred to in Article 1 of the First Protocol to the ECHR. The preceding provisions shall not in any way impair the right of the Union to enforce those provisions of Community law which are necessary within the Union to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Reasons:

This Article is based on Article 1 of the First Protocol to the ECHR. It concerns a fundamental principle shared by all national constitutions. In order to avoid misunderstandings, it is advisable - partly in view of the case law of the European Court of Human Rights – to follow the wording of Article 1 of the First Protocol as closely as possible.

AMENDMENT 399

Proposed amendment to Article: 20

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions **subject to the restrictions imposed by the general interest.** No one may be (rest unchanged).

AMENDMENT 400

Proposed amendment to Article: 20

Submitted by: Simone BEISSEL

Proposed text:

delete "... subject to a prior guarantee of fair compensation" or possibly "provided for by law and subject to compensation".

Reasons:

In the current system, the prior guarantee of fair compensation would block all expiry procedures, and in any event for the expropriated party the compensation is never fair.

Proposals for Article 20a

AMENDMENT 401

Proposed amendment to Article: insertion of two new Articles after Article 20

Submitted by: Peter ALTMAYER, Member of the German Bundestag

Proposed text:

Article 21/ Prohibition on expulsion

“Every person is entitled to live peace, security and dignity in his place of residence, home and country. No one may be driven from his home by force or coercion, or compelled to flee. Displaced persons and refugees are entitled to return to their traditional homes.”

Article 22/ Rights of minorities

“The identity and the rights of minorities and their members, as well as linguistic and cultural diversity in the European Union, shall be respected and protected.”

Reasons:

The 20th century saw millions of people driven from their traditional homes by totalitarian regimes in Europe and other parts of the world. Even very recently, in the spring of 1999, the expulsion of several hundred thousand people from Kosovo led to NATO military intervention against the criminal regime of the Serbian dictator Milosevic. At the same time, the rights of minorities were and are repeatedly violated. Expulsion and contempt for minority rights are among the most serious and most common human rights violations in Europe. It would therefore seem essential for these rights to be expressly laid down in the Charter.

Proposals for Article 21

AMENDMENT 402

Proposed amendment to Article: 21

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this article entirely

Reasons:

The Praesidium text shows the great difficulty of formulating the relevant provisions concerning this sensitive subject in an acceptable way. Protocol 4 to the ECHR has not been accepted by all the Member States. Moreover the text is confined to non-EC citizens, which is understandable but incompatible with the Refugee Convention. Article 63 TEC quotes the title of the 1951 Convention and the 1967 Protocol; but it does not assert a right to asylum. Neither is it true to say that Article 63 incorporates the 1951 Convention into Community law; in fact it provides for new First Pillar legislation in accordance with the 1951 Convention. I consider that development of an acceptable text on asylum rights is beyond the reach of the Convention and that, in the time available, the matter should be reserved for separate consideration by the Member States.

AMENDMENT 403

Proposed amendment to Article: 21

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 21. Right to asylum and expulsion

1. Nationals of third countries shall have the right to asylum in the European Union when in justified fear of political persecution or inhumane punishment, and 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 (new). Asylum seekers shall have access to fair and efficient determination procedures, including reasoned decisions and the right to an appeal with suspensive effect.

3 (ex 2). Collective expulsion of (delete: 1 word) third country nationals is prohibited.

Reasons:

The right of asylum is a universal right under the terms of Article 14 of the Universal Declaration of Human Rights. The text of paragraph 1 is based on Article 63 TEC which incorporates the Convention on Refugees into Community law.

Paragraph 2 of this Article is based on best practice within the Member States of the European Union, which itself is in the process of developing a common asylum policy according to the Treaty of Amsterdam.

Paragraph 3 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. (delete: 20 words) 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.

AMENDMENT 404

Proposed amendment to Article: 21

Submitted by: Erling OLSEN

Proposed text:

The expression “nationals of third countries” must be changed to “everyone”. Moreover, it must be specified that there is a right to seek asylum “in any Member State of the European Union”.

Reasons:

Under the Geneva Convention on the legal status of refugees, everyone has the right to seek asylum. The comments on the article might refer to Protocol 29 on asylum for citizens in the Member States of the European Union.

AMENDMENT 404

Proposed amendment to Article: 21

Submitted by: Piero MELOGRANI

Proposed text*:

Right to asylum and *prohibition on collective expulsion*

1. ***Everyone*** shall have the right to asylum in the European Union in accordance with the rules of ***international asylum law as laid down, in particular, in*** 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.

Reasons:

The first proposed amendment concerns the title of this Article: the use of “*right*” in connection with “expulsion” is infelicitous. Moreover, to prevent baseless discrimination, the right to asylum should – as laid down in Article 3 of the Geneva Convention relating to the Status of Refugees – cover everyone, including stateless persons, and not just “*nationals of third countries*”; this is also the position argued by Amnesty International in its submissions to the Convention.

Lastly, it should be made clear that the Geneva Convention, albeit central, is not the only international instrument for the protection of refugees. The proposed wording would mean that relevant future agreements would be automatically incorporated.

* Proposed amendments are in bold.

AMENDMENT 405

Proposed amendment to Article: 21

Submitted by: Win GRIFFITHS, MP

Proposed Text:

1. Nationals of third countries shall have the right to seek 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.

Reasons:

The right to asylum is not automatic but anyone does have the right to seek asylum.

AMENDMENT 406

Proposed amendment to Article: 21

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Any person who has a justified fear of persecution shall have the right to asylum in the European Union pursuant to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees. Grounds for asylum specific to women shall be taken into consideration.
2. No one may be expelled to a State if there are valid reasons for assuming that the measures referred to in paragraph 1 are likely to be carried out.
3. Collective expulsions of aliens are not permitted.
4. Any person who applies for asylum shall be entitled to admittance, protection and support.
5. Any person who is granted asylum shall be entitled to reunion with their family.

Reasons:

AMENDMENT 407

Proposed amendment to Article: 21

Submitted by: Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN/Ieke VAN DEN BURG

Proposed amendment:

Article 21 Asylum and expulsion

1. Any person who faces political persecution or inhuman or degrading punishment or treatment shall have the right to asylum. Grounds for asylum specific to women shall be taken into consideration.
2. Collective expulsions of aliens are prohibited.

Reasons:

The amendment restates – in slightly amended form – the proposed amendment which I submitted on 29 March (Contrib. 76) and clarifies my original discussion draft (submitted on 6 January; Contrib. 2).

The fundamental right to asylum is also considered in the proposal of the Praesidium. This is expressly welcomed as the Union will in the future acquire powers in this area pursuant to Article 63 of the EC Treaty.

The right to asylum is laid down inter alia in Article 14 of the Universal Declaration of Human Rights, in the constitutions of the Federal Republic of Germany (Article 16a), France (the preamble

to the 1946 constitution which is still in force), Italy (Article 10), Portugal (Article 33(6), Spain (Article 13(4), Slovakia (Article 53) and Poland (Article 56).

The inclusion in paragraph 1, second sentence of grounds for asylum specific to women is based on a realisation that is gaining in international acceptance, namely that women as a sociological group frequently face particular forms of persecution. In this connection the systematic rape of Muslim women during the armed conflict in former Yugoslavia, together with the fact that rape is regarded as a specific war crime by the UN, should be noted.

By incorporating such a clarification of persecution, the Union would be contributing towards the affirmation of a modern fundamental right that is already recognised in specific cases.¹ The wording proposed here is expressly welcomed by *Amnesty International*, *PRO ASYL* and *Terre des Femmes*.

Protection from expulsion as laid down in the amendment proposed previously (Contrib. 76) in the cases referred to in paragraph 1 has therefore been removed from this amendment because it has now been incorporated by the Praesidium in the second sentence of Article 4. This is expressly welcomed and is in keeping with the constitutions of many Member States (Finland, France, Greece, Italy, Portugal, Spain) and with Article 3 of the UN Convention against torture or other Cruel, Inhuman or Degrading Treatment or Punishment and Article 33(1) of the Geneva Convention relating to the Status of Refugees.

Paragraph 2 incorporates the wording proposed by the Praesidium.

¹ Magdeburg Administrative Court on 20 July 1996, coalition agreement of the Green/SPD Federal Government of 20 October 1998.

AMENDMENT 408

Proposed amendment to Article: 21

Submitted by : Pervenche BERÈS

Proposed text:

Any person not resident in a Member State, or resident in a Member State the rights of which have been suspended in the Union, shall have the right to asylum in the European Union in accordance with international rules.

Reasons:

The right to asylum should be opened to stateless persons.

The reference to the Geneva Convention makes the wording cumbersome and makes the Charter dependent on the assessment of a text over which the Union has no control.

AMENDMENT 409

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by : Dr Ingo FRIEDRICH

1. (new) Politically persecuted persons who do not belong to the Union shall be protected 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. (new) 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.
3. Collective expulsion of aliens is prohibited.

Reasons:

The Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 already offer sufficient international minimum standards for the treatment of refugees which are binding on Member States.

However, the Geneva Convention does not guarantee a right to asylum but only rights in the context of asylum. A reference to the Geneva Convention in a catalogue of fundamental rights might give the impression that Member States wanted to elevate the legal status of the Geneva Convention to the level of an individual fundamental right. This, however, is not the case.

Paragraph 2 is taken from former Article 4, second sentence.

AMENDMENT 410

Proposed amendment to Article: 21

Submitted by: Heinrich NEISSER

Proposed text:

Article 21. The right to asylum and expulsion.

1. Everyone 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.

Reasons:

In order not to fall below the level of protection of the Geneva Convention the right to asylum should basically be guaranteed to everyone and not only nationals of third countries. However, the acquis in accordance with the Protocol to the EC Treaty on asylum for nationals of the Member States of the EU (added by the Amsterdam Treaty) remains unchanged.

AMENDMENT 411

Proposed amendment to Article: 21

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:

Article 21. Right to asylum and expulsion

1. *Everyone 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. The expulsion order shall guarantee the right of the individual to present reasons against his expulsion before a court or any other independent body.*

Statement of reasons:

The right to asylum should be guaranteed to anyone applying for asylum in the territory of the European Union, not only to nationals of third countries. This wording is taken from the Convention on the Status of Refugees, to which there is also a reference in the text of this Article.

The right of the individual to have an expulsion order examined before an impartial body is in line with Article 13 of the UN Covenant on Civil and Political Rights which has been ratified by all the Member States.

AMENDMENT 412

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 21. Right to asylum and expulsion

1. The protection of politically persecuted persons who do not belong to the Union shall be guaranteed in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to status of refugees.
2. Collective expulsion of aliens is prohibited.
3. 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."

Reasons:

The wording proposed by the Presidency, i.e. "Nationals of third countries" makes no distinction at all between types of asylum seekers. It does not distinguish between politically persecuted persons and those seeking to enter for other reasons. Limiting the group of beneficiaries to politically persecuted persons takes account of the idea of the need for protection which lies at the heart of asylum.

The wording proposed by the Presidency i.e. "... shall have the right to asylum" suggests that the norm should be interpreted as an individual right under public law. Given Member States' heterogeneous legal position this concept appears to be too narrow. In view of the binding force of the Charter for EU bodies, it is important that a wording be found that also covers constitutions which merely provide for institutional guarantees relating to asylum. If an individual right were laid down EU bodies would be forced to act against those Member States whose constitution only provides for institutional guarantees. The wording proposed by the German Länder offers sufficient leeway here.

The ban on expulsion and extradition has been added to Article 21, which logically speaking is its rightful place, and not Article 4 as in CONVENT 28.

AMENDMENT 413

Proposed amendment to Article: 21

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Article 21. Right to asylum and expulsion.

1. Anyone who is politically persecuted or exposed to inhuman or degrading treatment shall have a right to asylum. Account shall be taken of grounds for asylum relating specifically to women.
2. No one may be expelled to a State if there are valid reasons to assume that the acts described in paragraph 1 are a threat after expulsion. This also applies in particular to conscientious objectors from third countries in which there is no right to refuse to serve in a war.
3. Collective expulsion of aliens, male or female, is prohibited.

Reasons:

This proposed amendment basically draws on Professor Meyer's proposed amendment of 24 March 2000. The addition of the right to protection from expulsion for conscientious objectors goes beyond that proposal. The reference in the Presidency's proposal to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees belongs in the statement of reasons relating to Article 21. It must be ensured that the fundamental right to asylum is individually enforceable through legal action and that it does not degenerate into an act of mercy by the State.

AMENDMENT 414

Proposed amendment to Article: 21

Submitted by: VITORINO, Commission representative at the Convention

Proposed text:

The article could be split into two separate articles, one to deal with the right to asylum and the other with expulsion (Article 21(2) is not altered in substance):

“Article 21. Right to asylum

The right to asylum is guaranteed in compliance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and with other relevant treaties.

Article 21a. Expulsion

Collective expulsion is prohibited.”

Reasons:

1. Grouping asylum and the ban on expulsion in the same article is incompatible with the spirit of the conclusions of the Tampere European Council, which made a clear distinction between the problems of asylum and those of aliens' residence.
2. For a person who has the right of asylum, a neutral wording should be adopted, in compliance with the Treaties and in particular the Protocol on asylum for nationals of Member States of the European Union.

AMENDMENT 415

Proposed amendment to Article: 21

Submitted by: François LONCLE

Proposed text:

Word paragraph 1 of this Article as follows:

“Persons covered by the Geneva Convention of 28 July 1951 and by the Protocol of 31 January 1967 relating to the status of refugees shall be granted refugee status in the European Union, under the conditions laid down in those texts.”

Reasons:

This amendment is intended to remove two ambiguities in the present text:

- the first is the implication that the benefit of the Geneva Convention is limited to certain categories of persons, whereas in fact that text applies universally;
- the second is that this text mixes up the right of asylum, that is admission to the territory, which comes under the jurisdiction of each State, with refugee status, which is regulated by the Geneva Convention.

AMENDMENT 416

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone has the right to asylum in a Member State of 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.

Reasons:

In accordance with the obligations of Member States under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, every application for asylum must be treated individually, whether made by a citizen of the Union or a person who is not a citizen of the Union. Hence the proposed extension *ratione personae* of the right to asylum.

In the absence of a genuine European right to asylum, it is technically more correct to speak of a right to asylum in accordance with the law of the EU Member States.

AMENDMENT 417

Proposed amendment to Article: 21(a) (new): Prohibition of expulsion

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

21(a) (new): Prohibition of expulsion

(New) The citizens of the European Union have a right to their home country. No one may by force of compulsion be expelled from his ancestral home, his place of residence or his country or be forced to flee. Displaced persons or refugees shall have the right to return to their ancestral home country.

Reasons:

In the 20th century millions of people were expelled by totalitarian regimes from their home countries in Europe and throughout the world. Only recently in the spring of 1999 the expulsion of several hundreds of thousands of people from Kosovo led to the military intervention by Nato against the criminal regime of Serbia's dictator Milosević.

The draft of Article 21(2) provides that the collective expulsion of aliens is prohibited. However, it is important that not only aliens, especially nationals from third countries, are protected by this right but also citizens of the European Union.

AMENDMENT 418

Proposed amendment to Article: 21b (new): Protection of minorities

Submitted by: Dr. Ingo FRIEDRICH

Proposed text:

21b (new): Protection of minorities

(New) The identity and the rights of historically-rooted and long-established minorities and their members, as well as linguistic and cultural diversity in the European Union, shall be respected and protected.

Reasons:

The rights of minorities are continuously violated even today. Expulsion and disregard for minority rights are among the most serious and the most frequent human rights violations in Europe.

AMENDMENT 419

Proposed amendment to Article: 21

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

- Convert Article 21(2) into Article 4(3) in order to combine issues relating to expulsion.
- Change the title of Article 21 as it now concerns only the right of asylum.
- Replace the proposed version of Article 21 with the following text:
 1. The European Union shall grant the right of asylum to any third-country national whose life is threatened or who is exposed to inhuman or degrading treatment. However, persons enjoying this right shall undertake to observe and observe in practice both the principles of tolerance and democracy and the fundamental laws of the Union and its Member States.
 2. When the reasons for the application are reviewed, grounds relating specifically to women may be taken into account.
 3. Collective expulsions of refugees or other aliens or expulsions aimed specifically at one nationality or religious or ideological group are prohibited.

Reasons:

A Union of 400 million people cannot guarantee the right of asylum to a global population outside the Union of over 5 billion human beings without fundamentally impugning the well-being of its inhabitants.

Moreover, the right of asylum has from time immemorial been regarded primarily as a personal right (which justifies references to it as such both in this section and elsewhere in the Charter). If there is a desire to treat it as a collective right, it should be dealt with in the relevant section.

Furthermore, good reasons have been found for not quoting legal sources thus far in the Charter, and this rule should not be modified for this one Article.

Lastly, it must be emphasised that the right of asylum is not conceived of as simply involving residence but as an act of adherence to the fundamental values of the Union as reflected moreover in the Charter.

The other changes are aimed at improving the form and do not alter the substance.

Proposals for Article 21(1) and (1a)

AMENDMENT 420

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

1. Nationals of third countries shall have the right to asylum in the **Member States of 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.

Reasons:

Although there is a common asylum policy, it remains the fact that pursuant to Article 63 of the TEC it is the Member States which grant or refuse asylum to persecuted individuals. Article 21 should not present any ambiguity on this point.

AMENDMENT 421

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 1a

Submitted by: Georges BERTHU, MEP

Proposed text:

Aliens may be expelled from the territory of Member States, subject to the guarantees recognised by international law, if they have entered that territory illegally, if they have violated the laws of that State, or if they endanger public order and public safety.

Reasons:

It would be bizarre for an Article entitled “Right to asylum and expulsion” to have a first paragraph defining the right to asylum without the following paragraph defining cases where expulsion is permitted.

AMENDMENT 422

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 21

1. Nationals of third countries shall have the right to seek and enjoy 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.

Reasons:

It is suggested to include "seek and enjoy" as there is no right to "asylum" in international law. To "seek and enjoy" is in conformity with Article 14 of the Universal Declaration of Human Rights.

AMENDMENT 423

Proposed amendment to Article: 21

Submitted by: E.M H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

In paragraph 1 the phrase “Nationals of third countries” should be replaced with “Any person”.

Reasons:

Stateless persons also have the right of asylum.

AMENDMENT 424

Proposed amendment to Article: 21(1)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Nationals of third countries shall have the right to apply for asylum in the European Union.”

Add to Article 21(1) a reference to the Treaty establishing the European Community.

Reasons:

The internationally recognised right is to “apply for asylum”. The wording is incorrect and may be dangerously broad.

A reference needs to be made to the Community powers laid down in Articles 61 and following of the EC Treaty and Protocol No 29.

AMENDMENT 425

Proposed amendment to Article: 21(1)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Nationals of third countries shall have the **right to apply for asylum** 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.

Reasons:

The right to asylum cannot be considered to be absolute. It is subject to compliance with established requirements.

AMENDMENT 426

Proposed amendment to Article: 21(1)

Submitted by: Peter ALTMAIER, Member of the German Bundestag

Proposed text:

“Persons from third countries who are persecuted on political grounds shall be granted asylum in the European Union pursuant to the Geneva Convention of 28 July 1951 and the Protocol of 11 January 1967 relating to the Status of Refugees”.

Reasons:

This wording should prevent Article 21(1) of the Charter being invoked as justification for individual rights of asylum that go beyond the legal provisions in force in the Member States of the European Union.

AMENDMENT 427

Proposed amendment to Article: 21

Submitted by: François LONCLE

Proposed text:

Word paragraph 1 of this Article as follows:

"Persons covered by the Geneva Convention of 28 July 1951 and by the Protocol of 31 January 1967 relating to the status of refugees shall be granted refugee status in the European Union, under the conditions laid down in those texts."

Reasons:

This proposed amendment is intended to remove two ambiguities in the present text:

- the first is the implication that the benefit of the Geneva Convention is limited to certain categories of persons, whereas in fact the text applies universally;
- the second is that this text confuses the right of asylum, i.e. permission to reside in sovereign territory, which falls within the jurisdiction of each individual State, with refugee status which is regulated by the Geneva Convention.

AMENDMENT 428

Proposed amendment to Article: 21(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. *The right to apply for asylum shall be guaranteed 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.*

Reasons:

The proposed amendment to paragraph 1 is more in line with the obligations ensuing from the Geneva Convention.

AMENDMENT 429

Proposed amendment to Article: 21

Submitted by : RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1 replace “Nationals of third countries shall have the right to asylum” with “Everyone shall have the right to asylum”.

Reasons:

The proposed wording for paragraph 1 includes stateless persons and all persons without citizenship.

Proposals for Article 21(2)

AMENDMENT 430

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 2

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete the paragraph (“Collective expulsion of aliens is prohibited”).

Reasons:

Paragraph 2 as presented here is deceptive because, although it is indeed based on Article 4 of Protocol No 4 to the European Convention on Human Rights, that Article is part of a legal instrument which provides for derogation, particularly “in time of war or other public emergency threatening the life of the nation” (Article 15 of ECHR).

In those circumstances, it is inappropriate to adopt a draft which could lead the non-specialist reader to believe that the collective expulsion of aliens is prohibited at all times and in all circumstances. The sentence should either be deleted or be qualified by the addition of “except in time of war or other public emergency, in accordance with international provisions in force”.

AMENDMENT 431

Proposed amendment to Article: 21(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Delete the paragraph.

Reasons:

Paragraph 2 comes from Protocol No. 4, which has not been ratified by Spain. The problem arises from the term “collective expulsions”: at what stage is an expulsion deemed to be collective? Can this prohibition be applied to the expulsion of several separate individuals who illegally enter a State? In the case of Spain, it is worth keeping in mind the well-known events arising from the nature of its borders. Such problems are also shared by other Member States of the Union.

AMENDMENT 432

Proposed amendment to Article: 21(2)

Submitted by: Peter Michael MOMBAUR, MEP

Proposed text:

“Collective expulsion is prohibited”.

Reasons:

The right of protection also concerns minorities within the present or, where appropriate, future territorial extent of the European Union.

Proposals for Article 21(3)

AMENDMENT 433

Proposed amendment to Article : 21

Submitted by : RODOTA', PACIOTTI and MANZELLA

Proposed text :

Add a new paragraph 3 as follows:

“3. 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.”

Reasons :

Paragraph 3 incorporates the wording of Article 4, transferred here for reasons of logic.

Proposals for Article 22 as a whole

AMENDMENT 434

Proposed amendment to Article: 22

Submitted by: Andrew DUFF, MEP

Proposed text:

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, regional or cultural 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.**

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. Protection of regional and cultural minorities is included in recognition of the diversity of the peoples of the European Union and of the need for solidarity between them. It also draws on the 1995 Council of Europe Framework Convention on the Protection of National Minorities.

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.

AMENDMENT 435

Proposed amendment to Article: 22

Submitted by: Win GRIFFITHS, MP

Proposed Text:

1. Any discrimination based on sex, nationality, 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. Men and Women shall have the right to equal treatment, and in particular when setting pay and working conditions and measures or social protection.
3. Persons belonging to minorities shall have the right to maintain and develop their own language and culture.

Reasons:

Article 22.2 can be deleted as it is covered by the inclusion of "nationality" and "association with a national minority" in Article 22.1.

New Article 2 is expressed in a way more consistent with the language and approach of the Charter without losing any of the context of the existing 3.

New paragraph 3 states in an overt and positive fashion what is only implied in paragraph 1. The legal base is Article 151 of the Consolidated Version of the Treaty establishing the European Union.

AMENDMENT 436

Proposed amendment to Article: 22 – Equality and non-discrimination

Submitted by: Ben FAYOT

Proposed text:

General principle of equality between men and women in all areas

1. The unconditional and fundamental principle of the equality of the sexes in all areas shall be ensured by the Union.
2. Any discrimination on grounds of sex is prohibited.
3. Positive measures shall be implemented to put the principle of equality into effect.

Reasons:

AMENDMENT 437

Proposed amendment to Article: 22

Submitted by: Pervenche BERÈS

Proposed text:

Any arbitrary discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, genetic characteristics, health, disability, age or sexual orientation shall be prohibited.

Reasons:

The concept of “arbitrary discrimination” allows for the prospect of positive discrimination (or measures) aimed at restoring equality.

Genetic characteristics constitute a major discriminatory threat of the future: the Charter must ensure that they are kept confidential.

AMENDMENT 438

Proposed amendments to Article: 22 Equality and non-discrimination

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

- (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 unequal treatment (delete one word) and to promote equality between men and women. Equal treatment of (delete two words¹) the sexes shall be ensured in particular when setting pay and other working conditions.

Reasons:

The wording chosen in paragraph 3 - “Inequalities” and “equality between the sexes” - was not entirely felicitous.

¹ Delete one word in the German version.

AMENDMENT 439

Proposed amendment to Article: 22

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, (...), colour or ethnic or social origin, language, religion or belief, political opinion or *association with an ethnic, religious or linguistic minority*, property, birth, disability, age or sexual orientation or *another personal reason* 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 *between nationals of the European Union* on grounds of nationality shall be prohibited.**

Reasons:

The reference to race may be deleted since it is in fact contained in other discrimination grounds. Furthermore, its deletion is consistent with current linguistic usage.

The reason for replacing “national minority” as grounds for discrimination with a more explanatory version is that the reference to different kinds of minority provides a more comprehensive picture of the kinds of minority which actually exist and of which factors are most often the reason for discrimination. The example of different kinds of minority also specifically underlines the importance of prohibiting discrimination aimed at minorities. The proposed amendment is in line with the wording of Article 27 of the UN Convention on Civil and Political Rights.

The list of grounds for discrimination should be left open so that it might also cover grounds for discrimination previously specified. In this case, the Article is also closest in line with Article 14 of the European Convention on Human Rights.

In paragraph 2 Union nationality is also worthy of mention in connection with discrimination based on nationality, since otherwise the Article would acquire a wider meaning in this connection than is intended.

AMENDMENT 440

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

1. In paragraph 1 add "or other opinion" before "political opinion" and "genetic characteristics" after "birth".
2. Paragraph 2 should be amended as follows:

"Within the scope of application of the Treaty establishing the European Community and the Treaty of the European Union, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."
3. The second part of paragraph 3 should be deleted ("in particular equality between the sexes shall be ensured when setting ...").
4. The Commission representative proposes submitting an amendment inserting an Article on equality between men and women in social affairs (CONVENT 34).

Reasons:

1. The addition proposed for the first paragraph is necessary in order to take over a form of discrimination prohibited by Article 14 of the ECHR; the second addition takes account of the new bio-ethical challenges and is based on a suggestion by the European Ethics Committee.
2. The second paragraph takes over the first paragraph of Article 12 TEC. In order to avoid any legal uncertainty the wording must be identical to Article 12 TEC, with the sole exception of the principle of non-discrimination being henceforth explicitly extended to cover the scope of the TEU.
3. The current third paragraph is legally erroneous and contradictory: the first sentence enshrines the general principle of positive action in promoting *de facto* equality between men and women. The second sentence refers by way of example to equality in setting pay, which principle should however be interpreted in the strict sense and specifically does not allow for

positive action in favour of women. Payment of a higher salary to women than to men for the same work would disregard the basic principle enshrined in Article 141(1) TEC. The second part of the paragraph as currently proposed thus provides a wrong example for the principle set out in the first part and should accordingly be deleted.

AMENDMENT 441

Proposed amendment to Article: 22

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

- 1. Discrimination between citizens of Member States of the European Union on grounds of nationality shall be prohibited*
- 2. The rights and freedoms in [ECHR-based rights] shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

For Part B, “Definition of Rights”:

Paragraph 1 is the prohibition of discrimination on grounds of nationality in Article 12 of the Treaty establishing the European Community. The prohibition applies within the scope of application of, and without prejudice to special provisions contained in, that Treaty.

Paragraph 2 is the right in Article 14 of the ECHR

Reasons:

The Praesidium draft conflates the relevant ECHR provision (which applies only to the ECHR rights) with TEC Article 13 and TEC Article 12. TEC Article 13 is not a right. It is the basis on which the Council can take action. Such action is under current negotiation and it is not yet possible to determine the outcome with sufficient confidence to justify reference in the Charter at this time. I believe that much the same is true of the negotiations within the Council of Europe regarding the proposal to extend the right in Article 14 of the ECHR.

Article 14 of the ECHR says: “The enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status.” The Charter should not provide for a free-standing non-discrimination right but like the ECHR the article should be “parasitic” on other provisions.

AMENDMENT 442

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. **Any discrimination shall be prohibited, for example 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.
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. **Delete**

Reasons:

The grounds on which discrimination might be based should be presented as examples, so that any other discrimination which might arise is also covered. Listing particular grounds for discrimination equates to expressly permitting anything which is not specifically mentioned.

In CHARTE 4284/00 CONVENT 28, Article 22(3) states that the Union shall seek to “eliminate inequalities”. However, to eliminate inequalities would mean a demand for one hundred percent equal distribution of all available resources between the citizens of the Union. As the whole Charter has arisen in order to promote equality in various areas, this aim does not need to be repeated in Article 22(3). Every Article of the Charter constitutes an attempt to ensure equality in various areas.

Equality between the sexes is ensured by Article 22(1), which prohibits all discrimination, amongst other things on the grounds of sex.

The Charter should contain absolute rights and should therefore not also contain provisions defining aims of the type in Article 22(3). If two paragraphs of an Article lay down absolute rights but a third paragraph of the same Article contains relative rights, there is a risk of weakening the absolute rights in the same Article.

AMENDMENT 443

Proposed amendment to Article: 22

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text :

Delete Article.

Reasons:

Taken over into the proposed Article 1a.

AMENDMENT 444

Proposed amendment to Article: 22

Submitted by : Rocco BUTTIGLIONE MEP, on the authority of the Chairman of the European Parliament delegation

Proposed text:

Article 22. Equality and non-discrimination

2. 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 or age 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.

Reasons:

No change.

AMENDMENT 445

Proposed amendment to Article: 22(3)

Submitted by: Hanja MAIJ-WEGGEN

Proposed text:

The Union shall seek to eliminate inequalities and to promote the equal treatment of men and women.

The equal treatment of men and women shall in particular be ensured with regard to pay, social security, taxation, access to vocational training and other working conditions.

Reasons:

Re 1st paragraph: There are certain biological differences between men and women. The term "equal treatment" is therefore preferable to "equality".

Re 2nd paragraph: Numerous studies show that equal pay for the same work cannot be guaranteed or is undermined if there are differences between men and women in social security (contributions and benefits), taxation (breadwinner arrangements), access to vocational training and other working conditions. These should therefore all be specified in this Article.

AMENDMENT 446

Proposed amendment to Article: 22

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

“1. The enjoyment of any right set forth by law shall be secured without discrimination. Any discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or on any grounds whatsoever, shall be prohibited.

2. Any discrimination on grounds of nationality shall be prohibited in accordance with Article 12 of the Treaty establishing the European Community.

3. With a view to ensuring full equality within the Union, the principle of equal treatment shall not prevent measures from being maintained or adopted in order to prevent or compensate for disadvantages arising from the unequal position of persons of a particular sex, of a particular racial or ethnic origin, with a disability, or of a particular age or sexual orientation.”

Reasons:

To replace Article 1(2), paragraph 1 of this Article regarding the principle of equality is based on the wording of the draft twelfth Protocol to the ECHR.

The second sentence of paragraph 1 states that discrimination on “any grounds whatsoever” is prohibited. The non-discrimination grounds specifically given in that sentence are based on Article 13 of the EC Treaty.

As far as nationality is concerned, the prohibition of discrimination in paragraph 2 is confined to a reference to Article 12 of the EC Treaty.

Paragraph 3 lays the basis for positive action, and is based on Article 141(4) of the EC Treaty and the draft directives implementing Article 13 of the EC Treaty. In the light of Article 13 of the EC Treaty, it is not desirable to refer exclusively to difference in sex in paragraph 3. The wording of the draft text, containing “the promotion of equality between men and women”, was also considered to be less felicitous.

AMENDMENT 447

Proposed amendment to Article: 22

Submitted by: Erling OLSEN

Proposed text:

Paragraph 1 should instead use the wording of Article 14 of the ECHR, which should apply as regards Articles coming from similar provisions in the ECHR.

Paragraph 2 should instead fully reflect the first paragraph of Article 12 of the EC Treaty: “Within the scope of application of the Treaty establishing the European Community, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”.

Paragraph 3 should be deleted.

Reasons:

Article 13 of the EC Treaty, on which the Praesidium’s current draft is based, does not issue any directly applicable prohibitions, but merely provides authority for the Council to take measures to combat discrimination based on certain criteria. Paragraph 3 expresses an aim, not a right.

Proposals for Article 22(1)

AMENDMENT 448

Article 22. Equality and non-discrimination

Proposal:

Rephrase paragraph 1 completely.

Reasons:

Paragraph 1.

The scope of this paragraph is far too wide.

An instrument with elaborate and precise provisions aimed at combating discrimination in those sectors of society where it is most frequent and serious might be more effective. Such provisions are now being negotiated in a Council working group within the EU.

Further, there is no mention in Article 22.1 of positive measures. In several areas where our governments, or the EU institutions, are involved in compensating for injustices or supporting underprivileged groups to improve their position in society, those negatively affected by such action may raise the issue of discrimination. An Article on this delicate matter must therefore be based on a thorough analysis of such problems.

Thirdly, the wide scope of the Article would not necessarily create problems if we had reason to believe that it would apply only in relations between the individual and public authorities, in other words in the classic human rights sense. But this is not clear, nor is it clear to what extent Member States will be held liable for conduct of individuals, such as landlords, restaurant owners, employers, etc. This is not to say that discriminatory behaviour on their part should not be met with sanctions and perhaps be criminalised. But States should not be held liable for human rights violations as a result of conduct of third parties.

Finally, in the explanation for the proposal, one gets the impression that after the entry into force of the Amsterdam Treaty, community law on ethnic discrimination has been widened to include a total ban on all ethnic discrimination in all the areas enumerated in the proposed Article. On the contrary, Article 13 in the Treaty has no direct effect as it only provides an opportunity for Member States to decide in unanimity on proposals in this area. In fact, draft Article 22.1 goes much further than the Commission's own proposal on a directive against ethnic discrimination now being negotiated in a Council working group.

AMENDMENT 449

Proposed amendment to Article: 21(1) and 22(3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

1. Everyone is equal before the law. All forms of discrimination shall be prohibited.

Reasons:

1. Developments in society make it impossible to establish an exhaustive list of types of discrimination. The proposed wording allows for such developments, respects the Community's legal framework and is consistent with Article 26 of the UN International Covenant on Civil and Political Rights.

AMENDMENT 450

Proposed amendment to Article: 22(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, *nationality*, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

AMENDMENT 451

Proposed amendment to Article: 22

Submitted by: Alvaro Rodríguez BEREIJO, Personal Representative of the Spanish Prime Minister

Proposed text:

In paragraph 2, insert the words “between citizens of the Union” between “any discrimination” and “on grounds of nationality”.

Reasons:

The wording of paragraph 2 is contradictory, since it is obvious that the Charter contains rights which apply to persons or to citizens of the Union. For certain rights there is a distinction between European citizens and citizens of third countries. In order to avoid the absurd situation where the Charter prohibits a discrimination that it has itself introduced, it is suggested that the expression “between citizens of the Union” be inserted in the clause prohibiting any discrimination on grounds of nationality. Furthermore, it should be noted that Article 12 of the EC Treaty applies in principle to the citizens of the fifteen Member States. The cases in which it applies to citizens of third countries are rare and are laid down explicitly.

AMENDMENT 452

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Georges BERTHU, MEP

Proposed text:

1. The Union shall combat any inequality of treatment between persons, subject to the conditions and powers laid down by the Treaties and with due regard for the constraints of the public good.

Reasons:

Article 22(1) and (2) of the Charter, in the wording proposed by the Praesidium, go much further than Article 13 of the EC Treaty:

- in matters of substance: new areas of non-discrimination are added to those in the Treaty. Some are self-evident (property, birth), some should be categorically rejected (nationality ¹) and others require extensive clarification at the very least (national minorities);
- in matters of procedure, the draft of Article 22 of the Charter would absolutely prohibit all discrimination, whereas Article 13 TEC is more cautious and promises only to “combat” discrimination and then only “within the limits of the powers conferred upon the Community” and after a unanimous decision by the Council. Those safeguards would completely disappear with the Charter.

Hence the preference in this amendment for more general wording, referring to the existing provisions in the Treaties.

¹ It should be pointed out that the current Article 12 TEC, which prohibits any discrimination within the Union on grounds of nationality, allows for exceptions, particularly for the public service.

AMENDMENT 453

Proposed amendment to Article: 22(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

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, sexual orientation, ***or any other personal or social condition*** shall be prohibited.

Reasons:

The addition of the phrase "or any other personal or social condition" makes it clear that this list of prohibited grounds for discrimination is open; not exhaustive.

* Proposed amendments are in bold.

AMENDMENT 454

Proposed amendment to Article: 22

Submitted by: Kathalijne BUITENWEG

Proposed text:

Amend paragraph 1:

1. Any discrimination on whatever grounds, such as sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation, marital or other status shall be prohibited.

Reasons:

The additions “on whatever grounds” and “or other status” ensure that the non-restrictive character of Article 14 of the ECHR is retained.

The addition “marital status” is in line with social trends, whereby the distinction between married and unmarried persons, particularly in the context of EU law, is losing its relevance.

AMENDMENT 455

Proposed amendment to Article: 22

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

Amend paragraph 1:

1. Any discrimination on any ground such as sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation or other status shall be prohibited.

Reasons:

The insertion of “on whatever ground” and “or other status” reflects the non-exhaustive character of Article 14 of the EHCR.

AMENDMENT 456

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Hubert HAENEL

Proposed text:

1. *Everyone is equal before the law. Any discrimination shall be prohibited.*

Reasons:

The text proposed in Article 22 lists a series of areas in which discrimination is prohibited.

A list of that kind is not conducive to a clear and concise text.

Moreover, as with any list, there is a serious risk of omissions.

It would therefore seem preferable to set out the principle of equality before the law in simpler terms and to prohibit any discrimination.

Proposals for Article 22(2)

AMENDMENT 457

Proposed amendment to Article: 22(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

(2) Delete paragraph 2 altogether.

Reasons:

Paragraph 2 duplicates the scope of Article H.1.

AMENDMENT 458

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Georges BERTHU, MEP

Proposed text:

2. The Union shall seek to eliminate inequalities **between men and women** and to promote equality between them (rest deleted).

Reasons:

Article 22(1) and (2) of the Charter, in the wording proposed by the Praesidium, go much further than Article 13 of the EC Treaty:

- in matters of substance: new areas of non-discrimination are added to those in the Treaty. Some are self-evident (property, birth), some should be categorically rejected (nationality¹) and others require extensive clarification at the very least (national minorities);
- in matters of procedure, the draft of Article 22 of the Charter would absolutely prohibit all discrimination, whereas Article 13 TEC is more cautious and promises only to “combat” discrimination and then only “within the limits of the powers conferred upon the Community” and after a unanimous decision by the Council. Those safeguards would completely disappear with the Charter.

Hence the preference in this amendment for more general wording, referring to the existing provisions in the Treaties.

¹ It should be pointed out that the current Article 12 TEC, which prohibits any discrimination within the Union on grounds of nationality, allows for exceptions, particularly for the public service.

AMENDMENT 459

Blank.

Proposals for Article 22(3)

AMENDMENT 460

Proposed amendment to Article: 22

Submitted by: Alvaro Rodríguez BEREIJO, Personal Representative of the Spanish Prime Minister

Proposed text:

Delete the last part of paragraph 3 regarding equality between the sexes in the employment field.

Reasons:

We believe that the wording of the paragraph is not precise (what is meant by “setting pay”?) and above all that it belongs in social rights, and that the wording used should be the same as in the EC Treaty.

AMENDMENT 461

Proposed amendments to Article: 22. Equality and non-discrimination

Proposed text:

The topic dealt within paragraph 3 could be dealt with in the preambular text of the Charter.

Reasons:

Paragraph 3 is an objective and would be better placed in the preamble.

AMENDMENT 462

Proposed amendment to Article: 22(1) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

3. (Last sentence). Equality between the sexes shall be ensured **in the field of pay and other working conditions.**

Reasons:

3. Technical improvement

AMENDMENT 463

Proposed amendments to Article: 22

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

1.
2.
3. The Union shall seek to eliminate inequalities and to promote **equalities** between men and women. In particular equality between the sexes shall be ensured **in access to employment**, when setting pay and other working conditions **and in social security**.

AMENDMENT 464

Proposed amendment to Article: 22. EQUALITY AND NON-DISCRIMINATION

Submitted by: Jordi SOLÉ TURA

Proposed text:

3: **“The primary objective of the Union shall be to eliminate inequalities and to promote equality between men and women. Equality between the sexes shall be ensured when setting pay and other working conditions.”** (this phrase changed in Spanish only)

Reasons:

It is not sufficient to say that the Union “shall seek to eliminate inequalities”. Eliminating them must be a “primary objective”. The last phrase in Spanish is syntactically more specific than the one in the existing text.

AMENDMENT 465

Proposed amendment to Article: 22

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The first sentence of paragraph 3 should be deleted.

Reasons:

For a prescriptive provision, the first sentence of paragraph 3 is drafted in terms which are too broad.

AMENDMENT 466

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 22. Equality and non-discrimination

(1)....

(2)....

(3) Men and women are equal. The Union shall seek to eliminate inequalities and to promote equality between men and women. Equality between the sexes shall be ensured in particular when setting pay and other working conditions.”

Reasons:

The fundamental point that men and women are equal ought to be explicitly stated at the beginning of paragraph 3, i.e. given prominence.

As for the rest, it is suggested that if no gender-neutral alternative can be found, the feminine form should be added in the wording of all Charter provisions.

AMENDMENT 467

Proposed amendment to Article: 22

Submitted by: EINEM/HOLOUBEK

Proposed text:

Delete paragraph 3 in Article 22

Reasons:

Paragraph 3 should be divided into two separate articles and amplified (cf. proposed amendment 2 to Article 22).

AMENDMENT 468

Proposed amendment to Article: 22(3)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

The word "**inequalities**" should be replaced by "**unequal treatment**".

Reasons:

The proposal refers to the EU's possibilities for action. It corresponds to the proposal made by the German Federal Government in CONTRIB 154 and to the proposal made by the German Federal States in CONTRIB 142.

AMENDMENT 469

Proposed amendment to Article: 22

Submitted by: Simone BEISSEL

Proposed text:

3.(a) Delete “to eliminate inequalities and”.

3.(b) Delete “in particular equality between the sexes working conditions”.

Reasons:

3.(a) The wording should be positive.

3.(b) Pay and working conditions should be covered by the section on social rights.

Proposals for Article 22a and b

AMENDMENT 470

Proposed amendment 2 to Article: 22

Submitted by: EINEM/HOLOUBEK

Proposed text: the following new Articles should be inserted after Article 22 (new):

“Article XX *Equality between men and women*

- (1) The Union shall seek to eliminate inequalities and to promote equality between men and women. ***In order to bring about real equality, positive discrimination measures shall be permitted.***
- (2) Gender equality shall be ensured in particular when setting pay and other working conditions.

Article YY *Equality of minorities*

- (1) **Persons who belong to linguistic or ethnic minorities shall be entitled collectively and publicly to use their own language and preserve their own culture.**
- (2) **The Union shall strive to eliminate inequalities or discrimination.”**

Reasons:

In order to highlight the importance of individual rights, it is proposed that the general right to equality be enshrined in a separate Article in the same way as equality between men and women. In view of the vital importance of the right of minorities to equality, we also suggest that it be removed from the general ban on discrimination and dealt with in a separate Article.

The proposed Article XX on equality between men and women corresponds to the text of the draft proposed by the Praesidium. As a purely drafting proposal, we suggest that the duty of the Union to promote equality and the right to equal pay for the same work as provided for in the EC Treaty be covered in separate paragraphs.

The new second sentence of paragraph 1 of the proposed Article XX is intended to make it clear that measures involving “positive discrimination” are permissible in order to bring about real equality.

Article YY sets down in explicit terms a right which is particularly important if linguistic and ethnic minorities are to achieve equality; the right to use their own language and preserve their own culture. Paragraph 2 is intended to oblige the Union to eliminate inequalities or discrimination suffered by minorities.

Proposals for Article 23

AMENDMENT 471

Proposed amendment to Article: 23

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this Article.

Reasons:

This Article has no clear basis in the ECHR, the Treaties, nor has it been shown to be in the constitutional traditions common to all the Member States. Accordingly, it should not be included in the Charter.

As drafted the Article could be read as stating that children had to be treated as equal to adults which would clearly be inappropriate. This concept is expressed in the Convention on the Rights of the Child in terms of non-discrimination. The second half of the proposed Article is vague. The concept of a child “influencing” matters “pertaining to their person” could be interpreted in a way that goes much further than the Convention. I also see problems with the term “maturity” since – in social care terms – children can be “mature” in some respects beyond their years.

AMENDMENT 472

Proposed amendment to Article: 23. Children's rights

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

Although the content of the article is worthy of interest, it does not appear to correspond to any existing European competence nor to be in the interests of the Charter as a whole, which runs the risk of becoming a list of the rights of many specific categories. If reference is made to children's rights, why not refer to the rights of the elderly or the sick, etc.

AMENDMENT 473

Proposed amendment to Article: 23

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 23. Children's rights

Children must be (delete: 7 words) allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Reasons:

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

AMENDMENT 474

Proposed amendment to Article: 23. Children's rights

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"1. Children shall have the right to such protection and care as is necessary to their well-being. They must be allowed to express their views freely in all matters affecting them, their views being given due weight in accordance with their age and maturity.

2. In all actions concerning children, whether undertaken by public institutions or bodies or by private social welfare institutions, the best interest of the child shall be a primary consideration."

Reasons:

The present amendment is designed to add to the current draft two most fundamental principles of the Convention on the Rights of the Child, these being the right to protection and care, and the principle of the best interest of the children. The wording of the second sentence follows that of Article 12(1) of the Convention on the rights of the child.

AMENDMENT 475

Proposed amendment to Article: 23

Submitted by: Erling OLSEN

Proposed text:

“Every child has, without any discrimination, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. The best interests of the child shall always be a primary consideration.”

Reasons:

The Praesidium’s text does not present childrens’ rights, as described in the heading of this Article, but rather expresses a political aim. One solution might be to use the main part of the wording in Article 24 of the International Covenant on Civil and Political Rights and refer in the statement of reasons to the full text and to the UN Convention on the Rights of the Child.

AMENDMENT 476

Proposed amendment to Article: 23

Submitted by: Maria Pia VALETTO and Piero MELOGRANI

Proposed text *:

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. ***When decisions on such matters are taken, the interests of the child must be the primary consideration.***

Reasons:

The addition of the second sentence is intended to confirm the principle of the best interests of children, a principle established by a vast body of case-law of the Court of Human Rights on the custody of children.

* Proposed amendments are in bold.

AMENDMENT 477

Proposed amendment to Article: 23

Submitted by: Win GRIFFITSH, MP

Proposed text:

All children in the European Union shall have the right for their interests to be respected by the institutions of the European Union.

Reasons:

Member States have committed themselves to the UN Convention on the Rights of the Child and although there are no specific references to children in the European Union treaties the Consolidated Version of the Treaty Establishing the European Union in Article 13 does clearly refer to age discrimination.

AMENDMENT 478

Proposed amendment to Article: 23. Children's rights

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 23

~~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.~~

In all cases concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

Reasons:

It is suggested that Article 23 be deleted and replaced with language from Article 3.1 of the UN Convention of the Rights of the Child.

The text as originally drafted appears to be drawn from Article 12.1 of the Convention on the Rights of the Child, although it does not accurately reflect that provision which, moreover, is just one of several provisions setting out detailed rights. A single Article in the Charter should more appropriately reflect a general principle, particularly the predominance of the best interests of the child. The amended provision proposed does so with the language of Article 3.1 of the Convention.

AMENDMENT 479

Proposed amendment to Article: 23

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The Union shall respect the rights of the child in accordance with the provisions of the Convention on the Rights of the Child. More particularly, children should be guaranteed protection of their family environment and the care required for their welfare and should be given the opportunity to form their own views and have the right to express those views freely in all matters affecting them, the views of the child being given due weight in accordance with their age and evolving capacities.

Reasons:

This provision expresses more clearly the fact that children are equal individuals and brings it more expressly into line with the Convention on the Rights of the Child, and in particular Article 12 thereof. It also ties in with the right to family life as laid down in Article 13 of the draft Charter.

AMENDMENT 480

Proposed amendment to Article: 23

Submitted by: Pervenche BERÈS

Proposed text:

Children shall enjoy all the rights recognised in respect of persons. The exercise and protection of those rights shall take into account the age and the ability of the child.

Reasons:

The expression “equal individual” should be clarified.

AMENDMENT 481

Proposed amendment to Article: 23

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Children shall enjoy the protection laid down in international agreements safeguarding their rights.

Reasons:

The wording of the provision is too detailed and raises many problems of interpretation yet does not set out a general principle of child protection.

AMENDMENT 482

Proposed amendment to Article: 23 Children's rights

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 23. Children's rights

1. 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.
2. Every child has the right to the protection and care of the community.”

Reasons:

Children - like mothers – are particularly in need of protection. The German Federal States therefore advocate that Article 23 be supplemented by the proposed provision on protection.

AMENDMENT 483

Proposed amendment to Article: 23

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Children must be treated as independent *human beings*; they must be allowed to influence matters pertaining to themselves person to a degree corresponding to their maturity.”

Reasons:

“Human beings”, rather than “persons”, should be used for natural persons.

AMENDMENT 484

Proposed amendment to Article: 23. Children's rights

Submitted by: Marie-Thérèse HERMANGE (Cornillet)

Proposed text:

- “1. In all actions concerning children, the best interests of the child shall be a primary consideration.
2. Every child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, and to influence, depending on their degree of maturity, the issues affecting him or her personally.”

Reasons:

The International Convention on the Rights of the Child constitutes the universal reference and a minimum in terms of recognition of civil rights in respect of persons under 18 years of age.

This amendment therefore borrows heavily from Articles 2, 3, 6 and 12 of the International Convention on the Rights of the Child.

It emphasises the principle of the best interests of the child, which must apply to all the European Union's actions.

AMENDMENT 485

Proposed amendment to Article: 23

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

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, **and their best interests must be safeguarded in all cases.**

Children's right to adequate protection in a family environment shall be respected.

Reasons:

This wording is closer to the content of the Convention on the Rights of the Child, which is the essential point of reference.

AMENDMENT 486

Proposed amendment to Article: 23. Children's rights

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the current text and replace with the following:

In all actions concerning children the best interests of the child shall be a primary consideration and the rights of the child shall be respected and ensured without discrimination of any kind. The child shall be assured the right to express its views freely in all matters affecting the child, the views of the child being given due weight.

Reasons:

This text is inspired by the wording in the UN Convention for the Rights of the Child (CRC) (Article 2, 3 and 12).

AMENDMENT 487

Proposed amendment to Article: 23. Children's rights.

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the Article by the following:

- “1. Children must be treated as equal individuals, they must be allowed to express their views on matters pertaining to their person to a degree corresponding to their maturity.**
- 2. Children must be protected against all threats to their intellectual development and their psychological and sexual integrity.”**

Reasons:

In paragraph 1 “influence” has been replaced by “express their views on”, which is far more appropriate to the child’s stage of development.

Paragraph 2 addresses the matter of threats to children (including through the use of information technology) and imposes an obligation to protect them on the public authorities.

AMENDMENT 488

Proposed amendment to Article: 23 (addition)

Submitted by: Hanja MAIJ-WEGGEN

Proposed text:

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

The European Union shall ensure that all EU activities are fully compatible with the principle of the best interests of the child as expressed in the UN Convention on the Rights of the Child.

Reasons:

An explicit reference to the Convention on the Rights of the Child is desirable since this is the most comprehensive statement of children's rights and has almost universal ratification.

AMENDMENT 489

Proposed amendment to Article: 23

Submitted by: François LONCLE

Proposed text:

Use the following wording for this Article:

“Children who are capable of forming their own views have the right to express those views freely in all matters affecting them. Their views shall be given due weight in accordance with the children’s age and maturity”.

Reasons:

Drafting amendment, inspired by the wording of Article 12(1) of the international Convention on the Rights of the Child.

AMENDMENT 490

Proposed amendment to Article: 23(1) - Children's rights

Submitted by: Hubert HAENEL

Proposed text:

Article 23: The rights of the child

1. A child must be treated as an equal individual, he/she must be allowed to influence matters pertaining to his/her person to a degree corresponding to his/her maturity, while taking his/her best interests into consideration.

Reasons:

As stated in the Convention on the Rights of the Child, in all decisions concerning a child, the child's best interests must be a primary consideration. Reference should be made to this consideration in the Charter of Fundamental Rights.

Moreover, as the Charter deals with the rights of "everyone" and not the rights of "all people", it seems preferable to deal here with the rights of "the child" and not "children's" rights

Proposed amendment to Article: 23 (inserting a paragraph 2) - Children's rights

Proposed text:

The child must not be separated from his/her parents against his/her wishes unless that separation is in his/her best interests.

Reasons:

As far as possible the child must be allowed to grow up in his/her family environment.

This should be stated in a provision based on the Convention on the Rights of the Child.

AMENDMENT 491

Proposed amendment to Article: 23. Children's rights

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Every child has the right to respect for his or her moral, physical, mental and sexual integrity.
2. 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.

Reasons:

The proposed insertion (as a new paragraph 1) of the right of the child to respect for his or her moral, physical, mental and sexual integrity is based on the UN Convention on the Rights of the Child and on the Belgian Constitution. This provision, together with paragraph 2 (version in CONVENT 28), spells out the importance attached by the Member States of the European Union to children's rights.

AMENDMENT 492

Proposed amendment to Article: 23

Submitted by: Ieke VAN DEN BURG

Proposed text:

Addition: Children must be protected against harmful and exploitative forms of child labour

Reasons:

Children's rights should also include protection against harmful and exploitative forms of child labour. Reference may be made here to the broad consensus reached within the International Labour Organisation in 1999 on a new Convention against child labour (ILO Convention 182).

AMENDMENT 493

Proposed amendment to Article: 23

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

The Union respects the rights of the child in accordance with the provisions of the Convention on the Rights of the Child. More particularly, children should be guaranteed the protection and care required for their welfare and should be given the opportunity to form their own views, have the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with his or her age and consistent with the evolving capacities of the child.

Reasons:

This provision expresses more clearly the fact that children are equal individuals and brings it more into line with the Convention on the Rights of the Child, and in particular Article 12 thereof.

AMENDMENT 494

Proposed amendment to Article: 23

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. Turn Article 23 (Childrens' rights) into Article 13a, where it follows on naturally from family life.
2. Change the title, replacing "Childrens' rights" by "Rights of the child".

Reasons:

Amd 1: Improved structure for the Charter.

Amd 2: Sounds more natural.

Proposals for Article 23a

AMENDMENT 495

Proposed amendment to Article: 23a

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 23a. Principle of democracy

1. Everyone has the right to a democratic form of government
- 2. The Union and its institutions are founded on the principles of liberty, democracy, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.**

Reasons:

Democracy is the one unarguable foundation stone of the European Union and an essential precondition for both accession and continued membership. This Article is intended to underscore that, and is drawn from Articles 2 and 6 of the Treaty on European Union, as well as from the Preambles of the Treaties.

Article 6(1) says: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."

Article 2 sets out the Union's objectives to include the "promotion of economic and social progress" and the "strengthening of economic and social cohesion".'

AMENDMENT 496

Proposed amendment to Article: 23a (new)

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1. The Union shall guarantee respect of the national and regional identities of Member States and of their cultural and linguistic diversity, including the right to address institutions and receive replies from them in one of the official languages of the Union.
2. The Union shall support minority languages.

NOTE: These proposals are made without prejudice to other aspects to be included as horizontal clauses, and of future suggestions for a better systematisation.

AMENDMENT 497

Proposed amendment to Article: 23

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Insert the following after Article 23:

“Article 23a Right to nationality

- 1. Everyone has the right to a nationality.**
- 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. “**

Reasons:

This Article reproduces Article 15 of the Universal Declaration of Human Rights; it is an important precondition for establishing citizens' rights.

Proposals for six new articles after Article 24

AMENDMENT 518

Proposed amendment to Article: 24 (new) Principle of democracy
Article 24(1) National identity

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

- 1. Every citizen has the right to respect for his national identity.**
- 2. In exercising its powers, both internally and externally, the Union shall defend the national identities of its Member States.**

Reasons:

Paragraph 1 takes up the principle already incorporated in Article 6(3) of the TEU, with different wording. This principle seems so important that it should not be lost in the overall text of the Treaty, but raised to the level of the Charter of Fundamental Rights.

Paragraph 2 is a reminder that the Member States created the Union in order jointly to defend their respective identities, not to abolish them.

AMENDMENT 519

Proposed amendment to Article 24 (new) Principle of democracy
Article 24(2) Democratic expression

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Citizens have the right to respect for their democratic expression at national level.

Reasons:

Respect for democratic expression at national level is so self-evident that the Treaties have not to date explicitly mentioned it. However, we have reached a stage in the development of the Union where the need for clarification is being felt.

This principle is so important that the right place for it to be included is in the Charter (without prejudice to the preamble, which should point out in particular that all public authority stems from the people).

AMENDMENT 520

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(3) - Right of withdrawal

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of each country decide freely on the accession of their State to the European Union. Similarly, they may democratically choose to withdraw.

Reasons:

The right to secede is not mentioned in the Treaty but, in a democratic context, it is implicit. The suggestion here is to make it explicit in the Charter.

AMENDMENT 521

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(4) - Right to adopt safeguard measures

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the fundamental right to adopt democratically national safeguard measures where compelling circumstances so require. In any event, these measures shall remain within the limits recognised by international law as permissible where the survival of the nation is threatened.

Reasons:

Here again, the right to national safeguard measures should be implicit. However, it is observed that it has been challenged by the Union's institutions in a number of recent cases, particularly those linked with public health. It should be noted here, at the formal level of the Charter, that , whatever form Community law takes in any particular field, no-one may remove a people's right to adopt the measures it deems essential to its survival.

AMENDMENT 522

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(5) - States' right of organisation

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the right to decide freely how their State shall be organised and in particular the limits and the operation of their public services.

Reasons:

Over recent years the Member countries and the institutions of the Union have become aware of certain undesirable effects of the principle of competition when applied indiscriminately to public services. To remove any ambiguity, the Charter provides the opportunity to note that the citizens of each Member country have the right to determine how their public services are to be organised.

AMENDMENT 523

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(6) - Freedom of choice

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the right to decide democratically not to take part in a particular form of cooperation at European level or to choose for themselves rules that are more protective than those of a cooperation arrangement in which they are taking part.

Reasons:

By explicitly recognising the democratic freedom of choice of the citizens of the Member countries, the Charter could demonstrate the possibility of a more flexible conception of the European institutions.

Proposals for Article 24

AMENDMENT 498

Proposed amendment to Article: 24

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 24 should be deleted.

Reasons:

The added value of this Article is not clear, given that the right to freedom of association and political parties are both referred to in Article 17.

AMENDMENT 499

Proposed amendment for Article: 24. Political parties

Submitted by: Daniel TARCHYS

Proposal:

Delete

Reasons:

The rights guaranteed in draft Article 17 provide sufficient protection.

AMENDMENT 500

Proposed amendment to Article: 24(1)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Delete

Reasons:

Doubts about the suitability of such a declaration in the Community context.

AMENDMENT 501

Proposed amendment to Article: 24

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this article

Reasons:

The fundamental right stated in this Article is entirely covered by the guarantee of freedom of assembly and association in Article 17. Political parties are a classic example of associations. The proposed accretions to the relevant ECHR rights in Article 24 have no clear basis in the Treaties or elsewhere. They raise serious technical and other difficulties which would affect other Member States and would need to be the subject of separate substantive consideration.

In any case, it is unclear why only Union citizens should be able to found a party. Under Article 17 and ECHR Article 11) anyone has that right. The limitations in Article 11 ECHR are important. All Member States restrict this freedom to exclude extremist parties e.g. those aiming to overthrow the constitution or who preach racism. The proposed Article appears to give an unqualified right.

AMENDMENT 502

Proposed amendment to Article: 24

Submitted by: Sylvia Yvonne KAUFMANN

Proposed text:

Delete Article 24 and do not replace

Reasons:

Article 24 is a duplication of the freedom of association guaranteed in Article 7.

AMENDMENT 503

Proposed amendment to Article: 24

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Article 24 should be deleted.

Reasons:

The rights referred to in the first sentence are already covered by Article 17 (freedom of assembly and of association). With regard to the second sentence, it is unclear who ought to ascertain whether a political party is abiding by this obligation and what the consequences are if it does not.

AMENDMENT 504

Proposed amendment to Article: 24

Submitted by: R. VAN DAM, MEP

Proposed text:

Delete Article 24.

Reasons:

The content of this Article is already guaranteed in Article 17 of the Charter. Its inclusion is superfluous.

AMENDMENT 505

Proposed amendment to Article: 24. Political parties

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

This Article probably adds nothing to what has already been said in the preceding Article 17 (Freedom of assembly and association). If it is admitted that it adds something, this can only be the idea of "European political parties", which goes beyond the current text of the Treaty (Article 191 TEC). In both cases the proposed text ought therefore to be deleted.

AMENDMENT 506

Proposed amendment to Article: 24

Submitted by: EINEM/HOLOUBEK

Proposed text:

Reasons:

According to the text proposed by the Praesidium, "everyone" has the right to join a political party at the level of the Union. It is indicated in the statement of reasons that this right should only be open to "anyone living in a Member State". This limitation is not expressed in the text and that raises the question of whether it is intended or even useful.

AMENDMENT 507

Proposed amendment to Article: 24

Submitted by: Andrew DUFF, MEP

Proposed text:

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.

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.

The existence of political parties at the EU level is recognised in Article 191 of the TEC.

AMENDMENT 508

Proposed amendment to Article: 24

Submitted by: Erling OLSEN

Proposed text:

The text should be reworded as follows: “Everyone has the right to form a political party and everyone has the right to join such a party”. The second sentence should be deleted.

Reasons:

Article 191 of the EC Treaty does not provide any basis for the Praesidium’s proposed Article. In its way, the right to form a political party and to join one is already covered by the Article on the freedom of association (Article 17) and so Article 24 could be deleted.

AMENDMENT 509

Proposed amendment to Article: 24

Submitted by :: Piero MELOGRANI

Proposed text *:

Every citizen of the Union has the right to contribute to shaping the will of the European Institutions through political parties at Union level. The rules governing those parties shall respect the fundamental principles of democracy.

Reasons:

The text of CONVENT 28 merely confirms, at Union level, a right that Article 17 already generally recognises “everyone” as having. It should therefore be replaced by a text that clarifies the role of such parties at Union level.

The second sentence has been amended, so that it does not prevent a lawful, democratic party from supporting a programme that seeks to abolish or limit some of the rights guaranteed by the Charter.

* Proposed amendments are in bold

AMENDMENT 510

Proposed amendment to Article: 24. Political parties

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

*“Every **Union** citizen has the right to form a political party at the level of the Union. **The right of parties to decide on the admission of members shall be guaranteed** (last sentence deleted).”*

Reasons:

If someone wishes to join an existing party, this should be left to the discretion of the party itself. There should be no automatic entitlement to admission.

The second sentence obliges political parties to respect the Charter of Fundamental Rights. In terms of the system followed, there are a number of considerable objections to this.

First, parties are not State bodies and are therefore not among those to whom fundamental rights are addressed. This is presumably also the thinking behind the Charter (see Article 46).

Also, the provision envisaged is a matter of conventional constitutional law. The legal status of political parties is amongst the issues that may have to be settled in any EU constitution, not in a charter of fundamental rights.

The suggested provision would further seem inadequate. Any attempt at setting standards for the conduct of parties should first and foremost focus on the observance of specific objective legal principles, such as upholding the basic democratic system, not on individual rights. What would also be needed are appropriate penalties and procedures for enforcement; none of this is the task of a charter of fundamental rights.

Article 50 of the latest draft of the Charter, moreover, affords protection against abuse of their position.

AMENDMENT 511

Proposed amendment to Article: 24. Political parties

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Every citizen of the Union has the right...”

Reasons:

To make it clear that this right, like the other citizenship rights recognised in the Charter, is reserved for citizens of the European Union and is not available to citizens of other States. A citizen of the Union is defined in Article 17 of the EC Treaty as “every person holding the nationality of a Member State”. This is a logical consequence of the fact that the EU is a political entity formed by the political grouping of the fifteen States which constitute it.

AMENDMENT 512

Proposed amendment to Article: 24. Political parties

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 24. Political parties

Every citizen has the right also to form a political party at the level of the Union. The right of parties to decide on the admission of members shall be guaranteed. Political parties must respect the rights and freedoms guaranteed by this Charter.”

Reasons:

The word “also” makes it clear that the right to form a political party applies both at Member State and European Union level.

If someone wishes to join an existing party, this should be left to the discretion of the party itself. There should be no automatic entitlement to admission.

AMENDMENT 513

Proposed amendment to Article: 24

Submitted by: MANZANELLA

Proposed text:

Replace the text with the following:

- 1. Every citizen of the Union has the right to form, on the conditions laid down by the Treaties, political parties at the level of the Union, and every citizen of the Union has the right to join such parties in order to contribute, by democratic means, to building a genuine “European public area” and to the expression of the political will of its citizens .**
- 2. Aliens resident in the Union may join Union-level parties on the conditions laid down in their statutes.”**

Reasons:

In our proposal the purpose of forming political parties, which is the prerogative of citizens of the Union, is the creation of a “Union public area”. Aliens residing in the Union may join Union-level parties, which they are already entitled to do.

AMENDMENT 514

Proposed amendment to Article: 24

Submitted by: François LONCLE

Proposed text:

Article 24:

At the beginning of the first sentence, after "Every citizen" insert "of the European Union".

Reasons:

This amendment is intended to remove an ambiguity in the wording.

AMENDMENT 515

Proposed amendment to Article: 24

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

The word "**citizen**" should be replaced by "**citizen of the Union**".

Reasons:

For the same reasons as adduced for the proposed Article 24.

AMENDMENT 516

Proposed amendment to Article: 24. Political parties

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Everyone 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.

Reasons:

The aim of the proposed text is to grant "everyone" the right to form a political party, so that this provision is brought fully into line with Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – which operates as a minimum standard in drawing up the Charter – and with Article 17 (CONVENT 28 version), in which the right to form a political party is explicitly granted to "everyone".

AMENDMENT 517

Proposed amendment to Article: 24

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every citizen of the Union 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 **have a democratic internal structure** and respect ... (no changes).

Proposals for Article 25 as a whole

AMENDMENT 524

Proposed amendment to Article: 25

Submitted by: Andrew DUFF, MEP

Proposed text:

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.**

Reasons:

Paragraph 1 follows 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".

(Delete: 2 words) Paragraph 2 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.

AMENDMENT 525

Proposed amendment to Articles: 25 and 26

Submitted by: Jürgen MEYER/Pervenche BERES/Jo LEINEN/Hans-Peter MARTIN/Ieke VAN DEN BURG

Proposed text:

Article 25 Right to vote and to stand as a candidate

- 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 elections to the European Parliament and municipal elections in the Member State in which he resides under the same conditions as nationals of that State.**
- 3. All citizens of third countries shall enjoy the rights referred to in paragraph 2 to the same extent if they have been legally resident in the territory of the Member States for five years.**

Reasons:

Paragraph 1 takes over the Presidency's wording of Article 25(1) (Convention 28).

Paragraph 2 merges Article 25(2) and Article 26 since they are worded identically, the first referring to European elections and the second to municipal elections.

Drafting two separate Articles runs counter to the Convention's requirement that the Charter be as concise as possible. The rewording does not in any way affect the substance of the Presidency's proposal.

Paragraph 3 reflects my original discussion text (submitted on 6 January: Contrib. 2). The underlying idea is to afford the possibility of democratic participation, as expressed through elections, to citizens who are legally resident in a Member State but are not citizens of the Union or of that State. One of the most important principles of democracy is that those who share in the financing of communal life must have a right to have a say in matters and to participate in elections. The requirement of five years' legal residence in a Member State attaching to participation in elections indicates that the third-country nationals concerned have decided to shift their centre of interests to the State in question.

AMENDMENT 526

Proposed amendment to Article: 25

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State”

For Part B, “Definition of Rights”:

“The rights in Article 25 are the rights in Article 19(2) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article”

Reasons:

To avoid any misunderstanding I am also proposing wording which is closer to the terms of TEC Article 19(2). My “B” text ensures that these rights will be understood within the meaning of the relevant Treaty provisions, including the conditions and ability to arrange for derogations. The reference in the proposed text to “specified rules and arrangements” picks up the requirement in Article 19 that the Member States agree specific rules for the exercise of these rights (which they have done). I disagree that such matters can effectively be dealt with in a single horizontal article. Finally I have omitted the reference to the manner of election for MEPs, which does not seem to fit here since it does not state a right.

AMENDMENT 527

Proposed amendment to Article: 25

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

In the Dutch title of Article 25, "stemrecht" must be replaced by "kiesrecht" (not applicable to the English version).

Reasons:

The Dutch title of the Article erroneously refers to "stemrecht" instead of "kiesrecht".

Proposals for Article 25(1)

AMENDMENT 528

Proposed amendment to Article: 25 - Right to vote and to stand as a candidate for the European Parliament

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

- 1. Members of the European Parliament shall be elected by direct, equal universal suffrage by free and secret ballot.**

Reasons:

Only an equal weighting of votes reflects the vote of the electors.

AMENDMENT 529

Proposed amendment to Article: 25(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Members of the European Parliament shall be ***periodically*** elected by direct universal suffrage by free and secret ballot.

Reasons:

Adding the word “*periodically*” makes it clear, in accordance with the Treaty, that the European Parliament has to be elected at regular intervals.

* Amendments are given in bold.

AMENDMENT 530

Proposed amendment to Article: 25(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free, *equal* and secret ballot.**

Reasons:

The “equal” right to vote, in the sense that each vote basically counts equally, is one of the fundamental voting rights recognised in a democratic society and should also apply in the case of elections to the European Parliament. The remainder of the text proposed by the Presidency is accepted.

AMENDMENT 531

Proposed amendment to Article: 25

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace paragraph 1 with the following:

“1. The citizens of the Union have the right to take part in the exercise of public authority at Union level through a representative assembly elected by direct universal suffrage by free and secret ballot.”

Reasons:

This alternative version of paragraph 1 makes as its subject the actual holders of the right, as in all the Articles of the Charter: in this case “the peoples of Europe” in their electoral manifestation. The wording comes from the case law of the Court of Justice (in particular the Roquette and Maizena judgment).

Proposals for Article 25(2)

AMENDMENT 532

Proposed amendment to Article: 25 – Right to vote and to stand as a candidate for the European Parliament

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

2. **Every citizen of the Union has the right to vote and to stand as a candidate for the European Parliament in the Member State in which he resides under the same conditions as nationals of that State.**

Reasons:

This makes it clear that Article 25 applies only to European Parliament elections.

AMENDMENT 533

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

Submitted by: Ben FAYOT

Proposed text:

“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, subject to derogations where warranted by problems specific to a Member State.”

Reasons:

The Treaty (Article 19(1)) provides that the right to vote and the right to stand for election may be subject to derogations.

Reference needs to be made to that, otherwise the text will state an absolute right that is not put into perspective by the horizontal clauses.

AMENDMENT 534

Proposed amendment to Articles: 25 and 26

Submitted by: Johannes VOGGENHUBER/Kathalijne BUITENWEG

Proposed text:

For paragraph 2 (taken over from Prof. Meyer's proposal)

2. All nationals of third countries shall also enjoy these rights to the same extent if they have been legally resident for five years in the territory of the Union.

Reasons:

AMENDMENT 535

Proposed amendment to Article: 25(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. Every citizen of the Union "**residing in a Member State of which he is not a national**" has the right to vote and to stand as a candidate (rest unchanged).

Reasons:

Primarily to conform to the text of Article 19(2) of the EC Treaty which includes the proposed paragraph. The text of the Treaty should be transcribed literally as in CONVENT 17. If streamlining the text is preferred, an alternative is to copy Article 190(1) of the TEC which states "The representatives in the European Parliament of the people of the States brought together in the Community shall be elected by direct universal suffrage".

This amendment is very important, just after the discussions provoked by the judgment of the European Court of Human Rights (in the Matthews case) on the right of Gibraltarians to participate in the European elections.

And it is essential to mention this here, in the definition of the right to vote and to stand as a candidate for the European Parliament, irrespective of the fact that in the horizontal clauses general limitations are established to which the rights contained in the Charter may be subject.

AMENDMENT 536

Proposed amendment to Article: 25(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. ***Every person resident in the EU* 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.**

Reasons:

(Translator's note: proposal affects the German text only, removing the inherent gender differentiation).

This wording should also be taken up in future regulations, such as that on the extension of the electorate.

Proposals for Article 25(3)

AMENDMENT 537

Proposed amendment to Article: 25

Submitted by: R. VAN DAM, MEP

Proposed text:

Add a new paragraph:

3. Article 19(2) of the EC Treaty sets out the conditions under which this right may be exercised.

Reasons:

The content of the right is defined more precisely.

Proposals for Article 26

AMENDMENT 538

Proposed amendment to Article: 26

Submitted by: R. VAN DAM, MEP

Proposed text:

Add a new paragraph:

2. Article 19(1) of the EC Treaty sets out the conditions under which this right may be exercised.

Reasons:

The content of the right is defined more precisely.

AMENDMENT 539

Proposed amendment to Article: 26. Right to vote and to stand as a candidate at municipal elections

Submitted by: Ben FAYOT

Proposed text:

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, subject to derogations where warranted by problems specific to a Member State.

Reasons:

Same as for Article 25.

AMENDMENT 540

Proposed amendment to Article: 26

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Every citizen of the Union residing in a Member State of which he is not a national 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.

Reasons:

Ensuring conformity with Article 19(1) of the EC Treaty.

AMENDMENT 541

Proposed amendment to Article: 26

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Every person with citizenship of the Union and every person resident in the EU 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.

Reasons:

(Translator's note: Proposal affects the German text only, removing the inherent gender differentiation).

The wording should be taken up in future regulations, such as that on municipal voting rights for foreigners.

AMENDMENT 542

Proposed amendment to Article: 26

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State”

For Part B, “Definition of Rights”:

“The rights in Article 26 are the rights in Articles 19(1) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article”

Reasons:

As with the previous Article, I am proposing wording which is closer to the terms of TEC Articles 19(1). My “B” text ensures that these rights will be understood within the meaning of the relevant Treaty provisions, including the conditions and ability to arrange for derogations. The reference in the proposed text to “specified rules and arrangements” picks up the requirement in Article 19 that the Member States agree specific rules for the exercise of these rights (which they have done).

AMENDMENT 543

Proposed amendment to Article: 26

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text: (applies to Dutch text only)

In the Dutch title of the Article, “stemrecht” should be replaced by “kiesrecht” (does not apply to English text).

Reasons:

“Stemrecht” has been used wrongly in place of “kiesrecht” in the Dutch title of the Article.

AMENDMENT 544

Proposed amendment to Article: 26

Submitted by: MANZELLA

Proposed text:

Replace the text of the Article with the following:

“Article 26. Right to vote and to stand as a candidate

Every citizen of the Union may also exercise his political rights outside the territory of the Member State of which he is a national, under the conditions and in accordance with the arrangements laid down in the Treaties.”

Article 25(2) would therefore be deleted.

Reasons:

The text combines in a single form of words the entitlement of European citizens to exercise active citizenship rights in Member States other than the one of which they are nationals.

Proposals for Article 26a

AMENDMENT 545

Proposed amendment to Article: 26 bis

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 26 bis. Right to diplomatic protection

Every citizen of the Union shall be entitled to diplomatic and consular protection by any Member State in third countries.

Reasons:

This clause reflects the provisions of Article 20 of the TEC.

Proposals for the whole of Article 27

AMENDMENT 545a

Proposed amendment to Article: 27(2) and (3)

Submitted by: Roman HERZOG

Proposed text:

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 includes the right of every person:
 - to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - to see his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - to receive from the administration reasons for administrative decisions taken against him;
 - to address the institutions and bodies of the Union in one of the official languages of the Union and to receive an answer in that language.

Reasons:

The proposed amendment is essentially a recasting intended to make the Article more readable. Without prejudice to any further revision of the text as a whole, this proposal for an amendment is being formally submitted since, at least in the third indent of paragraph 2, a restriction is introduced, which constitutes a substantive change.

Proposals for Article 27(1)

AMENDMENT 546

Proposed amendment to Article: 27(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

1. "*Without prejudice to Articles 7 and 8*, 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."

Reasons:

The addition of "without prejudice to Articles 7 and 8" is intended to indicate that the articles in question are also applicable without restriction with regard to the institutions of the European Union.

Since natural and legal persons are to be covered by this right, it is suggested that "jeder Person" be used in the German text. (*This is already the case in the English text*).

There is otherwise no change to the text of the Praesidium's draft.

AMENDMENT 547

Proposed amendment to Article: 27. Relations with the administration

Submitted by: VITORINO, Commission representative in the Convention

Proposed text:

Replace the words "the institutions and bodies of the Union" by the words "the administration".

Reasons:

The aim of this amendment is to give this article the same scope as the other articles in the Charter. Court of Justice case law already applies the general principles of administrative procedure, as laid down in Article 26, to the authorities of the Member States where they are acting within the scope of Community law (see the judgment in the Heylens case, 222/86, ECR 1987, 4097, on the duty to state reasons). This is a logical step insofar as national authorities are the main enforcers of Community law.

AMENDMENT 548

Proposed amendment to Article: 27(1)

Submitted by: Peter ALTMAIER, Member of the Bundestag

Proposed text:

"Every person who is affected by a measure under European law has the right to have his affairs handled impartially, fairly and within a reasonable time."

Reasons:

Since most of Community law is transposed into national law by the bodies and institutions of the Member States, any limitation of the application of Article 27(1) to the institutions and bodies of the European Union would result in differing levels of protection depending on whether a measure under European law was implemented by European or national authorities.

AMENDMENT 549

Proposed amendment to Article: 27(1)

Submitted by: Dr Sylvia–Yvonne KAUFMANN

Proposed text:

No change to the English text.

In the German text, “Jeder” is replaced by “Jede Person”.

Reasons:

The proposed wordings differ in using or avoiding gender-specific terms.

Proposals for Article 27(2)

AMENDMENT 550

Proposed amendment to Article: 27

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2:

2nd indent should be modified as follows:

the right of every person to have access to his file (12 words deleted in Dutch), while respecting necessary confidentiality and secrecy.

3rd indent should be modified as follows:

the obligation of the institutions and bodies of the Union to give reasons for their decisions.

Reasons:

The amendment of the second indent broadens the meaning. The third indent has been amended because the Charter is addressed not to the Member States but to the institutions and bodies of the Union.

AMENDMENT 551

Proposed amendment to Article: 27. Relations with the administration

Submitted by: Jordi SOLÉ TURA

Proposed text:

Paragraph 2:

- **the right of every person to be heard before any measure is taken which would affect him adversely;**
- **the right of every person to have access to his file, etc.**

Reasons:

The words “in relation to him” are deleted because they are redundant if the measure affects him adversely. “Individual” is deleted because he may be adversely affected by a measure taken against one or more persons. In the second paragraph of the Spanish version “la” should be replaced by “le” (does not affect English text).

AMENDMENT 552

Proposed amendment to Article: 27(2). Relations with the administration

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

This right includes:

- the right of every person to be heard before any individual measure which would affect him/**her** adversely is taken in relation to him/**her**;
- the right of every person to have access to his/**her** file, while respecting the legitimate interests of confidentiality and of business secrecy;
- the obligation of the administration to give reasons for its decisions.

Reasons:

Reference should also be made to women's rights, as otherwise the article would constitute discrimination on grounds of sex.

AMENDMENT 553

Proposed amendment to Article: 27(2), second indent

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

- the right of every person to have access to his file

Reasons:

Grammatical correction of the Spanish version (does not affect English text).

AMENDMENT 554

Proposed amendmens to Article: 27. Relations with the administration

Submitted by: Daniel TARSCHYS

Proposed text:

Redraft paragraph 2.

Reasons:

The scope of the first indent in paragraph 2 appears to be without limits and therefore problematic to accept in the present shape. The second indent is difficult to understand as it is not at all clear who is responsible for what. In the third indent, the word negative should be added to make clear that favourable decisions need not necessarily be explained.

AMENDMENT 555

Proposed amendment to Article: 27

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Delete paragraph 2.

Reasons:

The reason for deleting paragraph 2 is the need for simplification in regard to aspects which are already dealt with elsewhere or which cannot definitely be placed in the category of fundamental rights.

Proposals for Article 27(3)

AMENDMENT 556

Proposed amendments to Article: 27

Submitted by: Erling OLSEN

Proposed text:

Paragraph 3 could usefully be transferred to become the first paragraph.

Reasons:

Moving paragraph 3 to become the first paragraph would make it clearer for citizens that Article 27 applies to cases which come under EU law.

AMENDMENT 557

Proposed amendment to Article: 27(3)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Every person" should be replaced by "Every citizen of the Union".

Reasons:

The proposed wording is in line with Article 21 TEC.

AMENDMENT 558

Proposed amendment to Article: 27

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 3, the word “may” should be replaced by “has the right to”.

Reasons:

AMENDMENT 559

Proposed amendment to Article: 27(3)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

In the German text, replace "Jeder" by "Jede Person"

Reasons:

The proposed versions differ in using or avoiding a gender-specific term.

Proposals for Article 28

AMENDMENT 560

Proposed amendment to Article: 28

Submitted by: EINEM/HOLOUBEK

Proposed text:

Instead of "natural and legal person", simply read "person".

Reasons:

In line with our proposal that the word "individual" should be used when referring to natural persons and "person" when referring to natural and legal persons, it is sufficient in Article 28 to speak of every "person".

AMENDMENT 561

Proposed amendment to Article: 28

Submitted by: Andrew DUFF, MEP

Proposed text:

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 (delete: 1 word) agents of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

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.

AMENDMENT 562

Proposed amendment to Article: 28

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace "Every citizen and every natural and legal person residing or having its registered office in a Member State" by "Every person". "Judicial" should also be inserted before "bodies".

Reasons:

This Article contains the principles which arise from Articles 21 and 195 of the EC Treaty. There is no reason why this right should not apply to every person.

AMENDMENT 563

Proposed amendment to Article: 28

Submitted by: R. VAN DAM, MEP

Proposed text:

1. 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 complaint concerning administration 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.
2. Article 195 of the EC Treaty lays down the conditions governing the performance of the Ombudsman's duties.

Reasons:

With regard to paragraph 1, this amendment widens access to the Ombudsman in comparison with the original text. Paragraph 2 is intended to render the Article more explicit.

AMENDMENT 564

Proposed amendment to Article: 28

Submitted by: Kathalijne BUITENWEG

Proposed text:

Every person (18 words deleted) has the right to refer to the Ombudsman of the Union cases of administration 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.

Reasons:

The personal scope of the fundamental rights must not be unnecessarily restricted. Article 27 (Relations with the administration) was correct in this respect.

The proposed modification renders the Article more readable.

(This amendment obviously also necessitates amendment of Article 48 in CHARTE 4316/00 CONVENT 34. That Article should become a provision to prevent regression instead of a provision to prevent progress.)

AMENDMENT 565

Proposed amendment to Article: 28. Ombudsman

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

Article 28. Ombudsman

"Every citizen and every person residing 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."

Reasons:

It would seem that this is the first provision to include legal persons having their registered offices in Member States. Such explicit reference could lead to the converse conclusion that other fundamental rights are not applicable to legal persons. This must however be avoided. The best overall solution would be a specific horizontal provision for legal persons. That could read: "The rights and freedoms guaranteed by this Charter shall also apply to legal persons insofar as they are by their nature applicable to such persons".

AMENDMENT 566

Proposed amendment to Article: 28

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

“Article 28. Ombudsman/*Ombudswoman*”

In the German version, also replace “Jeder Unionsbürger” by “Jede Unionsbürgerin und jeder Unionsbürger” (i.e. specifically referring to both male and female citizens).

Reasons:

The proposed versions differ in using or avoiding gender-specific terms.

AMENDMENT 567

Proposed amendment to Article: 28

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Every natural person residing in a Member State has the right to refer to the Ombudsman of the Union

Reasons:

In the proposed text the reference to legal persons is deleted as it is not appropriate in a Charter of Fundamental Human Rights.

AMENDMENT 568

Proposed amendment to Article: 28

Submitted by: Rocco BUTTIGLIONE, MEP, under the authority of the head of the European Parliament delegation

Proposed text:

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 European Parliament, the Court of Justice and Court of First Instance acting in their judicial role and the Court of Auditors.

Reasons:

Remain the same.

AMENDMENT 569

Proposed amendment to Article: 28. Ombudsman

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Every citizen of the Union 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.

Reasons:

First sentence: The insertion of the words "*of the Union*" in the first part of the sentence (after "every citizen") is more in line with the EU Treaty.

AMENDMENT 570

Proposed amendment to Article: 28

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

The words “Every citizen and every natural and legal person residing or having its registered office in a Member State” should be replaced by “Everyone”.

Reasons:

This Article contains the principles derived from Articles 21 and 195 TEC. There is no reason why this right should not apply to everyone.

AMENDMENT 571

Proposed amendment to Article: 28

Submitted by: Jean-Maurice DEHOUSSE, MEP, alternate member of the Convention

Proposed text:

1. Add the following to the text of the proposed article:

The same right is granted to nationals of third countries who are established outside the Union and maintain relations of governance with the Union, its bodies or its official representatives.

2. Add the following to the text of the proposed article:

The Ombudsman shall draw up an annual report on the implementation of the Charter. The report shall be the subject of public debate at the European Parliament.

Reasons:

Re 1: It is in the interests of the citizens of the Union to verify how its bodies behave in their relations with the outside world.

Re 2: It is in the interests of both the governing bodies of the Union and its citizens that particular care be taken in supervising the application of the Charter.

Proposals for Article 29

AMENDMENT 572

Proposed amendment to Article: 29

Submitted by: EINEM/HOLOUBEK

Proposed text:

Instead of "natural and legal person", simply read "person".

Reasons:

In line with our proposal that the word "individual" should be used when referring to natural persons and "person" when referring to natural and legal persons, it is sufficient in Article 29 to speak of every "person".

AMENDMENT 573

Proposed amendments to Article: 29

Submitted by: Erling OLSEN

Proposed text:

The words "on EU-related matters under the conditions and limitations laid down in Article 194 of the Treaty" should be added after "European Parliament".

Reasons:

Under Article 194 of the EC Treaty a petition can be addressed to the European Parliament on matters which come within the Community's fields of activity; that should be reflected in this provision.

AMENDMENT 574

Proposed amendment to Article: 29

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

The existing text should be replaced by the following:

Every person has the right to petition an institution or body of the Union.

Reasons:

This Article contains the principles which arise from Articles 21 and 194 of the EC Treaty. Every person must have this right (see Article 5 of the Netherlands Constitution). There is also no reason to limit the right to the European Parliament. Incidentally, a right to a reply cannot be inferred from the right of every person to petition.

AMENDMENT 575

Proposed amendment to Article: 29

Submitted by: Kathalijne BUITENWEG

Proposed text:

Every person (18 words deleted) has the right to petition the European Parliament.

Reasons:

The personal scope of the fundamental rights must not be unnecessarily restricted. Article 27 (Relations with the administration) was correct in this respect.

The proposed modification renders the Article more readable.

(This amendment obviously also necessitates amendment of Article 48 in CHARTE 4316/00 CONVENT 34. That Article should become a provision to prevent regression instead of a provision to prevent progress.)

AMENDMENT 576

Proposed amendment to Article: 29. Right to petition

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

"Every citizen and every (delete three words) person residing (delete five words) in a Member State has the right to (delete rest) address a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him/her directly."

Reasons:

A horizontal provision should be introduced on the applicability of rights to legal persons.

It should also be made clear, in accordance with Article 194 of the EC Treaty, that the right to petition only applies within the fields of activity of bodies of the European Union.

AMENDMENT 577

Proposed amendment to Article: 29. Right to petition

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 29. Right to petition

Every citizen of the Union and *anyone residing* in a Member State has the right in matters which come within the Union's fields of activity and which affect him or her directly to address a petition to the European Parliament”.

Reasons:

Here too, one should initially avoid explicit reference to legal persons. As already indicated, there is therefore a need for a horizontal provision: "The rights and freedoms ensured by this Charter shall also apply to legal persons insofar as they are by their nature applicable to such persons".

It should, moreover, in accordance with Article 194 of the EC Treaty, be made clear that the right to petition only applies within the fields of activity of bodies of the European Union. This limitation of competence to deal with a matter could be achieved by inserting the text suggested by the German Länder.

AMENDMENT 578

Proposed amendment to Article: 29

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

In the German version, "Jeder Unionsbürger" should be replaced by "Jede Unionsbürgerin und jeder Unionsbürger".

Reasons:

The two proposed wordings differ in using or avoiding a gender-specific term.

AMENDMENT 579

Proposed amendment to Article: 29

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Every natural person residing in a Member State has the right to petition the European Parliament.

Reason:

In the proposed text the reference to legal persons is deleted as it is not appropriate in a Charter of Fundamental Human Rights.

AMENDMENT 580

Proposed amendment to Article: 29

Submitted by: Rocco BUTTIGLIONE, MEP, under the authority of the head of the European Parliament delegation

Proposed text:

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 and, accordingly, its Committee on Petitions.

The European Parliament, which elects the Ombudsman, shall, through the Committee on Petitions, exercise supervision of the role of the Ombudsman.

Reasons:

Remain the same.

AMENDMENT 581

Proposed amendment to Article: 29. Right to petition

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

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

Reasons:

First sentence: Insertion of the words "*of the Union*" in the first part of the sentence (after "every citizen") is more in line with the EU Treaty.

AMENDMENT 582

Proposed amendment to Article: 29

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Every person has the right to petition an institution or body of the Union.

Reasons:

This Article contains the principles which arise from Articles 21 and 194 of the EC Treaty. Every person must have this right (see Article 5 of the Netherlands Constitution). There is also no reason to limit the right to the European Parliament. Incidentally, a right to a reply cannot be inferred from the right of every person to petition.

Proposed amendment to add a horizontal clause

Proposed text of a horizontal clause:

Insofar as this Charter contains rights corresponding to rights laid down in the European Convention on Human Rights, their meaning and scope are the same as the meaning and scope of the rights under the ECHR, unless this Charter provides greater protection.

Reasons:

This clause makes it clear that the rights in the Charter have the same meaning and scope as the provisions of the ECHR, as interpreted by the CDH, even if the formulation differs. In Article 5 of the ECHR, security is linked to the individual person. The Charter does not therefore explicitly cover a right to security in the general sense, as is expressed for example in Article 2 of the Treaty on European Union which states that one of the objectives of the Union is "to maintain and develop the Union as an area of freedom, security and justice ...". Clearly that Article leaves open the possibility of further protection under the Charter.

Proposals for Article 30

AMENDMENT 583

Proposed amendment to Article: 30

Submitted by: Pervenche BERÈS

Proposed text:

Every citizen of the Union and every person legally resident in the Union has the right to move and reside freely within the territory of the Member States.

Reasons:

AMENDMENT 584

Proposed amendment to Article: 30. Freedom of movement

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Article 30. Freedom of movement

1. *Every citizen of the Union has the right to move and reside freely within the territory of the Member States. Every citizen of a third country shall have the same entitlement to this right if they have been legally resident for five years within the territory of the Member States.*
2. *Every citizen of the Union shall be free to leave and then return to the territory of the Member States”.*

Reasons:

The existing text concerning this right should be extended or clarified in two respects: firstly, third-country nationals should also be given the right to freedom of movement after a specified period of legal residence. Secondly, it is moreover necessary here to draw the conclusions of experience in recent years when whole sections of populations have been repeatedly driven out of their homeland and subsequently prevented from returning there.

AMENDMENT 585

Proposed amendment to Article: 30. Freedom of movement

Submitted by: Georges BERTHU, MEP

Proposed text:

Every citizen of the Union has the right to move and reside freely within the territory of the Member States, **subject to national controls designed to preserve liberty and security of persons, in accordance with Article 6 of the Charter. Such controls must in all cases remain legitimate and proportionate.**

Reasons:

Recent cases (Wijsenbeek) have shown that freedom of movement is sometimes interpreted, wrongly, as automatically signifying the complete abolition of all forms of control. In line with the very spirit of Article 6 of the Charter, it is important to signify that controls may be exercised.

AMENDMENT 586

Proposed amendment to Article: 30

Submitted by: Andrew DUFF, MEP

Proposed text:

BB. 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 whether to live, work, seek work, study or undergo training.

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."*

The Article also acts as a reference point for the citizen in drawing together all the rights of EU citizens with regard to freedom of movement. A reference to the Treaty will be made in a horizontal clause.

AMENDMENT 587

Proposed amendments to Article: 30

Submitted by: Erling OLSEN

Proposed text:

“Subject to the conditions and limitations laid down in the EC Treaty” should be added after “within the territory of the Member States”.

Reasons:

It is important to make clear that this provision does not vary from Article 18 of the EC Treaty. See Court of Justice judgment of 11 April 2000 in Case C-356/98 (Kaba), which indicates that a Member State's citizen's right to reside in the territory of another Member State is not absolute.

AMENDMENT 588

Proposed amendment to Article: 30

Submitted by: E.M H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

"Every citizen of the Union" should be replaced by "Every person with a lawful residence permit".

Reasons:

The proposed wording is in line with the applicable regulations.

AMENDMENT 589

Proposed amendment to Article: 30

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

"Everyone who has been accorded refugee status or enjoys permanent right of residence in a Member State has the right to move and settle freely within the Union".

Reasons:

AMENDMENT 590

Proposed amendment to Article: 30

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add at the end of the sentence “in accordance with Article 18 of the Treaty establishing the European Community”.

Reasons:

In the text which defines the right, it is necessary to make an explicit reference to the Community Treaty in which this right is set out and limitations and conditions governing its exercise are established. This is without prejudice to the relevant horizontal clause which may be more detailed in setting out those limitations.

AMENDMENT 591

Proposed amendment to Article: 30

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Every citizen of the Union or anyone residing or having the right to reside in a Member State has the right to move (*one word deleted*), reside *or settle* freely within the territory of the Member States.

In the German version, also replace “Jeder Unionsbürger” by “Jede Unionsbürgerin und jeder Unionsbürger”.

Reasons:

1. In the German version, the two proposed wordings differ in using or avoiding a gender-specific term.
2. The Article should not refer solely to citizens.
3. The right to freedom of movement should not become no more than a right for citizens of the Union to travel freely, but should include the right for all persons living in the Member States to settle freely.

AMENDMENT 592

Blank.

AMENDMENT 593

Proposed amendment to Article: 30

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Retain existing text

For Part B, “Definition of Rights”:

“The right in Article 30 is the right provided for in Article 18(1) of the Treaty establishing the European Community and is subject to the limitations and conditions laid down in that Treaty and by the measures adopted to give it effect”

Reasons:

I am very happy with the Praesidium text for the Proclamation of this right. However, I believe that we must ensure in Part B that Article 30 is understood within the meaning of the relevant Treaty provisions. It also preserves the effect of provisions laid down under as well as in the Treaty.

AMENDMENT 594

Proposed amendments to Article: 30. Freedom of movement

Submitted by: Daniel TARSCHYS

Reasons:

The conditions linked to this right should be explained in a part B.

Proposals for new Articles

AMENDMENT 595

Proposed amendment to Article: insertion of a new Article

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

- Insert in the Charter a new Article 31, worded as follows:

Upon leaving the territory of the Union, all citizens of the Union shall be entitled to diplomatic and consular protection. Such protection shall be afforded them by any official representative of the Union or of any of its Member States.

Reasons:

There is no reason to omit from the Charter the protection provided by Article 20 EC (under the Treaty of Amsterdam).

AMENDMENT 596

Proposed amendment to Article: HH

Submitted by: Andrew DUFF, MEP

Proposed text:

Article HH. European Union citizenship

Any right, privilege or obligation pertaining to citizens of the European Union may be extended in whole or in part to any natural or legal person by decision of the Union, in accordance with the principle of subsidiarity and where the extension of the scope of such rights shall not limit in any way those of EU citizens.

Statement of reasons

A new horizontal clause is required so that the rights falling to EU citizens in the above Articles may be extended to other categories of person. An extension of the right to vote in elections to resident third country nationals would be one such example. The reference to subsidiarity is appropriate in order to allow for a variable treatment of some citizenship rights as between Member States, as already exists in some cases, such as the franchise.

This clause would also allow for the development of the practice of freedom of movement of persons within the area of freedom, security and justice as foreseen by the Treaty of Amsterdam.

AMENDMENT 597

Proposed amendment to Article:

Proposal for a special Article on protection of minorities

Article xxx Rights of minorities

(to be inserted preferably after Article 17, before Article 21 or after Article 22)

Submitted by: Prof. Reinhard RACK, MEP

Proposed text:

1. Members of any national, ethnic, cultural, linguistic, religious or other minority have the right also to live their traditional distinctiveness collectively and in public, to assemble freely and peacefully with others and associate freely with others and to settle their own internal affairs.
2. The Union shall work to promote the tradition and cultivation of minority rights.

Reasons:

In addition to individual protection for minorities, in accordance with European traditions in the Member States, care should be taken to protect and promote the collective rights of minorities. The above proposal takes on board the main substance of a number of European legal texts already in existence or currently being drawn up. Among others, mention should be made of the framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The fact that the framing of collective minority rights is not without its political difficulties in individual Member States, if anything, brings out the need to include this right in the European Union Charter of Fundamental Rights.

AMENDMENT 598

Proposed amendment to Article: (new Article)

Submitted by: Johannes VOGGENHUBER

Proposed text:

Rights of minorities

1. Anyone belonging to a minority has the right to use their own language and pursue their own culture, collectively and in public, with other members of their group.
2. Members of groups in practice at a disadvantage are entitled to special support.

Reasons:

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