

DRAFT

CHARTER

OF

FUNDAMENTAL RIGHTS

OF THE

EUROPEAN UNION

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PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

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CHAPTER I – DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular :
 - the free and informed consent of the person concerned, according to the procedures laid down by law,
 - the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - the prohibition on making the human body and its parts as such a source of financial gain,
 - the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

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CHAPTER II – FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

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CHAPTER III – EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

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CHAPTER IV – SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without

prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the procedures laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

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CHAPTER V – CITIZENS’ RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

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

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes :
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

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CHAPTER VI – JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

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

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

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

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CHAPTER VII – GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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Frequently Asked Questions

Everything you want to know about the Charter.

Question 1

Does the Charter confer new rights on European citizens ?

Each of the Charter's 50 articles, which set out individuals' rights or freedoms, is taken from a "precursor" text. This can be another charter, a convention, a treaty or jurisprudence.

Certain rights are new, such as those relating to bioethics or the protection of personal data, in so far as they seek to respond to the challenges of new technologies in the areas of communication or biotechnology. In fact, a specific Council of Europe convention on bioethics already exists. Likewise, the protection of personal data is the subject of another specific Council of Europe convention, as well as of Community directives. What the Charter does is to express these rights in a new way and raise them to the status of fundamental rights.

Question 2

Why have the Charter if it does not contain new rights ?

The main reason is to make these rights visible for citizens. Whilst the rights deriving from the European Convention on Human Rights were already visible, those deriving from the judgements of the Court of Justice of the European Communities and the European Court of Human Rights were much less so. For example, the right to good administration found in the Charter synthesises a series of decisions of the Court of Justice of the European Communities in this field.

As well as making certain rights more explicit, the Charter is totally innovative in including fundamental economic and social rights, alongside the more traditional civil and political rights and citizens' rights resulting from Community treaties. This is something which has never been done before by any international or European documentation in this field.

Question 3

What impact will the Charter have on my life ?

The Charter means that you will be better armed to understand the extent of your rights, and therefore to defend yourself against any violation of your fundamental rights. You can refer to the Charter to challenge any decision taken by the Community institutions (European Commission, Council of Ministers of the European Union, European Parliament, etc.) and by Member States when implementing EU law. If, for example, you feel that a particular law in your country which derives from a Community directive is not compatible with your fundamental rights, you can bring the matter before a judge in your own country.

If the judge is not convinced, he can request an interpretation from the Court of Justice of the European Communities. The Charter will also provide the European Commission with a clearer sense of direction in order, if necessary, to challenge a Member State if and when fundamental rights are violated. Whilst all this was possible beforehand, the Charter will have an impact by making these rights more explicit and familiar.

Question 4

Will the Charter mean more power for Brussels and less sovereignty for Member States ?

The Charter does not entail any transfer of powers. On the contrary, what it does is to set up an instrument with which to control the way the institutions of the European Union and Member States implement their existing powers, with regard to fundamental rights, whenever they act in the field of Union law.

Question 5

Is there a human rights problem in Europe ? Or is it only the inhabitants of poorer countries who have no human rights ?

It is wrong to state that fundamental rights are violated elsewhere but not in our own countries. Even in those countries where a culture of human rights exists, these rights have to be defended day by day. This is true for 'traditional' human rights, if we think of the mistreatment that sometimes occurs during police questioning, or living conditions in prisons. But the Charter goes much further than this, because technologically advanced countries like the Member States of the European Union are also the most exposed to contemporary problems such as bioethics and the protection of personal data.

Question 6

What is the difference between the Charter and the European Convention for the Protection of Human Rights and Fundamental Liberties ?

The European Convention is a text from the Council of Europe, which is made up of over 40 European countries, including Russia. The Charter, on the other hand, is a text from the European Union, which currently has 15 Member States. Also, the scope of the protection provided by these two texts is different. The Convention of the Council of Europe relates solely to civil and political rights, whilst the Charter of the European Union covers additional aspects, such as the right to good administration, workers' social rights, the protection of personal data, and bioethics. In addition, the Charter covers those political rights of Union citizens that, by definition, cannot be included in the Convention of the Council of Europe.

Question 7

Why doesn't the European Union simply sign up to the European Convention ?

This would require the European Union to amend the Community treaties. The European Convention itself would have to be amended as only national States can sign up to the Convention for the moment. The Commission is in favour of amending the treaties in order to allow the European Community to sign up to the Convention. However, a number of Member States remain opposed to this. Only recently, in the framework of the latest intergovernmental conference amending the Community treaties, Finland officially tabled a proposal to make it possible for the European Community to sign up to the European Convention on Human Rights.

If the European Community did sign up to the Convention, the European Court of Human Rights, which is not an EU but a Council of Europe institution, would be in charge of examining how the European Union respects fundamental rights. Thus the Court of Justice of the European Communities would be subject to the control of the European Court of human rights, just like the supreme courts of all the Member States.

The two things – signing up to the Convention and adopting a Union Charter – are not mutually exclusive or contradictory. The optimal solution would be to adopt a Union Charter and, in parallel to this, for the Community or the European Union to sign up to the Convention of the Council of Europe. For the Union, having its own catalogue of rights puts it in the same situation as individual States. Each State has, in its constitution or elsewhere, its own list of fundamental rights and, at the same time, each State has signed up to the Convention. The European Union would be doing the same thing.

Question 8

Does the Charter go further than the Convention in conferring or guaranteeing fundamental rights ?

It goes further because it contains rights that are not explicitly included in the text of the Convention, which dates from 1950, in particular data protection, bioethics and social rights. But the Charter also goes further to the extent that the Court of Justice of the Communities has itself already gone further than the Convention with regard to certain rights : for example, the right to effective judicial recourse. Under the wording of the Convention, effective recourse is not necessarily judicial recourse : States can provide that this recourse can be sought before an administrative body and not in court, whilst the Charter requires that this recourse must always be sought before a judge. In addition, under the terms of the Convention, effective recourse needs to be provided only for the defence of fundamental rights. The Charter, on the contrary, provides that judicial recourse must be possible in order to defend all those rights protected by Union law, even where these are not fundamental rights.

Another example is the right of marriage. The text of the Convention speaks of the right of a man and woman to marry. The Charter uses more modern language, in line with national legislation which recognises other ways of creating a family than marriage. Other examples exist where the Charter goes further, even when this involves rights that are based on the Convention, in particular the right not to be tried or punished twice for the same offence. This right applies not only within the jurisdiction of a particular Member State, as provided for by the European Convention, but also within the jurisdiction of several Union Member States together.

Question 9

Do these rights apply equally to third-country citizens resident in the EU ?

Almost all the rights listed in the Charter are granted to everybody. However, things are different when it comes to the rights attached to citizenship of the Union, in the narrow sense of the term, in particular the right to vote in local and European elections. With regard to the free movement of persons, the Charter affirms the right of every European citizen to move and reside freely within the territory of the Member States. It adds that these rights “may” be granted to third-country nationals. This refers back to the Treaty on the European Community, Articles 62 and 63 of which state that it can be decided, under Community procedures, to extend the right of movement and the right of residence within the European Union to third-country residents.

Question 10

Who drew up the Charter ?

The Charter was drafted by a Convention set up following a decision by the heads of state and government of the Member States of the European Union at the European Council of Cologne in June 1999. The European Council at Tampere in December 1999 established the detailed composition of the Convention and its operation. The Convention had 62 members: 15 personal representatives of the heads of state and government, one representative of the President of the European Commission, 16 members of the European Parliament, and 30 members of national parliaments. This Convention began work in November 1999, electing as its leader Roman Herzog, the former president of the Federal Republic of Germany. The Convention was assisted by a bureau (presidium) made up of the president of the Convention and vice-presidents representing the Members of the European Parliament, the members of national parliaments and the Council presidency. The Commission also took part in the presidium’s work. The Convention completed this work on 2 October 2000 by observing that a consensus existed on the draft Charter, which was then sent to the European Council.

Question 11

Were ordinary citizens involved in writing this Charter ?

As decided by the European Councils of Cologne and Tampere, the Convention's meetings were made public. All the documents it produced – in particular the various successive draft wordings – were published on the Internet (<http://db.consilium.eu.int/df/>). It also organised public hearings for non-governmental organisations. In particular, 70 associations representing very varied interests (churches and confessional groups, human rights defence leagues, property owners, trade unions, business undertakings, asylum-seekers, associations defending the interests of women, children, and of homosexuals and lesbians, environmental protection groups, etc.) took part in a hearing organised by the Convention on 27 April 2000. Following this event, most of the associations in question produced written positions which were analysed by the Convention and published on the website. But this transparency of the Convention's work was also proven by the fact that everybody had free access to the Convention meetings and to the written documents. There was therefore no need to be part of a non-governmental organisation in order to take part in the work, which everyone could follow.

Question 12

Can I use the Charter as a basis for judicial recourse in my own country ?

Yes, on condition that this recourse concerns a subject within the field of Union law. The matter must be brought in front of the competent national judge. In most cases this is the common law judge responsible for the application of Community law.

Question 13

Does the Charter give greater power to judges to the detriment of democratically elected politicians ?

Exactly the opposite. Right now jurisdictions such as the Court of Justice of the European Communities have to base themselves on Article 6 of the Treaty of European Union, as expressing the general principles of Community law, in order to proceed against violations of fundamental rights. This article lacks clarity in that it refers not only to the European Convention but also to the constitutional traditions of the Member States. Inevitably, this concept has to be interpreted. On the contrary, the Charter will provide judges with a much more explicit guide to their reading of fundamental rights.

Question 14

Will the Charter lead to a large rise in the number of law suits for human rights violations ?

This cannot be excluded. The objective of the Charter is for people to be better informed about their rights, by making them more visible and explicit!

Question 15

If conflicts arise between different rights included in the Charter, how will they be resolved ?

A balance must always be struck between fundamental rights. For example, the protection of personal data requires us to strike a balance between everyone's right to privacy and the right to information that others can invoke. Similarly, tension can exist between the free movement of persons contained in Article 45 of the draft Charter, and Article 28 which sets out workers' rights, under Community law and in national legal systems, to take collective action, including strikes, in the case of conflicts of interest with their employers. Such situations are not resolved by postulating that one right is potentially more important than another. What is needed, rather, is to establish a balance between the rights in question to ensure that both of these rights are protected in a well-proportioned way. The Charter provides mechanisms for achieving this.

Question 16

What will happen if judgements of the Court of Justice of the European Communities are in contradiction with those of the European Court of Human Rights ?

This is a question already being asked. It is indeed possible that the Court of Justice of the European Communities and the European Court of Human Rights, a body of the Council of Europe may not have the same understanding of fundamental rights as established in the European Convention or in other documentation. However, the risk of jurisprudential contradiction is very limited as each Court takes account of the other's jurisprudence in its own decisions. But, this danger can only be removed completely by the Community or the European Union signing up to the Council of Europe Convention or, at the very least, by the introduction of co-operation mechanisms between the two Courts.

Question 17

What will the Charter mean for countries that have applied for EU membership ?

The Charter does not add supplementary conditions for applicant countries. In reality, the fact that these countries accept the acquired body of Community

law (the so-called “acquis communautaire”), for example in the area of the protection of personal data, already implies that they accept and respect the standards and principles set out in the Charter. What the Charter does is to render these standards more explicit in terms of fundamental rights, providing an additional judicial security which will benefit both applicant countries and citizens in general. Nor should we forget that the applicant countries have already signed up to the European Convention on Human Rights and that their own constitutions include these fundamental rights.

Question 18

Will the Charter be incorporated into the European treaties ?

This will be seen at the Nice summit on 7, 8 and 9 December 2000. It is possible that the inclusion of the Charter in the treaties will be one of the items to be tackled after Nice. But it would seem logical that the existence of the Charter be explicitly recognised in the text of the future Treaty of Nice resulting from the Intergovernmental Conference. This is why the European Parliament has suggested that a reference to the Charter be added to article 6 of the Treaty on the European Union, next to the references to the European Convention on Human Rights and to the common constitutional traditions already contained in the present text.

Question 19

Does the Charter constitute a first step towards a European Constitution ?

The Charter has its own specific objective : the protection of fundamental rights.

Question 20

As all Member States have already signed up to the European Convention why is there a need to have a Charter of Fundamental Rights in the European Union ?

A Charter of Fundamental Rights is needed now because the European Union has entered into a new and more resolutely political stage of integration. The Charter will be a very important milestone on the road towards this political Europe, which is developing into an integrated area of freedom, security and justice, which is the logical outcome of the very concept of European citizenship. Essentially, it serves to anchor the political and moral legitimacy of this political Europe, both for its citizens and vis-à-vis the political establishment, governments and national authorities, as well as economic and social players. It expresses the shared values which inspire the very essence of our democratic societies.

Question 21

Is the Charter just a wish list with no binding power ?

The proclamation represents a solemn commitment by three institutions – the European Parliament, the Council and the Commission – to respect the Charter. It is obvious that the Council of Ministers of the European Union and the European Commission will find it difficult to ignore in future, when they act in a legislative capacity, a text prepared at the behest of the European Council (the heads of state and government of Member States), and by every national and European source of legitimacy – the European Parliament, national parliaments, representatives of Member State governments and the Commission – united within a single framework. Similarly, it is probable that the Court of Justice of the European Communities will draw inspiration from it. We can therefore look forward to the Charter becoming binding through its being interpreted by the Court of Justice as enshrining the general principles of Community law.

Question 22

Will Member States be required to amend their constitutions or to transpose the Charter into their national law ?

No. The Charter does not replace national constitutions in its field of application. In any event, the Charter draws its inspiration from national constitutional traditions. There is therefore no fundamental contradiction between the Charter and national constitutions.

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Contents

PREAMBLE	1
CHAPTER I – DIGNITY	2
Article 1: Human dignity	2
Article 2: Right to life	2
Article 3: Right to the integrity of the person	2
Article 4: Prohibition of torture and inhuman or degrading treatment or punishment	2
Article 5: Prohibition of slavery and forced labour	2
CHAPTER II – FREEDOMS	3
Article 6: Right to liberty and security	3
Article 7: Respect for private and family life	3
Article 8: Protection of personal data	3
Article 9: Right to marry and right to found a family	3
Article 10: Freedom of thought, conscience and religion	3
Article 11: Freedom of expression and information	4
Article 12: Freedom of assembly and of association	4
Article 13: Freedom of the arts and sciences	4
Article 14: Right to education	4
Article 15: Freedom to choose an occupation and right to engage in work	4
Article 16: Freedom to conduct a business	5
Article 17: Right to property	5
Article 18: Right to asylum	5
Article 19: Protection in the event of removal, expulsion or extradition	5
CHAPTER III – EQUALITY	6
Article 20: Equality before the law	6
Article 21: Non-discrimination	6
Article 22: Cultural, religious and linguistic diversity	6
Article 23: Equality between men and women	6
Article 24: The rights of the child	6
Article 25: The rights of the elderly	7
Article 26: Integration of persons with disabilities	7
CHAPTER IV – SOLIDARITY	8
Article 27: Workers' right to information and consultation within the undertaking	8
Article 28: Right of collective bargaining and action	8
Article 29: Right of access to placement services	8
Article 30: Protection in the event of unjustified dismissal	8
Article 31: Fair and just working conditions	8
Article 32: Prohibition of child labour and protection of young people at work	8

..... CONTENTS

Article 33: Family and professional life	9
Article 34: Social security and social assistance	9
Article 35: Health care	9
Article 36: Access to services of general economic interest	10
Article 37: Environmental protection	10
Article 38: Consumer Protection	10
CHAPTER V – CITIZENS’ RIGHTS	11
Article 39: Right to vote and to stand as a candidate at elections to the European Parliament	11
Article 40: Right to vote and to stand as a candidate at municipal elections	11
Article 41: Right to good administration	11
Article 42: Right of access to documents	11
Article 43: Ombudsman	12
Article 44: Right to petition	12
Article 45: Freedom of movement and of residence	12
Article 46: Diplomatic and consular protection	12
CHAPTER VI – JUSTICE	13
Article 47: Right to an effective remedy and to a fair trial	13
Article 48: Presumption of innocence and right of defence	13
Article 49: Principles of legality and proportionality of criminal offences and penalties	13
Article 50: Right not to be tried or punished twice in criminal proceed- ings for the same criminal offence	13
CHAPTER VII – GENERAL PROVISIONS	14
Article 51: Scope	14
Article 52: Scope of guaranteed rights	14
Article 53: Level of protection	14
Article 54: Prohibition of abuse of rights	15
Frequently Asked Questions	16
Question 1: Does the Charter confer new rights on European citizens ?	16
Question 2: Why have the Charter if it does not contain new rights ? .	16
Question 3: What impact will the Charter have on my life ?	16
Question 4: Will the Charter mean more power for Brussels and less sovereignty for Member States ?	17
Question 5: Is there a human rights problem in Europe ? Or is it only the inhabitants of poorer countries who have no human rights ? .	17
Question 6: What is the difference between the Charter and the Euro- pean Convention for the Protection of Human Rights and Funda- mental Liberties ?	17
Question 7: Why doesn’t the European Union simply sign up to the European Convention ?	18

..... CONTENTS

Question 8: Does the Charter go further than the Convention in conferring or guaranteeing fundamental rights ? 18

Question 9: Do these rights apply equally to third-country citizens resident in the EU ? 19

Question 10: Who drew up the Charter ? 19

Question 11: Were ordinary citizens involved in writing this Charter ? . 20

Question 12: Can I use the Charter as a basis for judicial recourse in my own country ? 20

Question 13: Does the Charter give greater power to judges to the detriment of democratically elected politicians ? 20

Question 14: Will the Charter lead to a large rise in the number of law suits for human rights violations ? 21

Question 15: If conflicts arise between different rights included in the Charter, how will they be resolved ? 21

Question 16: What will happen if judgements of the Court of Justice of the European Communities are in contradiction with those of the European Court of Human Rights ? 21

Question 17: What will the Charter mean for countries that have applied for EU membership ? 21

Question 18: Will the Charter be incorporated into the European treaties ? 22

Question 19: Does the Charter constitute a first step towards a European Constitution ? 22

Question 20: As all Member States have already signed up to the European Convention why is there a need to have a Charter of Fundamental Rights in the European Union ? 22

Question 21: Is the Charter just a wish list with no binding power ? . . 23

Question 22: Will Member States be required to amend their constitutions or to transpose the Charter into their national law ? 23

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Sources :

- http://www.europa.eu.int/comm/justice_home/unit/charte/pdf/charter_en.pdf
- http://www.europa.eu.int/comm/justice_home/unit/charte/en/faq.html

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