

WG II 27

Note for the Members of Working Group II

Subject: Consultation on the updated and consolidated version of the Explanations on the Charter

1. As you will remember, our Working Group stressed in its final report that the "Explanations" to the Charter, which had been drawn up at the instigation of the Praesidium of the Charter Convention (and which, although not submitted to the Plenary of the previous Convention, played a role in securing consensus on the Charter text within that Convention), are one important tool of interpretation ensuring a correct understanding of the Charter. It recommended that its own explanations on the drafting adjustments to the horizontal clauses of the Charter should be fully integrated with the original Explanations. The Group furthermore recommended that, upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter; in particular, it would be important to publicise them more widely.

Following that recommendation, the Praesidium agreed that the technical work of producing such an updated and consolidated version of the Explanations of 2000 should be carried out under my authority, and that I should consult you, as members of Working Group II, on this technical work and then submit the product to the Praesidium for endorsement, before the end of the Convention.

I therefore herewith send you a draft updated and consolidated version of these Explanations and kindly ask you to send me your comments or suggestions on them by 10 June, noon, at the latest (to be sent to the Secretariat: clemens.ladenburger@consilium.eu.int).

2. My general approach to this technical exercise, as explained in more detail below, is to leave intact as much as possible the original Explanations of 2000, and to amend them only to the extent strictly necessary in order to reflect the work done by our Working Group and this Convention as a whole, without changing the original Explanations in substance.

I have therefore limited myself to:

- a) adding, to the Explanations under Articles 51 and 52, language reflecting the work done by our Working Group on these horizontal clauses, and making some necessary consequential adaptations in the remaining Explanations;
- b) adapting the references made to the EC or EU Treaty by inserting references to the appropriate provisions in Parts I and III of the Constitution and by taking into account the progress achieved by this Convention in certain areas;
- c) amending the references made to secondary Union law, and adding a few citations of important recent case law of the Court of Justice;
- d) correcting a few misprints or erroneous citations in the original Explanations.

3. As to the point a) above, I have, firstly, added some language to the Explanations under Article 51, so as to reflect fully the important clarification we have consensually reached in the Working Group, that incorporation of the Charter does not in any way lead to an extension of the Union's competences as defined by the other Parts of the Constitution. I felt it would be particularly appropriate to stress this same point again more specifically in connection with Article 21 (non-discrimination) and its relation to Article III-5 (ex-Article 13 TEC), in the light of the statements made by the representatives of the Legal Services to our Working Group.

4. On Article 52 § 3 (rights corresponding to ECHR rights), I have added a passage from our Working Group report which, although we convened that the clause itself should not be amended, does provide additional clarification on its interpretation, as requested by some members of our Group. In that connection, I have also added to that passage the sentence, currently found in the explanations under Article 53, on the ECHR as a minimum standard to be respected in any instance. The crucial importance of this rule - which is special to the ECHR - in particular for the regime of limitations of rights corresponding to the ECHR, was stressed in our hearings of Judges Skouris and Fischbach and of the 3 Legal Services, this is why I feel that point must be made under Article 52, not Article 53.

5. On Article 52 § 4, I have added language from the Working Group report on the rights resulting from common constitutional traditions.

6. Under Article 52 § 5, I have included language drawn from the Working Group report in order to explain the distinction between rights and principles.

I do not however intend to enter into an attempt of attributing the various individual Charter articles to the category of "right" or that of "principle". Rather, I wish to respect the spirit of the Charter Convention, confirmed by our Working Group, that the character as a right or a principle of individual articles is expressed as clearly as possible in the wording of the respective articles, which should permit future jurisprudence to rule on the exact attribution, taking into account the guidance provided by the Explanations. I also wish to respect the status quo of the existing Explanations which do qualify a number of Articles as principles.

Therefore, I have merely cited, for illustration, two examples of Articles which, in the light of their wording, are clearly principles and *already expressly qualified as such* in the existing Explanations (i.e., Article 26, starting with the words: "*The Union recognises and respects...*"; Article 37: "*A high level of environmental protection and the improvement of the quality of the environment must be integrated....*"). At the same time, I personally deem it important to stress that in some cases a Charter Article may actually contain *both* elements of a right and of a principle, and to give two further examples for that phenomenon (which in my personal view the judges might encounter even in relation to more Charter articles than the ones cited).

Finally, having enshrined a legal distinction between "rights" and "principles" in Article 52 § 5, we must be consequent and eliminate here and there in the Explanations a purely colloquial use - inconsistent with Article 52 § 5 - of the word "principle", i.e. as synonymous for "rule" or for "general principle of law", if we want to avoid that Article 52 § 5 is discredited and the reader of the Explanations confused. The most striking example for this use can be found in the Explanations to Article 1 (Human Dignity), but it also occurs under Articles 20, 41, 47, 49 and 50 - articles which correspond to "general principles of law" or come from the ECHR - and indeed in some explanations to the horizontal clauses themselves. As you will see, I have exercised care to replace the term "principle" in these cases by a *neutral* expression. In one case (Article 14), I have, following precisely the same logic, replaced the word "right" by a neutral wording, because it is in fact the *whole* article 14 (which contains both elements of a right and of a principle, as reflected already in the Explanations) that is extended to access to vocational and continuing training.

7. Finally, I have put a sentence of explanation for Article 52 § 6, equally taken from our Working Group report.

8. On item b) above (references to the Treaties), you will, first, note the slightly adapted wording of the Explanations under the referral clause in amended Article 52 § 2. Moreover, you will see that I have inserted, throughout the text, references to the new Articles of the Constitution replacing the TEC / TEU articles cited in the current Explanations. Where the Explanations of 2000 used the wording "this Article *is based on*....", I have put "*has been based on*..." (the respective TEC / TEU article), and added the indication of the new Constitution article replacing or amending the old article, in order to make the origin of the respective Charter article clear.

I also amended those passages of the Explanations touching on areas where our Convention, in drafting Part I or III articles, is likely to make progress in substance as compared to the situation of 2000. This concerns notably the right of access to documents (see explanations under Articles 42), the Union's system of judicial review (see explanations under Article 47), and the establishment of the Area of Freedom, Security and Justice for which respect of fundamental rights is particularly relevant (e.g., explanations under Articles 6, 18, 24). Obviously, these amended explanations are preliminary and depend on what the Convention decides with respect to these subject.

9. As regards points c) and d), you will see a number of references to recent secondary law of the Union, adopted notably in the field of social law. I have also included a few citations of new landmark cases of the Court of Justice, which are fundamental to the understanding of certain rights recognised in the Charter (cf. Explanations to Articles 1 and 3, 45, and 50). Finally, I corrected a few erroneous citations made to the European Social Charter or the Revised European Social Charter.

10. Finally, I have adapted the introductory formula of the Explanations in order to take account of this updating exercise.

I also propose to rephrase slightly the sentence about the status of the Explanations, in a way I believe to be faithful to the spirit of our Working Group, which agreed that these Explanations should be an important tool of interpretation and that they should be publicised more widely. I feel that, at least in some languages, the current wording could be misread as an excessively negative statement. For example, in English the words "they have no legal value" might be misunderstood in the sense - certainly unintended by the Praesidium of the former Convention - that the Explanations should have no legal importance or relevance whatsoever. That could of course not be said of any accompanying explanatory text to which the Courts should have due regard when interpreting the law concerned and which, hence, are indeed designed to be of considerable legal relevance. Therefore, it seems to me that we should remedy that misunderstanding in the languages concerned; the formula suggested "*although they do not as such have the status of law*, they are a valuable tool of interpretation..." would appropriately make the point.

DRAFT UPDATED EXPLANATIONS,
RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL
RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE EUROPEAN
CONVENTION WITH A VIEW TO ITS INCORPORATION INTO THE
CONSTITUTIONAL TREATY)

N.B.: the original text for this document is doc. CHARTE 4473/00 CONVENT 49 of 11 October 2000 (with a revision of the French version only: doc. CHARTE 4473/1/00 CONVENT 49 REV 1 of 19 Octobe 2000), containing the "explanations" prepared at the instigation of the Praesidium of the Charter Convention. All amendements proposed to that original text are indicated in "track-change" format below.)

These explanations have originally been prepared at the instigation of the Praesidium of the Convention on the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. ~~They have no legal value and are simply~~ Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

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

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

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

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

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

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

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

~~CHAPTER~~ TITLE I. DIGNITY

Article 1

Human dignity

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

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined ~~this principle~~ human dignity 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." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that the fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2

Right to life

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

Explanation

1. *Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:*
"1. Everyone's right to life shall be protected by law..."
2. *The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:*
"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."
Article 2(2) of the Charter is based on that provision.
3. *The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:*
 - (a) *Article 2(2) of the ECHR:*
"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection."*
 - (b) *Article 2 of Protocol No 6 to the ECHR:*
"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Explanation

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that the fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.

2. The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.

32. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5

Prohibition of slavery and forced labour

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

Explanation

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:

- no limitation may legitimately affect the right provided for in paragraph 1;*
- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:*

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from ~~the principle of~~ human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the "acquis communautaire", in which the United Kingdom and Ireland participates ~~and Ireland has requested to participate~~, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July*

2002, the Council adopted a framework decision on combating the trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

CHAPTER TITLE II. FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

~~Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-166, III-167 and III-169] of the Constitution, notably, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions to define common minimum~~

provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Article 7

Respect for private and family life

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

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

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

Explanation

This Article ~~is~~ has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Reference is also made to the meanwhile adopted regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). This regulation has set up the independent authority mentioned in Article 286 TEC and in paragraph 3 of this Article. –Provision with respect to the conditions of exercise of ~~The~~ right to protection of personal data is now to be made in Article [I-50] of the Constitution. ~~exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.~~

Article 9

Right to marry and right to found a family

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

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Article 10

Freedom of thought, conscience and religion

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

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11

Freedom of expression and information

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

Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which ~~Community~~ competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. *Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

Article 12

Freedom of assembly and of association

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

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article [I-45 § 4] of the Constitution~~191 of the Treaty establishing the European Community~~.*

Article 13

Freedom of the arts and sciences

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

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14

Right to education

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

Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this ~~right~~ article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,

this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

2. *Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article ~~[III-102-140]~~ of the Constitution of the EC Treaty.

The second paragraph deals with the three freedoms guaranteed by Articles ~~[I-4]~~ and ~~[III-15, III-19 and III-26]~~ of the Constitution ~~39, 43 and 49 et seq~~ of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services-

The third paragraph ~~is~~has been based on TEC Article 137(3), fourth indent, now replaced by Article ~~[III-99 (1) (g)]~~ of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by ~~Community~~ Union law and national legislation and practice.

Article 16

Freedom to conduct a business

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

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571 ~~[not yet published]~~, paragraph 99 of

the grounds) and ~~Articles [I-3 (2)] of the Constitution~~~~TEC Article 4(1) and (2)~~, which recognises free and undistorted competition. Of course, this right is to be exercised with respect for ~~Community~~Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Article 17

Right to property

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

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18

Right to asylum

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

Explanation

The text of the Article ~~has been~~^{is} based on TEC Article 63, now replaced by Article [III-162] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement ~~Community~~ Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the ~~EC Treaty~~ Constitution.

Article 19

Protection in the event of removal, expulsion or extradition

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

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

*Paragraph 2 incorporates case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

~~CHAPTER~~ TITLE III. EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).

Article 21

Non-discrimination

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

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-5, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-5] of the Constitution which has a different scope and purpose: Article [III-5] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover all action of Member State authorities in any area, as well as relations between private individuals. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-5] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [I-4 (2)] of the Constitution~~Article 12 of the EC Treaty~~ and must be applied in compliance with that Article ~~the Treaty~~.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article ~~is~~ has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-176 (1) and (4) of the Constitution.

concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3 (3)] I of the Constitution. The Article-It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-51] of the Constitution.

Article 23

Equality between men and women

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

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

Explanation

The first paragraph ~~has been is~~-based on- Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [I-3] and [III-1] of the Constitution which impose the objective of promoting equality between men and women on the ~~Community~~Union, and on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 2 takes over in shorter form Article III-103 (4) of the Constitution~~Article 141(4) of the EC Treaty~~ which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in

professional careers. In accordance with Article 52+(2), the present paragraph does not amend Article [III-103 (4)+141(4)-EC].

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-165 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Article 25

The rights of the elderly

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

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Article 26

Integration of persons with disabilities

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

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on ~~Article 23 of the revised Social Charter and~~ point 26 of the Community Charter of the Fundamental Social Rights of Workers.

CHAPTER TITLE 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 UnionCommunity law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by ~~Community~~ Union law and by national laws. The reference to appropriate levels refers to the levels laid down by ~~Community~~ Union law or by national laws and practices, which might include the European level when ~~Community~~ Union legislation so provides. There is a considerable ~~Community~~ Union acquis in this field: Articles [III-100 and III-101 of the Constitution¹³⁸ and ¹³⁹ of the EC Treaty], and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), ~~77/187/EEC~~ 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28

Right of collective bargaining and action

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

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of ~~C~~ collective action, including strike action, comes under national law

s and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29

Right of access to placement services

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

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30

Protection in the event of unjustified dismissal

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

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive ~~77/187/EEC~~ 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Article 31

Fair and just working conditions

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

Explanation

1. *Paragraph 1 of tThis Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article-3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article III-102 of the Constitution-140 of the EC Treaty.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

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

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33

Family and professional life

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

Explanation

Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by ~~Community~~Union 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~~Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by ~~Community~~ Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) ~~is~~ has been based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-99 and III-102] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-99 and III 102] of the Constitution~~140 of the Treaty establishing the European Community~~. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-99] of the Constitution~~137(2) of the Treaty establishing the European Community~~, particularly the last subparagraph.

Article 35

Health care

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

activities.

Explanation

The principles set out in this Article are based on Article ~~[III-174]~~ of the Constitution~~152 of the EC Treaty~~ and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-174 ~~152(1)~~.

Article 36

Access to services of general economic interest

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

Explanation

This Article ~~fully respects~~ is fully in line with Article III-3 of the Constitution~~16 of the Treaty establishing the European Community~~ and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with ~~Community~~ Union legislation.

Article 37

Environmental protection

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

Explanation

The principles set out in this Article ~~are~~ have been based on Articles 2, 6 and 174 of the EC Treaty, now replaced by Articles I-2, III-2 and III-124. It also draws on the provisions of some national constitutions.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been~~are~~ based on Article 153 of the EC Treaty, now replaced by Article III-127 of the Constitution.

CHAPTER TITLE 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.

Explanation

Article 39 applies under the conditions laid down in Parts I and III of the Constitution ~~by the Treaty~~, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [I-8 (2)] of the Constitution (cf. also the legal base in Article III-7 for the adoption of detailed arrangements for the exercise of that right)~~19(2) of the EC Treaty~~ and Article 39(2) corresponds to Article [I-19 (2)] of the Constitution~~190(1) of that Treaty~~. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Article 40

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

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

Explanation

This Article corresponds to the right guaranteed by Article [I-8 (2)] of the Constitution (cf. also the legal base in Article III-7 for the adoption of detailed arrangements for the exercise of that right)~~19(1) of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution~~the Treaty~~.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, ~~and bodies~~ and agencies 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~~ Union 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 official languages of the ~~Treaties~~ Union and must have an answer in the same language.

Explanation

*Article 41 is based on the existence of the Union as a Community subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia ~~the principle of good administration as a general principle of law~~ (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [I-37(2)] of the Constitution.*

Paragraph 3 reproduces the right guaranteed by Article ~~[III-333]~~ of the Constitution²⁸⁸ of the EC Treaty. Paragraph 4 reproduces the right guaranteed by Articles ~~[I-8, fourth indent, and III-9]~~ of the Constitution~~the third paragraph of Article 21 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by ~~Part III of the Constitution~~the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ~~European Parliament, Council and Commission~~ documents~~of the institutions agencies and bodies of the Union, in whatever form they are produced.~~

Explanation

The right guaranteed in this Article has been taken over from ~~is the right guaranteed by~~ Article 255 of the EC Treaty. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, ~~the right of access to documents is exercised under the conditions and within the limits for which provision is made in Article [I-49 (3)]~~ applies under the conditions defined by the Treaty.

Article 43

Ombudsman

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

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-232 of the Constitution]~~21 and 195 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles~~by the Treaty~~.

Article 44

Right to petition

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

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-231] of the Constitution~~21 and 194 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles~~by the Treaty~~.

Article 45

Freedom of movement and of residence

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

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article [I-8, first indent] of the Constitution~~18 of the EC Treaty~~ (cf. also the legal base in Article [III-6]; and the judgement of the Court of Justice of 17 September 2002, C-413-99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution~~by the Treaty~~.

Paragraph 2 refers to the power granted to the ~~Community~~ Union by Articles [III-161 to III-163] of the Constitution ~~62(1) and (3) and Article 63(4) of the EC Treaty~~. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46

Diplomatic and consular protection

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

Explanation

The right guaranteed by this Article is the right guaranteed by Article [I-8] of the Constitution; cf. also the legal base in Article [III-8] ~~20 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles ~~by the Treaty~~.

CHAPTER TITLE VI. JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

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

Explanation

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in ~~Community~~ Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined ~~the principle that right~~ in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313. According to the Court, ~~this principle that right~~ also applies to the Member States when they are implementing ~~Community~~ Union law. The inclusion of this precedent in the Charter ~~is~~ has not been intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-254 to III-285] of the Constitution, and in particular in Article [III-266 (4)]. ~~This principle is therefore to be implemented according to the procedures laid down in the Treaties. It~~ Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In ~~Community~~ Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the ~~Community~~ Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979,

Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union~~Communities~~.

Article 48

Presumption of innocence and right of defence

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

Explanation

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49

Principles of legality and proportionality of criminal offences and penalties

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

Explanation

This Article follows the traditional rule ~~principle~~ of the non-retroactivity of laws and criminal sanctions. There has been added the ~~principle~~ rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 50

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

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

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" ~~principle~~ rule applies in ~~Community~~ Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50, the "non bis in idem" ~~principle~~ rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the acquis in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" ~~rule~~ principle are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

CHAPTER TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions, ~~and~~ bodies and agencies 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 and respecting the limits of the powers of the Union as conferred on it by other Parts of the Constitution.

2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Community or the Union, or modify powers and tasks defined by the other Parts of the Constitution~~Treaties~~.

Explanation

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision ~~is~~ has been drafted in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in ~~the EC Treaty, Part I of the Constitution, Article [I-18(2)]~~⁷ of which lists the institutions. The expression "bodies and agencies" ~~term "body"~~ is commonly used in the Constitution to refer to all the authorities set up by the ~~Treaties~~ Constitution or by secondary legislation (see, e.g., Article [I-49 or I-50] of the Constitution²⁸⁶⁽¹⁾ ~~of the Treaty establishing the European Community~~).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the ~~context~~ scope of ~~Community~~ Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi, [1997] ECR I-7493). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds, ~~not yet published~~). -Of course this ~~principle~~ rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution ~~Treaties~~ confer on the ~~Community and the~~ Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by [Parts I and III of the Constitution]~~the Treaty~~. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the scope of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter ~~which are based on the Community Treaties or the Treaty on European Union~~ for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts ~~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.

4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

Explanation

The purpose of Article 52 is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Constitution and other interests protected by specific ~~Treaty~~ provisions of the Constitution such as Articles [I-5 (1), III-15, III-40, III-339] ~~30 or 39(3) of the EC Treaty~~.

Paragraph 2 ~~clarifies specifies~~ that where ~~a~~ rights were already expressly enshrined in the Treaty establishing the European Community and have merely been restated in the Charter (notably the rights derived from Union citizenship), ~~results from the Treaties~~ it they remain ~~is~~ subject to the

conditions and limits for which provision was made in that Treaty and is now made in Parts I and III of the Constitution. ~~laid down by them.~~ The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution ~~ies.~~

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the ~~principle~~-rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of ~~Community~~ Union law and of that of the Court of Justice of the European ~~Communities~~ Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the ~~European Union-Communities.~~ The last sentence of the paragraph is designed to clarify ~~allow the Union to guarantee that the Article does not prevent more extensive protection already achieved or which may subsequently be provided for (i) in Union legislation or (ii) in some Articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law acquis has already reached a higher level of protection (e.g., Articles 47 and 50).-~~ In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [I-5 (1), III-13, III-158] of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which ~~Community~~ Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and (3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to

European Union level between the Courts of the Member States.

- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of ~~Community~~ Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575.. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 § 1). Principles are implemented through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR I 155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23 and 33.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Article 53

Level of protection

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

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR. ~~The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the ECHR, with the result that the arrangements for limitations may not fall below the level provided for in the ECHR.~~ [transferred to the explanations under Article 52 § 3].

Article 54

Prohibition of abuse of rights

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

Explanation

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

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