

**NOTE**

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from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting held on Friday 4 October 2002 chaired by Commissioner Antonio VITORINO

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The fifth meeting of Working Group II (Charter/ECHR) was held on 4 October 2002 between 14.30 and 17.30 under the chairmanship of Commissioner Antonio Vitorino.

1. Effective judicial remedies and access to the Court of Justice of the European Communities for individuals

The Chairman drew the Group's attention to working document No 21, which summarised the question of judicial remedies and access to the Court of Justice for individuals on the basis of a number of proposals by members of the Working Group and other members of the Convention, in the context of the fundamental right to effective judicial protection. He pointed out that although the subject was linked to the general topic of fundamental rights, it was a separate issue from incorporation of the Charter into the Treaties or Union accession to the ECHR.

First of all the Group heard a presentation by the European Ombudsman, Mr Jacob Söderman, a Convention Observer, on his proposals for articles on remedies (judicial and other) for inclusion in the constitutional treaty (see CONV 221/02 CONTRIB 76). Mr Söderman suggested, amongst other things, that the treaty should place a duty on Member States – such as that which the Court of Justice had already deduced from Article 10 TEC – to ensure that their national courts provided effective protection for rights guaranteed by Union law. In addition, he proposed that the Ombudsman be empowered to bring proceedings concerning fundamental rights in the Court of Justice, and that a legal basis be established for harmonising common European principles of administrative law.

The Group's discussions focussed on the three options set out in the Chairman's working document No 21.

The vast majority of speakers were against creating a new judicial procedure specially for the protection of fundamental rights (along the lines of the "Verfassungsbeschwerde" or the "recurso de amparo", option "A" in working document No 21). It was pointed out that if the Charter were incorporated into the constitutional treaty, the legal remedies currently offered by the Union system through the fourth paragraph of Article 230 and through Article 234 TEC would also become available to Union citizens in respect of their rights under the Charter, which would be of great benefit in the protection of fundamental rights.

Some members commented that there were gaps in judicial protection, resulting in particular from the condition laid down in the fourth paragraph of Article 230 TEC that the disputed act had to be not only of direct but also individual concern to the applicant. These members therefore proposed limited redrafting of the fourth paragraph of Article 230 TEC in order to rectify these omissions (option "B" in working document No 21). Criticism was also levelled at the limitations on the jurisdiction of the Court of Justice in the current "3rd pillar" and the lack of protection against the acts of Union bodies such as Europol.

There were on the other hand a number of speakers who, while not denying that the current system did have a few shortcomings, were generally satisfied with the way it was working and warned against any major overhaul, in particular of the current "division of labour"

between national and Community courts. In particular, major changes might mean a substantially increased caseload for the Court of Justice, which would probably lead to longer procedural delays and thus prejudice the effective protection of citizens' rights. In a spirit of subsidiarity, some speakers expressed interest in the possibility that the Treaty might place a duty on Member States to provide effective legal remedies at national level in defence of rights guaranteed by Union law (option "C" in document No 21).

In conclusion, the Chairman felt that the question of revision of the fourth paragraph of Article 230 TEC and its institutional implications needed to be considered at the same time as other issues such as the limits on the Court's jurisdiction in matters affecting justice and home affairs or judicial review of subsidiarity. The Chairman's view was that the Group should not make any specific recommendations but should draw the Convention's attention to the issue and to the various contributions which members had made, for consideration in an appropriate context.

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