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REPORT

on behalf of the Committee on Institutional Affairs on the declaration of fundamental rights and freedoms

General rapporteur: Mr K. DE GUCHT
Co-rapporteurs: Mrs FERRER I CASALS
Mr ROTHLEY
Mr VALVERDE LOPEZ
Mr FILINIS

PART B: EXPLANATORY STATEMENT
WORKING DOCUMENTS
ANNEX

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CONTENTS

B.

EXPLANATORY STATEMENT

C O N T E N T S

THE DECLARATION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE EUROPEAN UNION

I. Background

1. Discussion of the Draft Treaty establishing the European Union (hereinafter referred to as the Draft Treaty) resulted in the adoption of a declaration of the fundamental rights and freedoms in the European Union being deferred to a later date. The reason for that deferral was certainly not a lack of interest or an underrating of the issue's importance but the justified concern of the Committee on Institutional Affairs in general and its rapporteur in particular not to delay the Draft Treaty or possibly even jeopardize its adoption by including a catalogue on which no agreement could be reached. At the same time, general political arguments also played their part in that decision.

2. The Draft Treaty stipulates that, within the first five years of its existence, the Parliament of the Union shall take a decision on its accession to European and international instruments of interest to the Union and shall also draw up its own catalogue of fundamental rights and freedoms (Article 4 et seq).

3. On 26 July 1984, during the first part-session of the second directly elected European Parliament, the House referred the motion for a resolution tabled by Mr Luster and Mr Pfennig[1] to supplement the Draft Treaty establishing the European Union to the Committee on Institutional Affairs which decided to draw up a report thereon.

4. The motion for a resolution tabled by Mr Luster and Mr Pfennig, which also forms the legal basis for this report, is designed to give practical effect to Article 4 of the Draft Treaty and takes up again a motion submitted by the same Members during the previous legislative period as a motion for a resolution[2] and as an amendment to the Draft Treaty[3]. Both demonstrate that the drawing up of its own catalogue stems from the European Parliament's abiding concern to provide maximum protection for fundamental rights and freedoms.

5. The aim of this undertaking is, therefore, to clarify forthwith the fundamental rights aspect of the Draft Treaty which, in Article 4, provides for the adoption of 'a Declaration of the fundamental rights and freedoms of the European Union' (hereinafter referred to as the Declaration).

6. Just as the European Parliament did its utmost to translate the Draft Treaty into specific political action when it adopted it and to make the establishment of the European Union a reality, it now wishes, in drafting the Declaration, to act as the interpreter of the sovereign will of the citizens of the Community. The very nature of the European Parliament, the only institution in the developing Community legitimated by direct universal suffrage and an essential link between the Community and the Union, should enable a Declaration to be adopted which will serve the

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[1] Doc. 2-363/84
[2] Doc. 1-653/83
[3] Doc. 1-1200/83, Am. 29

Union - i.e. which is geared to the future - but which will even today codify what is currently applicable in the Community framework.

II. Why the European Parliament should draw up the Declaration

7. The importance of the eixtence of specific protection for fundamental rights in the field of application of the Treaty of Rome and, all the more so, of the European Union is made clear by the case law of the Court of Justice. It is not by chance that the judgment in the Stauder case[4], where the Court indicated for the first time that 'respect for fundamental rights is enshrined in the general principles of Community law and protected by the Court of Justice', was handed down relatively soon after the Costa/ENEL judgment[5] which is decisive for the primacy of Community law. The primacy of Community law is the primacy of a law which respects fundamental rights and freedoms.

   The individual, the citizen of the Community and of the European Union, has subjective rights which are specific to the Community's legal framework. These rights, which derive not only from his European citizenship but also from the existence of fundamental rights enjoyed by everyone, whether or not he/she possesses European citizenship, must be guaranteed by the Institutions of the Community/Union and ultimately, by the Court of Justice. In order to protect the individual against attacks on his freedoms which might stem from European law, the Court of Justice must be able to refer to that higher standard which is respect for fundamental rights and freedoms. The Court of Justice has exercised this power, and the Member States have fully accepted the situation. Some national constitutional courts have even welcomed it.

8. The fact remains, nonetheless, that, with regard to the Community's situation in the field of human rights and to the possibility of a European Declaration of Human Rights being drawn up, various points of view have emerged. Emphasis has been laid on the Praetorian solution, whereby the Court of Justice would ensure respect for fundamental rights, drawing its inspiration from the common constitutional principles of the Member States and the appropriate international and European instruments, in particular the European Convention on the Protection of Human Rights and Fundamental Freedoms. In seeking a definition of the fundamental rights applicable to a specific case, the Court of Justice has always undertaken detailed research, without wishing, in so doing, to grant the status of fundamental Community right to a right which is recognized by all the Member States. However, there have been instances where the Court has declared to be a fundamental Community right a principle which, in the form defined by the Court of Justice, is only to be found in a single Constitution[6]. The Court's action in the field of the protection of fundamental rights has been widely approved. Nevertheless, it is not the task of the Court to define what constitutes the very essence of a pluralist democracy, i.e. the fundamental rights which must be protected.

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[4] CJEC, Case 26/69 (Stauder v Ulm) [1969] ECR 419

[5] CJEC, Case 6/64 (Costa v ENEL) [1964] ECR 1162

[6] See, for example, High Authority, Case 5/55 (ASSIDER) [1954-1956] ECR 135 on the concept of misuse of powers

9. The Praetorian solution is applied - and up to a certain level also tolerated - by the Court of Justice, although it must be admitted that the Court has virtually no other choice, given the absence of formal sources of law. In order to give practical substance to the protection of fundamental rights, the Court has recourse to the common principles enshrined in the constitutions of the Member States and to the appropriate European and international instruments, principally the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Recourse to principles common to the constitutions of the Member States must clearly not be reduced to a simple comparison of legal systems, but it frequently results in an extensive legal interpretation, even in legal innovation, to the extent that the Court of Justice has elevated to the rank of a Community principle a principle only found in that form in one constitution[7].

In its search for the sources of law for fundamental rights and freedoms, the Court has always shown the greatest possible scrupulousness and is to be congratulated thereon. Even those Member States which, initially, expressed reservations about the independent testing by the Court of secondary Community law against fundamental rights and freedoms which are nowhere accorded formally (Germany and Italy) have acknowledged this and withdrawn their reservations.

But it remains true that the Court has no natural assignment, and this is very clear in matters where it is independent, to define what is the most essential feature of a pluralistic democracy, i.e. that the citizen has unassailable rights. Furthermore, to date the Court has remained free from political influences, but it is no flight of fancy to imagine that, with the expansion of the Community's powers and, even more, its development into the Union, the Member States' circumspection in appointing the judges will increase. References made to the Supreme Court in the USA speak volumes.

10. For a long time now, the Commission, with Parliament's support, has advocated the European Community's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession would equip the Community with a catalogue of human rights which it would require in the application of Community law.

The accession of the Community to the Convention has been held up by a number of technical and political difficulties. At present, there is no movement on this front, and it is hard to see how the situation might change in the near future and become comparable to that of the Member States under the Convention. However, this objective would appear to have become outdated, given Community involvement, parallel with the Member States in a large number of general multilateral conventions. Others object that the European Convention does not contain the principles of law which are crucial to the Community and the European Union. However, the Convention only constitutes a minimum standard, and accession to it would confer a very specific legitimacy on the system for

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[7] See previous footnote

protecting fundamental rights and freedoms in the Community, even if other principles specific to Community law need to be defined.

11. To the extent that the European Parliament, elected by direct universal suffrage, sees itself as a constitutional legislator, it is only natural that the issue of drawing up a Declaration of fundamental rights and freedoms should periodically be brought up for discussion. That was the case when the Draft Treaty establishing the European Union was being debated, the outcome of which is well known. To date, Parliament has never adopted a definitive stance[8]. There are two reasons for its hesitation. Firstly, much discussion has centred around the likelihood of a consensus, or at least a significant majority, being secured for a Declaration of fundamental rights. It is feared that the result of a vote on such a Declaration might result in a situation less satisfactory than the one which already exists in the Community. Secondly, there is a fear that the drawing up of a Community Declaration might adversely affect the imposing edifice constituted by the European Convention. Until Parliament crosses that bridge, it is clear that the value of the outcome will remain open to debate.

But, after mature consideration, you rapporteur feels that the undertaking has a chance of success; bearing in mind what is at stake and the possible implications for the legitimacy of our Institution, the drawing up of the Declaration must be made into a natural assignment and a responsibility which cannot be avoided.

The Draft Treaty establishing the European Union demonstrates this conclusively. It is also said that there are major differences of opinion concerning the substance of the material rights which must be included in the Declaration. Your rapporteur feels that, in this case, appearance exceeds reality. The very broad political spectrum represented in the European Parliament enables it to seek agreement by negotiation. As far as the overwhelming majority is concerned, the political groups believe, to varying degrees - and is this not absolutely essential in a democratic system? - in the unassailable dignity of the individual who must live in harmony with his human and natural environment, in the enterprise economy, and in the free production of goods. Major differences may exist in respect to personal beliefs but your rapporteur feels that that problem must be left on one side, if only because the necessary consensus is lacking.

A substantial number of lawyers and politicians feel that traditional fundamental rights - civil and political rights - and social and economic rights are so different in nature that they cannot be covered by one instrument. The traditional fundamental rights are therefore seen as obligations on the State to refrain from taking action, the social and economic rights as obligations on the State to act. This difference should also directly influence the enforceability of each specific fundamental right - the possibility of its being invoked in law.

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[8] But, on 13 September 1988, it did adopt a resolution calling for the adoption of a Charter of Citizens' Rights to sanction the new specific rights laid down in Community law together with human rights understood in the traditional sense (OJ No. C 262, 10.10.1988, p. 40)

We must object to this excessively inflexible division. The European Convention, the supreme example, provides for rights which require positive action by the State and not simply an obligation on the State to refrain from taking action, for example, the right to be assisted by a legal adviser before a court, where necessary at the State's expense, and the right to have the free assistance of an interpreter where the interested party cannot understand or speak the language used in court[9].

Since the European Convention was signed, the distinction between the two categories has become even more blurred. The Treaty of Rome and the 'acquis communautaire' have given rise to a number of social and economic rights which are enforceable in law, such as the free movement of workers, freedom to provide services and the right to equal treatment for men and women as regards employment and social security schemes. Some fundamental rights which, hitherto, could not be invoked in law are becoming enforceable in the case law of the Court of Justice. In a recent judgment, the Court tested, in the light of the European Act, the principle of environmental protection against the right to the free movement of goods[10], explicitly confirming the fundamental character of environmental protection and probably conferring on it an undeniable degree of enforceability.

Furthermore, traditional rights can no longer be encompassed in the concept of the State's obligation to refrain from taking action. The right to freedom of expression - and is any right more traditional? - only acquires a proper dimension in our modern technological society in as far as the State takes the necessary measures, for instance in the case of Citizens' Band radio.

Therefore, the criterion for the incorporation of fundamental rights into the Declaration is not whether a right is classified as civil or political, or social or economic, but whether it is actually enforceable in law.

However, we should not exclude the possibility that rights which are at present described solely as strictly programmatic, i.e. they serve as an action programme for the Community, may become enforceable in law in the near future. It will be for the Court of Justice to identify them. That is why phrases such as the principle of equality or the 'due process of law' clause embodied in the Declaration must, where appropriate, enable it to be adapted in the light of case law[11].

The European Parliament's second fear concerns the relationship between the Declaration and the European Convention on Human Rights. Under no circumstances can it be the European Parliament's intention to attack or weaken the imposing instrument that is the European Convention.

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9 Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms

10 Case 302/86 (Commission v Denmark) judgment of 20 September 1988, not yet published

11 Cf. Chapter entitled: 'Structure, substance and field of application ...'

The dangers of discrepancies in case law between the European Court of Human Rights and the Court of Justice of the European Communities already exist. The sources of law for the Court of Justice are the common principles of the constitutions of the Member States and of the Convention, but the Court regards these simply as legal sources to which it gives its own autonomous interpretation, which may vary from the interpretation given by the European Court of Human Rights.

The relationship between the system of the European Convention on Human Rights and the legal system of the Community and, in future, of the Union, will not be affected by the adoption of the Declaration. This would only be the case if the Declaration were to conflict with the European Convention. The danger of this is negligible, particularly as the Declaration will take as its basis the rights set out in the European Convention on Human Rights and only make additions to that minimum standard which are compatible therewith. In this way, the Declaration will take over fundamental rights existing in the Community system without changing their nature or their relationship with the European Convention. Parliament's action may strengthen the position of the Convention in the Community system by incorporating the rights set out therein, with possible additions, into the legal system of the Community/Union. Those rights will be endowed with the characteristics of primacy and direct effect which are inherent to Community law and may be guaranteed in accordance with the Community's own means of redress.

Of course, the situation will be even more satisfactory once the Community/Union accedes to the European Convention. That accession will also give the system for protecting fundamental rights and freedoms in the Community a firmer foundation. Does the drawing up of a specific Declaration of fundamental rights and freedoms only respond to a requirement of practical utility? Your rapporteur thinks not. The Court of Justice gives full protection to fundamental rights, even if the charge may occasionally be brought that it does not give them the full impact which they might have on the situation of the individual. The Declaration will act as an incentive both for the Court and the institution and for the individual. The Declaration will render fundamental rights and freedoms more apparent to all those concerned. All the protagonists will therefore be prompted to consider Community problems from a position where the protection of fundamental rights is given greater significance. This prospect is particularly satisfying for the individual citizen. Experience acquired with complex federal and pre-federal systems demonstrates that fundamental rights and freedoms represent the essential means by which the individual may control the activities of the State. Community law offers them specific procedures for so doing, amongst which reference should be made to the procedure for a preliminary ruling set out in Article 177 of the EEC Treaty.

The cross-fertilization between the two systems would increase if the Community/Union were to accede formally to the European Convention. This would, furthermore, provide the ultimate legitimacy for the system of protection of fundamental rights and freedoms of the Community/Union.

12. Furthermore, the Declaration has a strong symbolic value, and its legitimizing effect is important. With this Declaration, Parliament is demonstrating unequivocally that it attaches prime importance to the protection of the individual. Parliament is fulfilling its role as a

constituent assembly of the European Union, and fulfilling it in the purest form, by giving a contemporary and forward-looking shape to the common European heritage of pluralist democracy.

III. Structure, substance and field of application of the Declaration

13. The originality of the European Parliament's approach is that it represents the synthesis of the achievements of three different approaches - the Praetorian thesis, accession to the European Convention and the drawing up of its own Declaration - in a combination which opens up new prospects for the protection of the fundamental rights and freedoms and for subsequent integration of the Community/Union.

14. That is why the European Parliament will draw up and adopt the Declaration of the Fundamental Rights and Freedoms of the European Union.

This will be a general Declaration, meaning that it will include not only those rights and freedoms which naturally belong to the sphere of European Community law, but it will be based on the presumption, established by judicial practice, that the Community/Union might violate all the fundamental rights[12]. Apart from the practical justification of this option, it is above all the symbolic function of the Declaration which will enable it to give the fullest picture possible of the values and traditions which must inspire and guide the Community/Union.

A Declaration of fundamental rights can, however, never claim to be exhaustive. Acquaintance with historical declarations of fundamental rights compels us to be more modest. Furthermore, reality is constantly changing, and the protection of fundamental rights and freedoms can never be regarded as having been completed. We must take care not to exclude or obstruct further development.

The Declaration will therefore include a reference to the relevant European and international instruments. According to the terms of the Draft Treaty, the Union shall decide on the ratification of these instruments within five years of its existence. Similarly, the reference to the 'acquis communautaire' will guarantee continuity with 30 years of European case law. Fianlly, the Declaration will stress explicitly the role of case law and of the Court of Justice in the safeguarding of the 'acquis communautaire' and the subsequent development of fundamental rights.

Furthermore, the Court of Justice is a central component in the subsequent development of fundamental rights.

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[12] See CJEC, Case 130/75 (V. Prais v Council) [1976] ECR 1589 - Freedom of religion;
CJEC, Cases 115 and 116/81, (Abdoui & Cornuaille v Belgian Government) [1982] ECR 1665 - definition of public order and implications for the deportation of Community citizens;
CJEC, Case 30/77 (Bouchereau), [1977] ECR 1999 - may even be applied mutatis mutandis to abolition of the death penalty

15. The corpus of the Declaration will include those fundamental rights and freedoms which are enforceable through the courts, or deemed to be so, *hic et nunc*. The demarcation line between enforceability of a fundamental right and the declaratory nature of that right does not coincide with the demarcation line between traditional fundamental rights (civil and political rights) and social and economic rights[13]. The criterion for inclusion is therefore enforceability through the courts and not the simply traditional nature of a right.

Furthermore, some rights already covered by Community law are not enforceable through the courts, even if they may become so, and are more programmatic by nature; they constitute the objectives of certain Community policies and serve as action guidelines for the European institutions. They therefore appear as such in their wording in the Declaration.

16. As far as traditional fundamental (civil and political rights are concerned, the point of departure is the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Convention retains its full significance insofar as it is accepted by all the Member States.

Furthermore, there is an entire body of case law connected with the formulation of traditional fundamental rights in the Convention, and even if the Court of Justice does reserve the right to interpret that Convention autonomously, the case law of the European Court of Human Rights is nevertheless of inestimable value for the protection of rights in the Community/Union.

Nevertheless, this does not mean that the European Parliament should slavishly follow the text of the European Convention. Additions in line with the 'acquis communautaire', and others which take account of changed circumstances since the drafting of the European Convention, must remain a possibility.

As far as fundamental social and economic rights, strictly Community rights and what are called 'new' rights are concerned, Parliament will be guided by the 'acquis communautaire', the constitutions of the Member States and the relevant European and international instruments. In a number of cases, this will mean that clauses contained in secondary legislation, case law, and resolutions of the European Parliament will be enshrined in the Declaration and will thus enjoy enhanced status.

This clearly means that political choices will have to be made. Parliament will have to undertake this work with great wisdom and in the

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[13] See : Frowein, Schulhofer & Shapiro, The protection of fundamental Human Rights as a vehicle of integration in : Integration Through Law, vol. 1, book 3, p. 231-344; and also Capeletti, Seccombe & Weiler, Ed. Weiler, J., Submission to the Institutional Affairs Committee of the European Parliament in its Hearing on Human Rights, 1988, part 2 : Some questions concerning the protection of fundamental Human Rights within the legal order of the European Communities, with reference to the American federal experience

realization that only a Declaration adopted by a significant majority will itself prove to be significant.

17. The European Convention is in the nature of a foundation for the Declaration of the European Parliament, a minimum consensus subscribed to by all Member States and below which legal protection of the individual must never drop.

    This role of a foundation is expressly referred to in the Declaration.

    This natural function of the European Convention would gain in validity and legitimacy as regards the legal protection of rights in the Community/Union if the latter were to accede to it. The Declaration would thus have a final arbiter situated outside and above the Community's own legal order. The resolution accompanying the Declaration refers expressly to this deficit in legitimacy and indicates a suitable method to overcome it.

18. The question must also be asked as to whose rights will be protected under the Declaration. Some rights are linked to citizenship of the Community/Union, others are guaranteed to any person residing on the territory of the Community/Union. The Declaration will indicate which rights, or which aspects of those rights, are reserved to citizens of the Community/Union.

19. The Declaration will also have to define its field of application *ratione materiae*. The field of application of the Declaration should be the field of Community law. The aim of the Declaration is not to equip the Community with new powers in the field of fundamental rights but quite simply to submit all existing Community legislation to the respect of fundamental rights. The advantage of such a formula is that it follows the evolution of Community law and its dynamic nature and that protection expands at the same rate as the material field of application of Community law expands.

    The further integration of the Community which, never ceases to extend the scope of its policies, the completion of the internal market and the transition to the European Union mean/will mean that the Community level and the national level will increasingly overlap.

    Of course, in a number of instances, the Member States act as enforcers of Community law. In that case, their actions must ensure the same respect for fundamental rights.

20. The final question is that of access to the law. In this respect, your rapporteur has returned to his position stated in the context of the drawing up of the Draft Treaty establishing the European Union[14], which is that, as regards fundamental rights and freedoms, the person concerned must be entitled to appeal directly to the Court of Justice, in principle after exhausting all national legal remedies. The preliminary ruling procedure under Article 177 EEC offers the individual all the necessary

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[14] See K. De Gucht: Working document on the Law of the European Union, PE 80.746/rev.

means of asserting his/her rights, means which are still grossly underestimated by legal practitioners.

IV. Proposed form of the Declaration

21. It is appropriate at this stage to go back to the starting point of this report. The primary aim of the parliamentary initiative is to give more precise details in the Draft Treaty establishing the European Union of the fundamental rights and freedoms involved. However, as stated at the beginning of the report, there is nothing to prevent the European Parliament from doing its utmost to implement immediately the provisions of the Declaration adopted by it, thereby initiating the implementation of the European Union. On the contrary, it would be perfectly natural for it to do so.

22. All these considerations are based on one very clear premise - the text of the Declaration is not open to negotiation. In drawing up the Declaration on fundamental rights and freedoms, Parliament is acting in the most important of the areas in which it has constitutional powers, namely the formulation of rights and freedoms which the legislative authority holds to be inalienable. This task is inextricably bound up with the sovereignty which Parliament derives from its democratic mandate.

23. From the outset, the Declaration should therefore take the form of a unilateral Declaration by the European Parliament. The Court of Justice would then be able to refer directly to the Declaration, insofar as it only expressed rights currently in force. The Declaration has an important progressive value. It is forward-looking in that it takes account as of now of rights which are not enforceable through the courts but which may develop in line with Community legislation and the case law of the Court of Justice, which has always played a dynamic role in the protection of fundamental rights and freedoms. This evolutionary concept is also based on Parliament's determination to place its political activities against the background of the European Union. It is clear that the majority by which Parliament adopts the Declaration will directly influence its impact.

24. Parliament's Declaration might lead to a joint Declaration by the institutions which might be incorporated into the Treaties establishing the European Communities and the Treaty establishing the European Union, in some subsequent revision.

25. The ultimate destination of the Declaration is obviously its incorporation into the Treaties. However, even in such an event, the substance of the Declaration is not open to negotiation. Parliament will be able to ensure that that is so, even within the framework of the intergovernmental conference instructed to amend the Treaties, by adopting an appropriate stance vis-à-vis the Commission. Any future intergovernmental conference called to consider a revision of the Treaties, which must in any case be on the agenda in the next ten years, will find it difficult to disregard a Declaration on fundamental rights and freedoms adopted by Parliament by a significant majority. This is evidenced by the Joint Declaration of 5 April 1977 on the protection of fundamental rights in the Community, which is reproduced in the Preamble

to the Single European Act and thus forms an integral part of the Treaties.

This prospect alone makes action by Parliament both judicious and necessary, although Parliament's ambitions justifiably go a good deal further, its aim being to achieve tangible results in the legal sphere in the short term.

No Member of the European Parliament can remain unmoved at the prospect of seeing his constituent power in the field of fundamental rights and freedoms confirmed by the Court of Justice.

COMMITTEE ON INSTITUTIONAL AFFAIRS

Working Document

Subject : Economic and social rights

Draftsman : Mrs FERRER I CASALS

7 October 1988

WORKING CONDITIONS

Object

To outline the set of rights which will enable the basic right to work to be developed and defined.

Definition in comparative law

	Source	Addressed to:
Germany :	Article 12, Basic Law	Government
Denmark :	Article 74, Constitution	Legislature
	Article 75, Constitution	Government
Spain :	Articles 35 and 40, Constitution	Government
Greece :	Article 22(2), Constitution	Legislature
France :	Article 34, Constitution	Legislature
Ireland :	Article 45.4.2 Constitution	Government
Italy :	Articles 1, 35-37, Constitution	Government
Luxembourg :	Article 11, 5th indent, Constitution	Legislature
Netherlands :	Article 19, Constitution	Government
Portugal :	Article 60, Constitution	Government

Articles 2 to 6, European Social Charter
Articles 23 and 24, Universal Declaration of Human Rights of the United Nations
Article 7, International Covenant on Economic, Social and Cultural Rights.

Level of protection in the EC

Article 55 of the ECSC Treaty and Articles 100a, 118 and 118a of the EEC Treaty assign to the Commission the task of promoting, in cooperation with the Member States, the right to work and working conditions, protection against occupational illness and accidents and hygiene in the work-place.

Furthermore, Articles 30 and 39 of the EAEC Treaty provide for measures to protect the health of workers exposed to ionizing radiations.

Points

The establishment of regulations governing working conditions requires the enactment of a substantial body of statutory legislation, which must be carried over into national legislation, while review work has to be carried out, either in conjunction with representatives of employers and labour or not.

Parliament's position

See the resolution by Mrs SCRIVENER (OJ C 46, 20.2.1984, p. 126).

Proposal

'Every citizen of the Community shall have a right to work, to the free choice of his profession and occupation, to decent working conditions, to advancement through work, to just and equitable remuneration, whereby he and his family may live decently, and to health and safety at work.

Under no circumstances may discrimination be practised on grounds of sex. Female workers shall be entitled to maternity leave.

The Community shall promote the conditions which make the right to work an effective one and shall enact a Workers' Statute.'

FREEDOM OF MOVEMENT FOR INDIVIDUALS

Object

The right to move freely.

Definition in comparative law

(law applicable only in national territory)

Germany :	Article 11, Basic Law
Spain :	Article 19, Constitution
Greece :	Article 5(4), Constitution
Italy :	Article 16, Constitution
Portugal :	Article 44, Constitution

Article 12, International Covenant on Civil and Political Rights
Article 13, Universal Declaration of Human Rights

Level of protection in the EC

The EEC Treaty makes the right of workers to move freely throughout the territory of the Community (Article 48) and to remain there for the purpose of employment in one of the Member States directly applicable.

Points

Putting this right into practice entails a considerable amount of harmonization in the area of laws, regulations and administrative provisions.

The restrictions allowed in respect of admission to employment in the public service are a substantial limitation on freedom of movement.

Proposal

'Every citizen of the Community shall have the right to move freely with his family and to choose his place of residence within Community territory.

He shall also be entitled to take employment offered and the same conditions shall apply to him as to nationals of the State in which he proposes to work.

Restrictions may be placed on admission to employment in the public service of a State for nationals of other Community Member States.'

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Object

The right of a national of one Member State to engage, in a self-employed capacity, in economic activity intended to be of a lasting nature in the territory of another Member State.

Definition in comparative law

Germany :	Article 12, Basic Law
Greece :	Article 5(4), Constitution
Luxembourg :	Article 11, 6th indent, Constitution
Portugal :	Article 44, Constitution.

Articles 10 to 17 of the European Convention on Establishment of 13 December 1955.

Level of protection in the EC

Freedom of establishment and the freedom to provide services are regulated in Articles 52 to 66 of the EEC Treaty.

Points

Though freedom of establishment and the freedom to provide services is a fundamental right expressly written into the Treaties, putting them into practice entails an enormous amount of legislative work to take account of the wide variety of different laws in the Member States applicable to the various occupations.

Proposal

'Every Community citizen shall have the right to establish himself freely in another Member State with a view to carrying on economic activity in a self-employed capacity.'

EQUALITY BETWEEN MEN AND WOMEN

Object

The principle whereby all individuals, irrespective of sex, enjoy the same legal status as regards the treatment, responsibilities and rights established by law.

Definition in comparative law

	Source	Addressed to:
Belgium :	Article 6, Constitution	
Germany :	Article 3, Basic Law	Government
Denmark :	Article 74, Constitution	Legislature
Spain :	Articles 14 and 35.1, Constitution	
Greece :	Article 4(2), Constitution	
France :	Preamble to 1946 Constitution	Legislature
Ireland :	Articles 40(1) and 45(2-i), Constitution	
Italy :	Articles 3 and 37, Constitution	
Luxembourg :	Article 11, Constitution	
Netherlands :	Article 1, Constitution	
Portugal :	Article 13, Constitution	
United Kingdom :	Sex Discrimination Act	

Article 14, European Convention on Human Rights
Article 2, Universal Declaration of Human Rights
Convention concerning Discrimination in respect of Employment and Occupation of 25 June 1958
Convention concerning Equal Remuneration of 29 June 1951
Convention on the Political Rights of Women of 20 December 1952
Declaration on the Elimination of Discrimination against Women of 7 November 1967
Articles 2, 4.1 and 26 of the International Covenant on Civil and Political Rights
Preamble and Article 4.3 (part II) of the European Social Charter

Level of protection

Article 119 of the EEC Treaty secured the principle of equal pay for men and women.

Directives have also enshrined or reinforced equal rights between men and women in the following areas :
- equal pay,
- equal treatment as regards access to employment, training and vocational training and as regards working conditions,
- equal treatment as regards social security,
- equal treatment for self-employed workers.

Points

Putting the Community directives into effect requires numerous adjustments to national legislation.

Parliament's position

Parliament, through a Committee on Women's Rights, makes sure that Community enactments are complied with and that the work of legislation continues, and has widened the debate to include women in the developing countries and migrant women.

Proposal

'Men and women are equal before the laws and are therefore entitled to enjoy equal rights. No-one shall be disadvantaged or favoured on grounds of his or her sex.

Community rules shall ensure and promote equal rights for men and women and shall provide effective protection against any form of discrimination on grounds of sex.'

HOUSING

Object

The right to occupy immovable property serving as a main or secondary dwelling-place for oneself and/or one's family, as owner, tenant or occupant.

Definition in comparative law

Spain :	Article 47, Constitution
Greece :	Article 21(4), Constitution
Netherlands :	Article 22, Constitution
Portugal :	Article 65, Constitution

Article 25, Universal Declaration of Human Rights
Article 11, International Covenant on Economic, Social and Cultural Rights

Level of protection in the EC

Article 54 of the ECSC Treaty empowers the Community to grant loans for the building of subsidized housing.

Points

The right to housing does not fall directly within the Community's sphere of jurisdiction and appears in only some national constitutions.

Such a right, however, clearly forms a part of decent living conditions.

Parliament's position

Resolutions on housing conditions for the disabled, the elderly and single-parent families.

Proposal

'Every citizen of the Community shall have the right for himself and his family to a dwelling in which they can lead a proper life and maintain personal and family privacy.

The Community shall put forward the measures required to make the exercise of this right possible.'

HEALTH

Object

The right to good health.

Definition in comparative law

	Source	Addressed to:
Germany :	Article 2(2), Basic Law	Public authorities
Spain :	Articles 43 and 51, Constitution	Public authorities
Greece :	Article 21(3), Constitution	Public authorities
France :	Preamble, 1946 Constitution	Public authorities
Ireland :	Article 45, Constitution	Public authorities
Italy :	Article 32, Constitution	Public authorities
Luxembourg :	Article 11, 5th indent, Constitution	Public authorities
Netherlands :	Article 22, Constitution	Public authorities
Portugal :	Article 64, Constitution	Public authorities

Article 11, European Social Charter
Article 12, International Covenant on Economic, Social and Cultural Rights

Level of protection in the EC

The Preamble to the EEC Treaty sets as an objective of the Community the constant improvement of living conditions.

Article 118a(1) lays down that the Member States shall pay particular attention to encouraging improvements, especially in the working environment, to protect the health and safety of workers, and sets as an objective the harmonization of conditions in this area, while maintaining the improvements made.

The Commission, in its proposals on health, is to take as a base a high level of protection (Article 100a(3)).

Points

The organization of the health system and the task of determining the conditions on which health benefits are granted or available remain the responsibility of the Member States; this gives rise to major disparities.

Parliament's position

Parliament has proposed that a European Patients' Charter, guaranteeing equivalent rights throughout the Community, be drawn up.

Proposal

'Every citizen of the Community shall have the right for himself and his family to health protection and appropriate medical care to make this effective. All Community citizens shall be guaranteed access to preventive, curative and restorative medical treatment.

No-one shall be obliged to undergo a specific treatment if the relevant legal instrument is not brought into play; under no circumstances can such an instrument infringe the limits set by human dignity.'

PROFESSIONAL SECRECY

Object

The obligation on persons who, in the performance or in the course of their duties, have acquired knowledge of confidential information not to divulge it except where the law so provides.

Definition in comparative law

Spain : Articles 20.1(d) and 24.2.2, Constitution

Level of protection in the EC

Article 130k of the EEC Treaty lays down terms or procedures for the dissemination of knowledge resulting from specific programmes in the field of technological research and development.

Also indirectly developed in relation to the rules on competition: Articles 85-89, EEC Treaty.

Points

So far the development of this right has been confined to the area of competition policy; for a right which, regulated from the point of view of an overall perspective, should be classed as a fundamental right, this does not go far enough.

There do not seem to be any insuperable obstacles to carrying out such an overall regulation.

Parliament's position

Resolution of 13 April 1984 (OJ C 127, 14.5.1984, p. 131).

Proposal

'Every citizen of the Community shall have the right to decline to disclose any information or knowledge acquired as a result of discharging any duty or carrying on any occupation, profession or activity.'

SOCIAL SECURITY

Object

A system whose purpose is to protect the individual from the effects of various occurrences described in general as social security risks.

Definition in comparative law

	Source	Addressed to:
Denmark :	Article 75(2), Constitution	Legislature
Spain :	Article 41, Constitution	Government
Greece :	Article 22(4), Constitution	Government + law
France :	Article 43, Constitution	Legislature
Italy :	Article 38, Constitution	Government
Luxembourg :	Article 11, 5th indent, Constitution	
Netherlands :	Article 20, Constitution	Government + law
Portugal :	Article 63, Constitution	Government

Article 12, European Social Charter
Article 22, Universal Declaration of Human Rights
Article 9, International Covenant on Economic, Social and Cultural Rights of the United Nations

Level of protection in the EC

Article 51 of the EEC Treaty provides for the adoption of such measures in the field of social security as are necessary to provide freedom of movement for workers.

Social security arrangements for wage-earning workers and their families are governed by Regulation No. 1408/71.

Points

Although all the Member States have set up social security systems, the degrees of protection provided vary considerably.

There is a need for a comprehensive view to be arrived at as regards social security, medical and health protection, areas which all the constitutional systems still regulate in different ways.

Parliament's position

Resolution of 11 November 1986 calling for the establishment of a European social security area.

Proposal

'Every citizen of the Community shall be entitled to a system of social security which guarantees him or her social and medical assistance and adequate social security benefits when in need, particularly in the event of unemployment, illness, old age or orphanhood.

The Community institutions shall ensure that all Community citizens enjoy an adequate and comparable level of protection and benefits.'

COMMITTEE ON INSTITUTIONAL AFFAIRS

Working Document

on

the 'classic' fundamental rights

Draftsman: Mr W. Rothley, co-rapporteur

23 August 1988

A. Introduction

1. This document contains information on a selected list of 'classic' fundamental rights. The terms used to designate these rights are not based on academic criteria; they were suggested by the rapporteur-general, Mr De Gucht, because of the need to categorize the subject matter under succinct headings, and were later adopted by the Committee on Institutional Affairs.

2. I was asked to cover the following areas:

   - freedom of assembly (I)
   - freedom of association (II)
   - freedom of expression (III)
   - right of ownership (IV)
   - freedom of conscience (V)
   - freedom of religion (VI)
   - abolition of the death penalty (VII)
   - right to privacy (VIII)
   - right of asylum (IX)
   - right to vote (X)

   It remains to be seen, in the light of the work being done by the other rapporteurs, whether this list should be extended and, if so, which areas should be included.

3. The description given below follows the format proposed at the meeting between the chairman, coordinators and rapporteurs on 5 July 1988 in Strasbourg.

B. The 'classic' fundamental rights

I. **Freedom of assembly**

- Subject matter

  The right to congregate for the common purpose of discussing or promulgating opinions.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Art. 19	Constitution	Legislature/Police
Denmark	§§ 79, 80	"	Police
Germany	Art. 8	"	Legislature
Greece	Art. 11	"	Legislature/Police
Spain	Art. 21	"	Competent authority
France	Laws of 30 June 1881 and 28 March 1901		Competent authority
Ireland	Art. 40.6.1.II	Constitution	Legislature
Italy	Art. 17	"	Competent authority
Luxembourg	Art. 25	"	Legislature/Police
Netherlands	Art. 9	"	Legislature
Portugal	Art. 45	"	-
United Kingdom	-		-

Art. 11 ECHR	Legislature
Art. 21 International Covenant on Civil and Political Rights of 19.12.66 (ICCPR)	Legislature

- Community protection

  - (?)

- Problems

Distinctions may be drawn between open-air events and indoor events. Legal provision be made for banning events likely to cause a breach of the peace.

Position of the EP

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Proposal

Freedom of assembly, freedom of association and the right to form associations at work to be combined in a succinct formula.

II. Freedom of association

- Subject matter

The right of voluntary association for specific purposes.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Art. 20	Constitution	Legislature
Denmark	§ 78	"	"
Germany	Art. 9	"	Constitutional authority
Greece	Art. 12	"	Legislature
Spain	Art. 22	"	"
France	Law of 28 March 1901		?
Ireland	Art. 40.6.1.III	Constitution	Legislature
Italy	Art. 18	"	Legislature/ Constitutional authority
Luxembourg	Art. 26	"	Legislature
Netherlands	Art. 8	"	"
Portugal	Art. 46	"	Legislature/ Constitutional authority
United Kingdom	-		-
Art. 11 ECHR			Legislature
Art. 22 ICCPR			"

- Community protection

Partially covered in Art. 48 ECSC Treaty (undertakings), Art. 118 EEC Treaty and Regulation (EEC) No. 1612/68 of 15.10.68 (both covering the right of association at work), OJ No. L 257 of 19.10.68, p.2.

- Problems

Express provision may also be made for the right not to join associations. Not all Member States' legislations provide for limitations to freedom of association.

- Position of the EP

See Resolution of 12.4.84, OJ No. C 127 of 14.5.84, p. 86 (on the right of members of the armed forces to form associations).

- Proposal

Freedom of assembly, freedom of association and the right to form associations at work to be combined in a succinct formula.

III. Freedom of expression

- Subject matter

The right to communicate information and ideas to others without hindrance from the authorities.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Art. 14	Constitution	Legislature
Denmark	§ 77	"	"
Germany	Art. 5	"	"
Greece	Art. 14	"	"
Spain	Art. 20	"	"
France	Art. 10 of the Declaration of 1789		
Ireland	Art. 40.6.1.I	Constitution	"
Italy	Art. 21	"	"
Luxembourg	Art. 24	"	
Netherlands	Art. 7	"	"
Portugal	Art. 37	"	"
United Kingdom	-		
Art. 10 ECHR			Legislature
Art. 19 ICCPR			"

- Community protection

Primary and secondary Community legislation contain no specific guarantees, while Art. 12(1) of the Staff Regulations contains only a restriction on this right.

- Problems

- Position of the EP

See resolutions OJ No. C 127 of 14.5.84, p. 148; OJ No. C 172 of 2.7.84, p. 174; OJ No. C 288 of 11.11.85, p. 113.

- Proposal

IV. Right of ownership

- Subject matter

Personal ownership of goods or other assets.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Art. 11 (indirect)	Constitution	Legislature
Denmark	§ 73	"	"
Germany	Art. 14	"	"
Greece	Art. 17(1)	"	"
Spain	Art. 33	"	"
France	Declaration of 1789, Art. 2		"
Ireland	Art. 43.1	Constitution	"
Italy	Art. 42	"	"
Luxembourg	Art. 16(indirectly)	"	"
Netherlands	Art. 14(indirectly)	"	"
Portugal	Art. 62	"	Constitutional authority/ State authorities
United Kingdom	-		-

First protocol to the ECHR, Art. 1 — Legislature

- Community protection

In a series of judgments, the European Court of Justice has defined the right to own property as a basic right guaranteed under Community legislation.

- Problems

Scope, social responsibility, expropriation, compensation.

Position of the EP

See resolutions OJ No. C 117 of 30.4.84, p. 195; OJ No. C 172 of 2.7.84, p. 155; OJ No. C 343 of 31.12.85, p. 114.

V. Freedom of conscience

- Subject matter

The duty of the State not to exert inadmissible coercion in matters of conscience and to refrain from influencing decisions taken by the individual on conscientious grounds.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Law of 3.6.1964 (Conscientious objection to military service)		
Denmark			
Germany	Art. 4 I	Constitution	
Greece	Art. 13 I (only religious)	"	
Spain	Art. 16 and 30 II	"	Legislature
France	General legal principle		
Ireland	Art. 44.2	"	
Italy			
Luxembourg			
Netherlands			
Portugal	Art. 41	"	Legislative (only in regard to conscientious objection to military service)
United Kingdom			

Art. 9 I ECHR
Art. 18 I ICCPR

- Community Protection

  -

- Problems

  Often exists only in relation to religion or conscientious objection to military service

- Position of the EP

  See Resolution of 7.2.1983, OJ No. C 68 of 14.3.1983, p. 14 et seq.

- Proposal

  (Freedoms of thought, conscience and religion to be combined)

VI. Freedom of religion

- Subject matter

The right to have a religous faith, to practise it and to profess it openly.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Art. 14	Constitution	
Denmark	§ 67	"	Legislature (§§ 66.69)
Germany	Art. 4	"	
Greece	Art. 13	"	
SOpain	Art. 16	"	Legislature
France	Art. 10 Déclaration des Droits de l'Homme du 26.8.1789		
Ireland	Art. 44.2	"	
Italy	Art. 19	"	
Luxembourg	Art. 19	"	Legislature
Netherlands	Art. 6	"	"
Portugal	Art. 41	"	
United Kingdom			
Art. 9	ECHR		Legislature
Art. 18	ICCPR		"

- Community Protection

ECJ, Case 130/75 (Prais), Reports 1976, p. 1589 ff

- Problems

-

- Position of the EP

See resolutions of 22.5.1984, OJ No. C 172 of 2.7.1984, p. 41, and 11.11.1985, OJ No. C 288 of 11.12.1985, p. 107

- Proposal

(Freedoms of thought, conscience and religion to be combined)

VII. Abolition of the death penalty

- Subject matter

Protection of the right to life.

- Comparative legal definitions

Germany :	Art. 102	Constitution
Spain :	Art. 15	"
Greece :	Art. 7 (3)	"
Ireland :	Art. 40 (5)	"
Italy:	Art. 27	"
Luxembourg :	Art. 18	"
Netherlands :	Art. 114	"
Portugal :	Art. 19 (4) and 24	"
United Kingdom :	Abolition of Death Penalty Act, 1965	

Art. 6 ICCPR
Art. 2 ECHR
Art. 3 Universal Declaration of Human Rights

- Community Protection

This question does not come within the Community's sphere of competence but is a matter for the Member States.

- Problems

Some Member States allow for the possibility of the death penalty in exceptional cases (e.g. in wartime)

- Position of the EP

See resolution by Mrs Vayssade of 18 June 1981 on the abolition of the death penalty in the Community (OJ No. C 172 of 13.7.1981, p. 72)

- Proposal

'Everyone has the right to life and the death penalty shall not be imposed on him.'

VIII. Right to privacy

- Subject matter

The right to have one's private life respected, such respect being shown also in the rules governing interpersonal relations.

- Comparative legal definitions

Germany :	Art. 2 (1), 10 and 13	Constitution
Belgium :	Art. 10 and 22	"
Denmark :	Art. 72	"
Spain :	Art. 18	"
Greece :	Art. 9 and 19	"
Italy:	Art. 14 and 15	"
Luxembourg :	Art. 15 and 28	"
Netherlands :	Art. 10 to 13	"
Portugal :	Art. 26	"

Art. 17 International Covenant on Economic, Social and Cultural Rights
Art. 8 ECHR
Art. 12 Universal Declaration of Human Rights

- Community Protection

Protection of private life does not fall directly within the sphere of competence of the Treaties. However, the Court of Justice in its judgments has underlined the need to ensure that private life is respected in the various Community provisions.

- Problems

Action by the public authorities to protect private life is mainly of an indirect nature. There is a conflict between the rules of public law and private law.

- Position of the EP

  - Resolutions on the protection of the rights of the individual in the face of technical developments in data processing, 8 May 1979 (OJ No. C 140 of 5.6.1979, p. 34) (Bayerl report) and of 9 March 1982 (OJ No. C 87 of 5.4.1982, p. 30) (Sieglerschmidt report)

  - European Charter on the Rights of Patients, 19 January 1984 (OJ No. C 46 of 20.2.1984, p. 104) (Pruvot report)

  - Resolution on sexual discrimination at the workplace (OJ No. C 104 of 16.4.1984, p. 46) (Squarcialupi report)

- Proposal

'Every citizen has the right to respect for his private life and his family : his home and communications are inviolable.'

IX. Right of asylum

- Subject matter

The right to be granted refuge in a foreign territory in the event of persecution (to be further defined) in home country.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Law		
Denmark	Law on Aliens No. 226 of 8.6.1983, amended by Laws No. 232 and 574 of 6.6.1985		
Germany	Art. 16 II 2	Constitution	-
Greece	Art. 5 II	"	-
Spain	Art. 13 IV	"	Legislature
France	§ 4 Preamble of Constitution of 4th Republic		-
Ireland			
Italy	Art. 10 III, 26	"	-
Luxembourg			
Netherlands			
Portugal	Art. 33 V	"	Legislature (for the status of political refugees)
United Kingdom	Immigration Act of 1971, Immigration Rules, Immigration Appeals, Rules of 1972		

Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention) and Additional Protocol of 31 January 1967 (ratified by all Member States)

Convention of the Organization of African Unity (OAU) on certain aspects of the refugee problem in Africa of 10.9.1969

- Community Protection

  - Art. 2(1) of Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ No. L 149 of 5.7.1971, p. 2)

  - Council Declaration of 25.3.1964, OJ No. 78 of 22.5.1964, p. 1225.

- Problems

The approach varies between recognizing a subjective right and allowing the authorities political discretion.

- Position of the EP

  Resolution of 12.3.1987, OJ No. C 99 of 13.4.1987, p. 167

- Proposal

  A subjective right to be granted, with further definition of the reasons for the pursuit.

X. Right to vote

- Subject matter

The right to be able to vote for the members of the legislature at appropriate intervals in free and secret ballots.

- Comparative legal definitions

	Source		Authority responsible
Belgium	Art. 47, 50	Constitution	Legislature
Denmark	§§ 29, 30	"	"
Germany	Art. 38	"	"
Greece	Art. 51	"	"
Spain	Art. 23 I, 68-70	"	"
France	Art. 3 III	Constitution of 1958	"
Ireland	Art. 16.1.1.	Constitution	"
Italy	Art. 48	"	"
Luxembourg	Art. 51 ff	"	"
Netherlands	Art. 4, 53, 129	"	"
Portugal	Art. 48 f	"	"
United Kingdom	Representation of the People Act, 147, with later amendments		"

Art. 3 of 1st Supplementary Protocol of ECHR — Legislature
Art. 25 ICCPR

- Community protection

Art. 138(3) of the EEC Treaty, Act concerning the election by direct universal suffrage of the Members of the European Parliament annexed to the Council Decision of 20 September 1976.

- Problems

Some Member States make it compulsory to vote.

- Position of the EP

Resolutions OJ Nos C 163 of 11.7.1977, p. 39; C 299 of 12.12.1977, p. 26; C 184 of 11.7.1983, p. 28; C 141 of 10.6.1985, p. 462; C 13 of 18.1.1988, p. 33 (all concern mainly local government elections)

- Proposal

A definition which does not make it compulsory to vote.

COMMITTEE ON INSTITUTIONAL AFFAIRS

Working Document

Subject: New rights to be included in a list of Fundamental Rights

Draftsman: Mr Valverde Lopez

23 August 1988

A. Right of Petition

1. Definition

The right to address requests or complaints to constitutional bodies outside the legal or administrative procedures. As a general rule, no obligation on the part of those bodies as to action to be taken.

2. Comparative law

Constitutional source		Destination
Belgium:	Article 21	Public authorities
Denmark:	--	--
Germany:	Article 17	Competent authorities and Parliament
Spain:	Article 29	Form determined by the law
Greece:	Article 10	Authorities, reply compulsory
France:	--	--
Ireland:	--	--
Italy:	Article 50	Parliament
Luxembourg:	Article 27	Public authorities
Netherlands:	Article 5	Competent authorities
Portugal:	Article 52	Constitutional bodies and public authorities
United Kingdom:	Bill of Rights (1683) No. 5	The Crown

3. Level of EC protection

Rule 128 of the European Parliament's Rules of Procedure.

'Every citizen of the European Community shall have the right, individually or jointly with others, to address written requests or complaints (petitions) to the European Parliament.'

4. Difficulties

Form: The European Parliament's Rules of Procedure do not have the status of a treaty; this right must be formally confirmed.

Substance: Should the provision be wider, including other institutions? Persons covered (EC citizens only?)

5. Position of the European Parliament

See resolution of 10 October 1986, OJ No. C 283/1986, p. 86

(The EP calls for 'effective and binding Community legislation' with a view to 'strengthening the right of citizens and other public and private bodies active in the Community's territory to address petitions to Community Institutions through the European Parliament'.)

6. Proposal

'Every citizen of the European Community and all other public and private bodies active in the Community's territory shall have the right, individually or jointly with others, to address written requests or complaints to the Community institutions. Petitions shall be sent to the European Parliament. Petitioners shall have the right to a reply within a maximum of three months.'

It is proposed that the expression 'every citizen of the European Community' be replaced by the wider provision, used in Article 1 of the European Convention on Human Rights:

'Everyone within the jurisdiction of the Member States'.

B. Right of information

1. Definition

This right includes the freedom to hold opinions and the freedom to receive or impart information or ideas.

2. Comparative law

Belgium:	Article 14	Ireland:	Article 40, para 6
Denmark:	Article 77	Italy:	Article 21
Germany:	Article 5	Luxembourg:	Article 24
Spain:	Article 20	Netherlands:	Article 7
Greece:	Article 15	Portugal:	Articles 38, 39
France:	Articles 10, 11 Declaration of Human Rights	United Kingdom:	

In most cases this right is guaranteed 'provided that the law is observed'.

European Convention on Human Rights:

Article 10:

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.

3. Level of EC protection

As a right guaranteed by the Convention on Human rights and given that it is guaranteed at national level, this right is certainly part of the 'general common principles' of European law.

4. Difficulties

The Court has not yet had the opportunity to confirm the existence of this right at EC level. However, the Court has explicitly stated that the rules relating to freedom of provision of services also apply to television broadcasting (Case No. 155/73), Sacchi).

5. Position of the European Parliament

See in particular Resolution of 10 October 1985, OJ No. C 288/1985, page 113 on media policy. For the definition of freedoms and their limits, the EP refers to Article 10 of the Convention on Human Rights.

6. Proposal

'Verbatim text of Article 10 of the Convention on Human Rights to be used (see No. 2 above).'

C. Right to Environmental Protection

1. Definition

Right to request the public authorities to implement measures to prevent damage to the natural environment

and/or

Obligation on the part of the public authorities (with no individual right) to adopt measures to protect the environment.

2. Comparative law

Spain:	Article 45
Greece:	Article 24
Portugal:	Article 66

Only Spain and Portugal provide for an individual right in their constitutions. The right is granted subject to the law.

3. Level of EC Protection

In accordance with Article 130 R of the EEC Treaty, the Community shall have the power to take action designed
'to preserve, protect and improve the quality of the environment'.

4. Difficulties

Under Community law as it stands, the Community is not obliged to act, nor is there any individual right to request action by the Community institutions. Without any widening of Community powers, a fundamental right in this field can be no more than a kind of specific right of petition, i.e. a right to request consideration of possible measures to protect the environment.

5. Position of the European Parliament

Parliament has not yet defined its position on an individual right or on a legal obligation on the part of the Community authorities to take action in this field.

6. Proposal

'The Community is obliged to contribute to the protection of the environment.

Everyone has the right to a humane, healthy and ecologically balanced environment. This right carries with it an obligation on the part of the individual to contribute towards preserving the environment.'

D. Right to Education

1. Definition

The right to education and teaching without any discrimination based on sex, race, philosophical or religious beliefs, nationality, social class or economic standing.

2. Comparative law (constitutions)

Belgium:	Article 17	Italy:	Articles 33, 34
Denmark:	Article 76	Ireland:	Article 42
Spain:	Article 27	Luxembourg:	Article 23
France:	Preamble to Constitution 1946	Netherlands:	Article 23
Greece:	Article 16	Portugal:	Articles 43, 73-77

3. Level of EC protection

Community law does not specify any competence for the Institutions in the field of education. Individual rights in this area as laid down in the EEC Treaty therefore derive from the principle of non-discrimination and primarily consist of obligations incumbent upon the Member States.

In addition, the Community has its own power to legislate on vocational training. In this context, individual rights vis-à-vis the Community Institutions could be established.

4. Difficulties

With EC powers as they currently stand, Community law can only guarantee protection against any form of discrimination. To go further and to establish a specific right to education would entail the right of a clash with national institutions.

5. Position of the European Parliament

The EP defined its position of principle in a resolution of March 1984 (OJ No. C 104/1984, page 69, Luster report). It argues in particular for the recognition of the right of 'every child and young person to education and teaching'.

6. Proposal

Text of the resolution adopted by Parliament in March 1984:

'1. every child and young person shall have the right to education and teaching; this includes the right of the child to develop his or her abilities; within the framework of the constitutions common to all the Member States and the legislation based thereon, the parents shall have the right to decide on the type of education and teaching to be given to their children of school age;

2. every child and young person shall have the right to education and teaching without any discrimination based on sex, race, philosophical or religious beliefs, nationality, social class or economic standing;

3. the admission of a child to a school receiving public funds shall depend on its abilities and inclinations and not on the parents' economic standing nor the social, racial or ethnic background of the child;

4. Within its sphere of competence, the Community shall help to guarantee these rights.'

E. Right to Consumer Protection

1. Definition

Protection of the health, safety and legitimate economic interests of consumers and users of services. Right of redress. Right to information, access to the courts.

2. Comparative law

Only the Spanish constitution (Article 51) and the Portuguese constitution (Article 81(j)) contain any provision concerning consumers. In both cases the provisions take the form of an obligation on the part of the State with no corresponding individual right.

3. Level of EC protection

The EC Treaties make no provision for any specific obligation on the part of the Community to take action in favour of consumers. However, some jurisdiction in this field derives from the wording of Article 100A(3). In a resolution of 23 June 1986, the Council stated:

'Whereas it is desirable that in achieving the internal market, the Community take measures allowing a high level of consumer protection, in particular concerning product quality and safety;'

Many measures have been adopted by the Community on this basis.

4. Difficulties

Consumer protection comprises several measures which are still the subject of controversy (reversal of burden of proof, easier access to the courts, right of redress). To avoid controversy, action could perhaps be limited to a definition of consumer protection as an obligation to be respected by the Community.

5. Position of the European Parliament

Parliament has adopted several resolutions in this field (see White Paper pp. 71-74) concerning the individual aspects of consumer protection, but there is still no overall definition of the consumer's legal status.

6. Proposal

'The Community shall take the appropriate steps to guarantee the protection of consumers and users of services against risks to health, safety and violation of legitimate economic interests. It shall make provision for an individual right of redress against any infringement of laws protecting individuals.'

F. Right to the Protection of Minorities

1. Definition

Protection of linguistic, ethnic, religious or social minorities.

2. Comparative law

Belgium:	Article 6
Spain:	Article 2
Italy:	Article 6

3. Level of EC protection

Only protection against discrimination on grounds of nationality is guaranteed (Article 7).

4. Difficulties

The protection of minorities encompasses two aspects, on the one hand the recognition of certain prerogatives which allow the minotiry to become established and exist as such, and on the other the prohibition of any discrimination. Given that minorities are normally defined in relation to the majority within a country, it is up to that country to define the status of a minority. Insofar as there are common features among the minorities throughout the Community, a form of Community protection might be envisaged constituting a sort of guaranteed minimum. The main difficulty consists in defining minorities, as this concept covers widely differing situations.

5. Position of the European Parliament

In October 1981, Parliament proposed the adoption of a charter of rights of ethnic minorities (OJ No. C 287/1981, page 106, Arfé report). Parliament emphasized the right of these groups freely to express themselves and their culture.

6. Proposal

'The right of ethnic, linguistic, religious and social minorities freely to express themselves and their culture is recognized by the Community.'

COMMITTEE ON INSTITUTIONAL AFFAIRS

Working document

Subject: The general principles of law as an integral part of human rights

Draftsman : Mr K. FILINIS

8 March 1989

Introduction

The Court of Justice of the European Communities ruled, for the first time in the Stauder and Internationale Handelsgesellschaft cases, that respect for fundamental rights forms an integral part of the general principles of Community law. Some of those legal principles are clearly laid down in the Treaties establishing the European Communities. Some are implied, others stem from the constitutions of the Member States or from international conventions, and it will be necessary, in addition, to note the gradual evolution of new principles from the existence and practice of the Community as well as from new rights.

Those general principles of law provide an opportunity to adapt judicial practice to the concept of justice and solidarity. They help to mitigate the injustices which are inevitably the result of the inflexibility of abstract general rules, help to put into effect the concept of mercy, to create legal certainty and to restrict arbitrary action.

A. The general principle of human worth

1. Object[1]

The State, and specifically its various institutions, is obliged on the one hand to respect human worth, in other words not to offend against it in the exercise of the power of the State, and, on the other, to protect it, in other words, to prevent it from being attacked either by those in power or by individuals.

2. Definition in comparative law

After the Second World War there was a deeply-felt need to protect the 'worth' and in particular the 'dignity' (dignité, Würde) of human beings which is reflected in the following:

Source: United Nations Charter, 1945 (preamble)
Universal Declaration of Human Rights, 1948 (preamble and Articles 1, 6 and 22)
United Nations Conventions on Economic, Social and Cultural Rights and on Civil and Political Rights, 1966 (preamble)
French Constitution (preamble)
Italian Constitution (Article 2)
Basic Law of the Federal Republic of Germany (Article 1)
Portuguese Constitution (Articles 1 and 33(2))
Spanish Constitution (Article 10)
Greek Constitution (Article 2(1)).

3. Position of the European Parliament

Article 4 of the draft treaty establishing the European Union, which arose out of the Spinelli report, provides as follows:

> 'The Union shall protect the dignity of the individual.'

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[1] See A. Manessi, 'Civil Liberties', pp. 108-113

4. Points

Human dignity describes the essence of all fundamental rights and is the supreme principle from which all others are derived.

5. Proposals[2]

The fact that this general principle is expressly enshrined in the Declaration of Fundamental Rights and Freedoms should be deemed to be a watershed expressing the transition to a 'humanistic' legal order of a new quality. To put into effect the principle of human worth, radical structural and institutional changes are necessary.

B. The principle of non-discrimination and equality before the law

1. Object:

Any discrimination or discriminatory treatment based on statutory rules or on an established form of behaviour is prohibited insofar as it relies on a difference of nationality, economic situation or sex. Discrimination exists where like situations are dealt with in different ways or unlike situations in the same way. The principle of non-discrimination on grounds of nationality also covers reverse discrimination, i.e. against natives of a country by their own country. The principle of prohibiting discrimination is very close to the constitutional principle that all are equal before the law but implies in addition the principle of equality of opportunity.

2. Definition in comparative law:

Source: Belgium: Article 6 of the Constitution,
France: Articles 2 and 77,
Germany: Article 3,
Ireland: Article 40(1),
Luxembourg: Article 11,
Greece: Article 4(1, 2),
Italy: Article 3,
The Netherlands: Article 1,
Spain: Article 14,
Portugal: Article 13 (1, 2),
Universal Declaration: Article 2, paragraph 1,
European Convention on Human Rights: Article 14.

3. Level of protection in the European Communities:

Articles: 7, 37(1), 48(2), 52, 54(1), 59, 63(1), 67(1) and 119 of the EEC Treaty.

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[2] See A. Manessi, 'Civil Liberties', pp. 108-113

Case law of the Court of Justice of the EC: The Court has concerned itself repeatedly with the rights associated with nationality[3].

4. Points:

Form: Article 7, second paragraph, of the EEC Treaty contains the words '... such discrimination'.
The additional provision introduced by the SEA must be interpreted as supplementary to the general rule. Indeed, the general principle is self-sufficient and no special rules of secondary law are required in order for it to apply. In this sense, the Council's rules are ancillary, auxiliary or even expository in character. Their purpose is to bring about the easier and clearer realization of the general principle, which, however, is valid of itself.

Substance: The principle of non-discrimination on grounds of nationality prohibits any discrimination in legislative or administrative measures as between nationals of one Member State and those of other Member States, but does not protect nationals of non-Community States. - This principle applies only subject to the special provisions in the Treaty. These provisions provide for exceptions in relation to employment in the public service (Article 48(2) of the EEC Treaty), the exercise of official authority (Article 55) or the safeguarding of public order or public security (Articles 36, 48(3) and 56). - The concept of equal treatment for the nationals of the Member States inevitably entails the granting of political rights which constitute fundamental principles existing in any democratic entity.

5. Position of the European Parliament:

See De Gucht, p. 1.163.

6. Proposals: Extension of the principle of equal treatment to cover the nationals of non-Community States. - In view of the extension of the sectors governed by the Treaty and of the single market scheduled for 1992, the principle of non-discrimination on grounds of nationality will become even broader in scope. With this prospect in view, it might perhaps be more useful to define the exceptions (e.g. access to employment in the public service) so as to dispel, as far as possible, the restrictive interpretations which the Member States often put forward. - The rights which guarantee the participation of citizens in the functioning of the organs of the State (political rights)[4] should be recognized, so as to concede special rights to the citizens of the Community pursuant to the decision adopted by the Paris summit in December 1974.

It is only to be expected that the general principle of non-discrimination and equality will gradually create the opportunity to claim before the

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[3] De Gucht White Paper, pp. 161, 162. Also: European Court of Justice Case 151/73, Sotgin, [1974], ECR 153 (164/5); Case 61/77, Commission v Ireland, [1978], ECR 417 (451); Case 2/74, Reyners, [1974], ECR 631 (652), Case 1/78, Kenny, [1978], ECR 1489 (1496/7, 1499); Judgment of 15 January 1986 in Case 41/84, Pinna/Caisse d'Allocations Familiales de Savoie

[4] Scelba report (Doc. 346/77)

Court certain rights which are at present defined by provisions based strictly on policy.

A very important objective is embodied in the Single Act; the objective of economic and social cohesion. It is of great importance that we should one day succeed in claiming before the Court the enforcement of a right derived precisely from that objective of economic and social cohesion.

C. The principle of democracy

The principle of democracy should govern this Declaration. It constitutes the ultimate guarantee of compliance with constitutional requirements. The creation and functioning of a given legal order is governed by that principle of democracy according to which the supreme will within that order which decides and prevails, in the first and last instance, is the will of the people. Sovereignty belongs to the people[5].

This principle is found in the 1789 Declaration of the Rights of Man and of the Citizen.

It also forms the final article of the Greek Constitution and of the Constitutions of other States.

D. Non-retroactivity

1. Object :

No one can be held guilty on account of any act or omission which was not an offence at the time when it was committed. Nor can a heavier penalty be imposed than the one that was applicable at the time when the offence was committed.

2. Definition in comparative law :

Source : Belgium: Article 9 of the Constitution,
France : Article 8 of the Declaration of the Rights of Man and of the Citizen of 1987,
Germany: Article 103(2) of the Basic Law,
United Kingdom: Article 39 of Magna Carta of 1215,
Greece : Article 7(1) of the Constitution,
Denmark: Article 71(2),
Spain : Article 9(3),
Portugal: Article 29,
Ireland : Article 38(1),
Italy : Article 25,
The Netherlands: Article 16,
Universal Declaration of Human Rights: Article 11(2),
European Convention on Human Rights: Article 7,
UN International Convenant of 1966 on Civil and Political Rights : Article 15.

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[5] Manessi, 'Constitutional Theory and Practice', pp. 66-67

3. Level of protection in the European Communities:

Article 191 of the EEC Treaty.

Case law of the Court of Justice of the European Communities

Reference is made to the principle of non-retroactivity in three decisions on isoglucose of 30 September 1982 (Cases 108/81, 110/81 and 114/81) and in a judgment of 10 July 1984 (Case 63/83).

4. Points:

Form: The principle of the non-retroactivity of penal provisions is enshrined in the legal order of all the Member States.

Substance: Where there is a risk of encroaching upon established rights, recourse to retroactivity had only in entirely exceptional circumstances and must be justified in the greatest possible detail. The institutions of the European Communities issue enactments with retroactive force when it is in the interests of those concerned to do so. In such cases the principle of non-retroactivity is not infringed, since there are no aggrieved parties. The principle of non-retroactivity coincides with the broader principle of 'nullum crimen nulla poena sine lege', whereby individual safety is protected against arbitrary action by those in power.

5. Proposals: that the scope of application of the principle in question, based on Article 15(1) of the United Nations Convenant on Civil and Political Rights which lays down, in addition, that 'if ... provision is made by [subsequent] law for the imposition of a lighter penalty, the offender shall benefit thereby', be widened. This additional clause is not to be found in the European Convention on Human Rights or in the Member States' Constitutions, even though, when the situation arises, the Member States abide by this principle.

E. Non bis in idem

1. Object :

No one can be punished twice for the same act.

2. Definition in comparative law:

Source: Germany: Article 103(3) of the Constitution,
Portugal: Article 29(5) of the Constitution,
UN Covenant on Civil and Political Rights: Article 14,
European Convention on the International Validity of Criminal Judgments: Articles 53, 54 and 55,
European Convention on the Transfer of Proceedings in Criminal Matters: Articles 35, 36 and 37.

3. Level of protection in the European Communities:

Article 86(3) of the EC Staff Regulations of Officials: 'A single offence shall not give rise to more than one disciplinary measure'. Article 90 of the ECSC Treaty.

Case law of the Court of Justice of the European Communities

The Court has referred repeatedly to the principle of 'non bis in idem'.

Case 7/72: Boehringer Mannheim GMBH v Commission of the EC' [1972], ECR 1281 (See De Gucht White Paper, p. 165).
Joined Cases 18 and 35/65: Gutmann v EAEC [1967] ECR 61.
Commission: Decision No. 71/400/EEC - OJ No. L 282, 23.12.1971, p. 46 (See De Gucht White Paper, pp. 166, 167).

Points : The EC Staff Regulations do not have the force of a treaty.

Substance: Having regard to the various freedoms provided by the EEC Treaty, particularly in the area of freedom of movement for persons, the existence of rules contrary to the principle of 'non bis inidem' is incompatible with the establishment of the single economic area.

5. Position of the European Parliament:

Motion for a resolution by Mr GLINNE and Mrs VAYSSADE on the application of the 'non bis in idem' principle within the European Community (Doc. 1-749/81). Also, the DE GUCHT report on the application in the EC of the 'non bis in idem' principle in the area of criminal law (Doc. 1-1379/83 - resolution of 16 March 1984).

6. Proposals:

Since Community law, on the basis of the case law of the Court of Justice of the EC in the field of the protection of fundamental rights, recognizes that such rights are an inalienable part of the general principles of law and that there can be no exceptions when it comes to applying the principle of 'non bis in idem', the Council of Ministers of Justice must enact that principle in legislative form by calling on the Member States to abolish provisions which are incompatible with it. A protocol must also be enacted to fill the lacuna in the European Convention on Human Rights as regards this specific principle.

F. The principle of proportionality

1. Object:

This principle lays down that there must be a reasonable relationship between the specific means and the lawful objective pursued, or that the freedom of action of the individual must not be restricted to a greater extent than is necessary in the public interest (Case 11/70, Internationale Handelsgesellschaft, [1970], ECR 1127).

2. Definition in comparative law:

Source: This principle derives from German administrative law (Grundsatz der Verhaltnismässigkeit) and has been linked by the Federal Constitutional Court with the principle of the State governed by the rule of law, thereby acquiring constitutional force. It is to be deduced from the spirit and the letter of all the Member State's Constitutions, on the basis of which restrictions on personal freedoms must not go further than

the extent required in each case, i.e. they must be necessary and appropriate to the purpose of achieving the result which is being pursued and which could not be achieved by more lenient means. In one of its judgments ([1975] ECR 1219 at 1231, paragraph 2), the Court of Justice refers to the general principle of proportionality as contained in Articles 8, 9, 10 and 11 of the European Convention on Human Rights and Article 2 of Protocol No. 4 to the same Convention signed in Strasbourg on 16 September 1963.

3. Level of protection in the EC: This principle is expressly enunciated in the Treaty as a restriction on Community action. Thus, Article 40(3), which allows the establishment of a common organization of the market, states that this organization 'may include all measures required to attain the objectives set out in Article 39'. Likewise Article 36[6] and Article 48(3) of the EEC Treaty. In addition, the appropriate Community instititution (Commission or Council) may, after examining the treaties, allow or recommend certain protective measures and at the same time determine the terms on which they are to be put into effect (Article 226(2)). The imposition of such measures is governed by the principle of proportionality. The measures must be appropriate (e.g. Article 70(2), first subparagraph; Article 90(1), second subparagraph; Article 102(1), second sentence) and necessary (Article 115, first subparagraph, second sentence; Article 226(2) and (3) of the EEC Treaty).

   Case law of the Court of Justice of the EC: see De Gucht White Paper, pp. 179, 180.

4. Points:

   Form: This is a general principle which is indirectly but clearly enunciated in the EEC Treaty and repeatedly stated in the case law of the Court of Justice of the EC.

   Substance: It would be interesting to examine how far this principle might be put into effect in the Member States in the light of the need for economic and social cohesion, as expressed, indeed, in the Single Act. In such an event, there is a risk of a conflict with the other general principle of Community law, the principle that it should be applied uniformly, though there is a risk here that, when it is strictly applied, equal treatment may be meted out in situations which are essentially different, which would be tantamount to discrimination. A certain flexibility in Community law is therefore a desideratum; and the principle of proportionality is the expression or source of inspiration of flexibility.

5. Proposals: The Commission's departments must make a greater effort to ensure that the principle of proportionality is contained in such enactments as are likely to give rise to disputes. The principle in question must be treated as an interpretative principle, in the sense that the interpretation of Community law and the obligations it confers on the Community institutions and the Member States must always be oriented upon the principle of proportionality[7].

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[6] De Gucht White paper, p. 179
[7] e.g. CJEC Case 39/75, Coenen, [1975] ECR 1547

G. Justification

1. Object:

The principle of justification is found in the various Constitutions of the Member States and is associated with the individual right to security of person, which consists precisely in protection from arbitrary prosecution, assault and deprivation of personal freedom on the part of organs of the State.

2. Definition in comparative law:

Source:

The protection of personal security through provisions which lay down special guarantees goes back to the English Act of Habeas Corpus. The French Constitution of 1791 also contained detailed provisions (Title III, Chapter V, Articles 10-16). There are succinct provisions in the subsequent Constitutions of the various Member States, e.g. that of Belgium (Article 7), Denmark (Article 71), Ireland (Article 40), Italy (Article 13) and Greece (Article 6). Article 5(2) of the European Convention on Human Rights also lays down that: '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. Level of protection in the EC: Articles 5 and 15 of the ECSC Treaty, Article 190 of the EEC Treaty, Article 162 of the EAEC Treaty. Secondary law: Article 25 of the Regulations and Rules applicable to officials and other servants of the EC[8].

Case-law of the Court of Justice of the EC: The concept itself and the extent of the obligation to provide justification have been the subject of a particularly important body of case law[9].

4. Points:

Substance: In affording private individuals the opportunity of assessing the legality of Community acts with greater accuracy, justification is an aid to the legal review of such acts and is, at the same time, an additional guarantee of the safeguarding of the individual rights protected by Community law.

5. Proposals:

Justification is the basic legal form which must govern the phrasing of the Community's legal acts.

H. Right to take legal proceedings

1. Object: The right to review the legality of Community acts and to be able to have them invalidated.

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[8] De Gucht White Paper, p. 155
[9] De Gucht White Paper, pp. 156-158

2. Definition in comparative law:

Source: The right to take legal proceedings exists in the legal systems of all the Member States. It is to be found in the German Basic Law (Article 34) and the Portuguese Constitution (Article 20). Article 5(4) of the European Convention on Human Rights lays down that: 'Everyone who is deprived of his liberty ... shall be entitled to take proceedings ...'.

3. Level of protection in the EC:

EEC Treaty: Articles 169, 170, 173, 175, 179 and 180[10]
ECSC Treaty: Articles 33 and 65[11]
EAEC Treaty: Articles 142, 144, 146 and 150.

Case law of the Court of Justice of the EC: In many cases the Court has pronounced on the content and scope of application of the right to take legal proceedings before it enjoyed by natural or legal persons by virtue of the relevant articles of the Treaties.

4. Points:

Substance: Article 173 lays down two restricting conditions: direct and personal interest. Since the case law of the Court is also equally restrictive, we must, at least in the first instance, exploit the indirect opportunities offered to private individuals by Article 169 and, in particular, Article 177, which refers to the procedure for references for preliminary rulings, the possibilities of which we have not yet fully exhausted.

5. Position of the European Parliament:

The EP has displayed an unceasing interest in the question of citizens' right of access to the courts and the defence of the right to take proceedings[12].

6. Proposals:

The proposals to widen the jurisdictional powers of the Court of Justice of the EC put forward in Mr De Gucht's White Paper (p. 200) are extremely interesting but, in the short term, difficult to put into effect. Thus, on grounds of realism and effectiveness, though still with a view to widening those powers, we must also give weight to exploiting the existing possibilities to the full. I should like to refer briefly to a number of other general principles which are not contained in the White Paper.

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[10] De Gucht White Paper, pp. 189-193
[11] De Gucht White Paper, pp. 194-195
[12] De Gucht White Paper, pp. 198-201

I. The principle of the lawful judge[13]

The principle of the lawful judge was established to prevent interference in the dispensing of justice and secure public confidence in the objectivity of court judgments.

Definition in comparative law

Source

The principle of the lawful judge dates back to the English Magna Carta of 1215 and the 1689 Bill of Rights which describes panels of judges of all kinds as 'unlawful and pernicious'. It also appears in France, in the Constitutions of 1791 (Chapter V, Article 4) and 1795 (Article 204, and then later in the constitutional charters of 1814 (Articles 52-63) and 1830 (Articles 53-54).

> Greece: Article 8, Luxembourg: Article 13, Belgium: Article 8, Germany: Article 103, Portugal: Article 20, Spain: Article 24, Universal Declaration: Article 10, European Convention: Article 6.

Level of protection in the EC: Articles 166 and 167 of the EEC Treaty

Position of the European Parliament: Doc. B 2-330/88/Annex to the motion for a resolution by Mr Luster, Article 11 (p. 26): 'Everyone shall have the right to a hearing in court'.

Proposals

This principle should apply not only to Community nationals but also to nationals of non-member countries who are on Community territory, and should apply not only to criminal but also to civil, administrative and even disciplinary proceedings.

J. The principle of legal certainty or the principle of the protection of the legitimate expectation of the individual

According to this principle, those subject to the law cannot be left in a condition of uncertainty as to their rights and obligations. The natural corollary of this principle is the concept of legitimate expectation[14], whereby a legal situation whose continuation a private individual might legitimately expect cannot lawfully be altered by unforeseen administrative measures.

This principle derives from German administrative law and is the basis for Article 174 of the EEC Treaty, which allows the Court of Justice to specify which of the legal effects of a regulation which it has declared void shall retain their force.

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[13] See Manessi, 'Civil Liberties', pp. 213-215

[14] Wyatt and Dashwood, 'The Substantive Law of the EEC', p. 61

The Court of Justice has repeatedly considered alleged violations of this principle and has declared its acceptance of its general validity[15].

K. The principle of respect for fundamental rights in the Community

The Community's political institutions, in a Common Declaration by their Presidents on 5 April 1977, stressed their will to ensure respect for fundamental rights within the Community legal order. Thus, after attaching particular importance to the practice followed by the Court of Justice, they stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention on Human Rights. They go on to declare that 'in the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights'. These views were also confirmed in the Declaration on Democracy issued by the European Council in Copenhagen on 8 April 1978. The preamble to the Single Act, too, contains two references to human rights, in the third and fifth paragraphs, and the European Parliament's contribution to the strengthening and broadening of Community protection for fundamental human rights is a major one.

L. Harmonization with a view to progress

Article 117, a basic provision in terms of social policy, proclaims the agreement among the Member States to promote improved living and working conditions for workers. This gives a definite and specific form to that part of the Community's task referred to in Article 2 and encompasses the accelerated raising of the standard of living. The specialization consists in the fact of specifying that the improvement in living and working conditions must be brought about in such a way as to enable them to be harmonized with a view to progress, which means that disparities (geographical or according to categories of occupations) must be progressively ironed out so as to improve the living and working conditions of workers in a less-favoured position, without at the same time impeding the further development of those who are better placed (economic and social cohesion). The European Parliament has repeatedly made reference to this principle and it is to be found among the conclusions reached at the Hanover summit.

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[15] CJEC Case 111/63, Lemmerz-Werke, [1965] ECR 893 at 911, [1981] ECR 1931 at 1942, [1982] ECR 1855, Case 44/81 and Case 74/74, CNTA, [1975] 533 at 549.

MOTION FOR A RESOLUTION (Document 2-363/84)
tabled by Mr Luster and Mr Pfennig
pursuant to Rule 47 of the Rules of Procedure
to supplement the draft Treaty establishing the European Union

The European Parliament,

A. endeavouring to comply at the earliest opportunity with the declaration of intent set out in the second sentence of Article 4(3) of the draft Treaty establishing the European Union[1] - extension of the draft to cover fundamental rights,

B. with the intention of embodying in the draft Treaty as of now an unambiguous statement on fundamental rights,

Has decided as follows:

Article 4 of the draft Treaty establishing the European Union shall read :

'1. The Union shall protect the dignity of the individual and grant every person coming within its jurisdiction the fundamental rights and freedoms set out below which are to be observed in the acts of state of the Union and the Member States.

The common principles of the Constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms shall also be binding upon the Union.

2. The essential content of the fundamental rights and freedoms may not be encroached upon.

3. These rights may only be limited in law where this is necessary to safeguard the rights of others or the constitutional order of the Union.

4. The Union undertakes to maintain and develop, within the limits of its competences, the economic, social and cultural rights derived from the Constitutions of the Member States and from the European Social Charter.

5. In the event of serious and persistent violation of democratic principles or fundamental rights by a Member State, penalties may be imposed in accordance with the provisons of Article 44 of this Treaty.

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[1] Adopted by the European Parliament on 14 February 1984 (OJ No. C 77, 19.3.1984)

Article 4 a - Fundamental freedoms

1. Each person shall enjoy the following fundamental freedoms:

   - freedom of conscience, freedom of religion and freedom to education,
   - freedom of thought, faith, opinion and expression, including freedom of the press and of the media;

2. Each citizen of the Union shall enjoy the following fundamental freedoms:

   - freedom of peaceful assembly;
   - freedom of association unless the purpose or activities of bodies so formed should contravene the penal law or be directed against the constitutional order. Detailed provisions shall be laid down in a law of the Union.

Article 4 b - Privacy

1. The inviolability of the home and the secrecy of correspondence and telecommunications are guaranteed.

2. Restrictions are permissible only within the framework of this Treaty and the Constitutions of the States of the Union.

Article 4 c - Collective rights of employers and employees

The employees' right of free association, the right of employers and employees to negotiate wage rates freely and the right to strike and to impose a lockout are guaranteed. Provisions concerning the substance and exercise thereof shall be laid down in a law of the Union.

Article 4 d - Democratic rights

Each citizen of the Union shall, in the State of the Union in which he permanently resides, have the right to vote and stand as a candidate in elections to all elective bodies and be eligible for public office and employment in the public sector. Detailed provisions shall be laid down in a law of the Union.

Article 4 e - Freedom of movement, right of residence and eligibility for welfare

1. Each citizen of the Union shall have the right to enter, remain in and leave any State of the Union. This right shall include the right to establish residence and to engage in gainful employment.

2. Every citizen of the Union, irrespective of his nationality, has, in case of need, the right to avail himself of the welfare services of the State of the Union in which he permanently resides. Detailed provisions shall be laid down in a law of the Union.

Article 4 f - Legal rights

1. The Union guarantees the right to life, liberty, inviolability and security of person. These rights may only be withdrawn by judicial sentences in conformity with this Treaty and the fundamental principles of law.

2. The death penalty is abolished.

3. Powers of search, apprehension, arrest and detention may be exercised only on the basis of a law.

4. Any person taken into detention has the right to be informed of the reasons for his arrest without delay, and the decision as to the permissibility and continuation of his detention over and above a period of 48 hours may be taken only by a judge.

5. Persons held in detention may not be subjected to mental or physical ill-treatment.

6. Each citizen of the Union shall have the right to petition. As in the case of all formal applications, complaints and legal remedies, he may use his mother tongue.

Article 4 g - Legal rights in relation to prosecution and measures adversely affecting the individual

In the courts, everyone shall be entitled to a hearing in accordance with the law.

An act may be punished only if it was a punishable offence by law before the act was committed.

No one may be punished for the same act more than once under general penal legislation.

Measures adversely affecting the individual may only be taken by the public authorities pursuant to a law and only in the period following the announcement of legislative intentions to this effect.

Article 4 h - Property and the right of inheritance

Property and the right of inheritance are guaranteed. Their content and limits shall be determined by laws. The use of property should also serve the common good. Expropriation shall be permitted only in the interests of the common good. It may be effected only pursuant to a law which shall also lay down the nature and extent of compensation.

Article 4 i - Social rights

Each citizen of the Union shall have the right to school education.

The freedom of education is guaranteed.

All schools shall promote the knowledge of a second Union language.

Each citizen of the Union shall have the right freely to choose his trade or profession, place of work and place of training. The freedom to engage in an occupation may be restricted only by a law.

Each citizen of the Union shall have the right of establishment in any Member State for the purpose of engaging in economic activity. Restrictions may only be imposed by means of a law of the Union.

Each citizen of the Union has the right to join in the working life of the State in which he resides irrespective of his nationality. Should the taking up of a professional activity be conditional on certain educational or training requirements, the production of a suitable diploma valid in one State of the Union shall suffice for all the States of the Union.

Article 4 k - Equality

1. All persons are equal before the law.

2. No one shall be privileged or discriminated against by virtue of his sex, nationality, origin, race or religious or political opinions.

3. Men and women shall receive equal pay for equal work.

Article 4 l - Rights of ethnic groups and their members

1. Ethnic groups and linguistic minorities shall enjoy the special protection of the Union.

2. Each citizen of the Union shall have the right to acknowledge freely his membership of an ethnic group and to cultivate the language and culture of the ethnic group.

3. A Union law shall lay down provisions on the recognition and status of ethnic groups.