

# DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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## COVER NOTE

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the Conference of European Churches with a view to the hearing on the 27 April 2000.<sup>1 2</sup>

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<sup>2</sup> This text has been submitted in English language only.

# CONFERENCE OF EUROPEAN CHURCHES

## CHURCH AND SOCIETY COMMISSION

### THE EU CHARTER OF FUNDAMENTAL RIGHTS - FIRST SUBMISSION TO THE CONVENTION

#### 1 Introduction

- 1.1 The Conference of European Churches brings together 125 Anglican, Protestant, Old Catholic and Orthodox churches throughout the whole of Europe. The task of its Church and Society Commission includes following developments in the institutions of the European Union both on behalf of all the member churches of the Conference and specifically on behalf of those in member states of the Union.
- 1.2 The Executive Committee of the Church and Society Commission has discussed the initial steps towards the drafting of an EU Charter of Fundamental Rights and has made a first comment on certain elements of the Charter. The present document has been developed further following comments by members of the Commission's working groups in the light of developments in the Convention drafting the Charter. As the drafting of the Charter is a dynamic process, this document will be submitted to the plenary meeting of the Commission at the beginning of May 2000 which will discuss the matter further, review developments in the Convention which is drafting the Charter and will adopt any further comment necessary on the Charter.
- 1.3 The document has two sections following this introduction. In the section 2 there are a number of remarks relating to more general aspects of the Charter. In the following section 3 there is a more specific discussion of the issue of freedom of thought, conscience and religion including a suggested wording for an article on this subject. The Church and Society Commission would want to stress that it sees the Charter as an important development in the life of the European Union and its member states. It views it as an opportunity to make the Union more real to all those who live within the European Union by ensuring that they are offered a standard of human rights protection in relation to the Union and all its institutions and policies which is as high as they enjoy *vis à vis* the Member State in which they live.

#### 2 General Comments

- 2.1 On the assumption that the content of the Charter is acceptable, there would be support for **a legally binding Charter**. Even if the drafting Convention has no clear mandate to prepare a legally binding document, the Charter should be more than an exercise containing only political declarations, however solemn, if it is to meet the expectations of people in the Member States. The Charter should be framed in such a way that it can become a binding part of the European Union treaties.

- 2.2 The Charter should be concerned not with an exhaustive list of general rights but should be **directly linked with the actions of the European Union and of member states executing the policies and legislation of the Union**. It should, therefore, cover the Common Foreign and Security Policy and the Co-operation in the Fields of Justice and Home Affairs as well as the European Community. A Charter on these lines would have an added value in clearly stating to people resident on the Union's territory that the Union's activities are at least as much linked to fundamental rights as are those of the Member States, all of which have signed and ratified the European Convention on Human Rights. At present there is technically a lower standard of human rights protection with regard to the actions of the European Union and its institutions than there is in relation to the member states. A natural corollary of this could be to amend the Union treaty to allow the European Union itself to adhere to the European Convention on Human Rights which should remain the minimum reference point for human rights throughout Europe. There would certainly need to be, however, a means of ensuring that there was a procedure to ensure that there was no conflict between the European Court of Justice and the European Court of Human Rights and no sense of there being two standards of human rights in Europe as a whole which could be used to relativise human rights and deny their universality.
- 2.3 As a pan-European body, the Conference of European Churches hopes that the Charter will be of interest throughout Europe and, in particular, it would expect the fullest possible **consultation with and participation of countries currently seeking membership of the European Union**. The proposal of the European Parliament's Commission on Constitutional Affairs that such countries should be given observer status in the context of the Convention and that permanent dialogue may be engaged with them in the context of the European Conference is supported.
- 2.4 The possibility of **direct access by individuals to the European Court of Justice** in case of infringements of rights should be considered. Direct protection of fundamental rights would be seen as an important step towards strengthening judicial control in the EU. An element of direct democracy would then strengthen the relationship between the process of developing of the Charter and deepening the character of European integration. It would be another step towards bringing the European Union closer to those who reside on its territory.
- 2.5 The question of **social, economic and cultural rights** should be considered in an appropriate way. The churches have a history, at least in recent times, of arguing for social justice and would welcome extensions of rights which give effect to that aim. It is recognised, however, that defining what is appropriate is a difficult task especially if the Charter is to be legally binding. It is essential that any rights granted in a legally binding Charter must be defined in such a way that they can be enforced. Thus provisions relating to equal treatment between women and men, the protection of children and young people and the right to social assistance clearly be made enforceable. It is important, however, that such rights should be expressed in sufficiently general way that the Charter does not have to be revised every time standards are raised. There must be a balance between precision and generality.

2.6 **Fundamental Rights listed in the Charter should not be limited automatically to EU citizens.** Rights of non-EU citizens, migrants, people who are nationals of third countries and asylum seekers need to be considered and there is a need to examine each provision carefully to see whether it requires to be limited to EU Citizens with it is hoped the presumption that whenever possible rights should be extended to the widest group possible. A number of particular concerns are found in this area relating to the enjoyment of the right to asylum and the need for it to have a priority over financial and administrative practice. While it would be unrealistic for persons on the territory of the Union without appropriate documentation to have every right, they are at least entitled to the absolutely fundamental right of being treated fairly and with dignity. These are issues which the Church and Society Commission is currently following up with the Churches Commission for Migrants in Europe.

2.7 Nevertheless, there should be a discussion as to whether the preparation of the Charter should also be taken as an opportunity to define the **rights of Citizens of the European Union** so as to give a real content to the concept first expressed in the Treaty on European Union in 1992. For example, consideration could be given to a right for Citizens of the European Union to vote in one of the member states to which they have a relationship at all levels in addition to their existing right to vote in the lowest level of local elections and in elections to the European Parliament.

### 3 **Freedom of Thought, Conscience and Religion**

3.1 Christian churches along with other communities of faith and conviction have an interest to see a provision in the Charter on **freedom of religion and the right to express faith or conviction individually or collectively.** At present the proposals being discussed in the Convention concentrate on statements of a positive character and it is noted that it will later address the question of general or specific clauses expressing limitations on the exercise of rights. For the moment the Church and Society Commission has followed the same pattern and would want to return to the question of limitation clauses at the time when the Convention discusses them.

3.2 The following wording is proposed for article 14 of the Convention as an alternative to the text currently being discussed by the Convention:

**Everyone has the right to freedom of thought, conscience and religion. Freedom of religion includes the public and the private, the individual and the corporate manifestation of belief as well as the right of churches and religious communities to organise and to administer their own affairs according to the laws of the Member States.**

- 3.3 The following **statement of reasons** supports this proposal. Actions of the European Union not only affect how individuals exercise fundamental rights but also religious institutions, especially churches and established religious communities. The European Commission on Human Rights linked to the Council of Europe has in several statements emphasised the right of churches and religious communities to appeal under Article 9 of the European Convention of Human Rights in their own right and not only on behalf of their members. In doing so the Human Rights Commission has in fact recognised that, under Article 9, churches and religious communities can be considered as principals. To avoid ambiguity in law, it is therefore appropriate to include the praxis of these statements in the formulation of Article 14 of the EU Charter of Fundamental Rights. Furthermore the European Union is bound by the Declaration No. 11 annexed to the Treaty of Amsterdam concerning the status of churches and philosophical and non confessional organisations. The status which churches and religious associations and communities have in Member States under national law should be respected and not prejudiced. The same applies to philosophical and non-confessional organisations.
- 3.4 Churches and religious communities in the Member States can be organised in many different ways and have different relationships to the state. Such structures and relationships can sometimes be regulated by law or through Church/State agreements. Many churches and religious communities have a high degree of autonomy in organising and administering their own affairs. The way in which new religious and quasi religious communities acquire established status varies from Member State to Member State. It is vital, therefore, to indicate in the Charter how the legal status in the Member States hinders actions in the Union. A reference to national law would be parallel to the proposed wording of Article 13 of the Charter dealing with family life. The right to marry and start a family is also regulated very differently in each Member State and there is, therefore, reference to national law in Article 13. In the same way reference must also be made here to the national law in the Article 14 of the Charter.

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