A Fundamental Rights Charter for the European Union

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I. THE CREATION OF THE CHARTER

A. *Historical Background*

The history of European Community integration can be divided into three phases: the initial phase beginning with the foundation of the three European Communities in the fifties, a period which is characterised by the contrast between intergovernmentalism and *supra*nationalism, state sovereignty versus the main features of the new EC order, namely autonomy, priority and direct effect.

The second phase, the seventies up to the mid-eighties, can be conceived as a period of consolidation where the idea of *supra*nationalism is strengthened and developed on the institutional level: return to majority decision in the Council, direct elections to the European Parliament, the creation of the European currency system, and developments accompanied by the enlargement of the Community from six to twelve members.

The third phase, from the mid-eighties to the present, is a period characterised by particular progress in *supra*nationality: the transfer of

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new competences to the EC which now embrace nearly all the fields of former state legislation; functional achievements in building up the internal market, creating the Monetary Union and, last but not least, establishing the European Union which adds a strong dimension of external and internal policy to the economic dimension already developed over four decades.

Of particular importance for this third phase is the territorial enlargement of the European Union. After the fall of communism, ten of the new democracies in Central and Eastern Europe are preparing for membership, and this event is regarded by the existing members of the EU as a "historical necessity." This new enlargement implies the need to make institutional reforms to maintain *supra*nationality and efficiency of the decision-making process. The third phase of Community history is a real phase of reform marked by four important steps: the European Single Act 1987, the Maastricht Treaty 1993, the Amsterdam Treaty 1998, and the not yet ratified Nice Treaty 2000, together with a further conference in 2004. Never before in Community history have so many reforms been achieved in so little time. While the first two reforms were dedicated mainly to a functional enlargement of the European Communities by adding noneconomic dimensions to the original economic aims of the EC, the other reforms were mainly initiated by territorial enlargement.[1]

All three factors (the enlargement of competence, function and territory) have given impulse to the idea of constitutionalising the EC and European Union by creating a basic legal framework for this new *supra*national order. The shift of competences from the state to the Community requires the existence of a basic law or a kind of Constitution. The accumulation of powers at the *supra*national level leads to further awareness that this power must be constitutionally moderated. In addition the prospective entry of new member states is also favourable for the idea of a European Constitution because the association of twenty members needs a common ideological link to integrate them sufficiently into the fundamental order.

B. Ideological and Conceptual Basis

In December 2000, at the intergovernmental conference in Nice, the European Union Fundamental Rights Charter was proclaimed by the Heads of Government and State, a body officially known as the

1. As to historical developments, see L. TICHÝ & R. ARNOLD ET AL., EVROPSKÉ PRÁVO, PRAHA 1-17 (1999).

European Council. This Charter, elaborated by a group mainly consisting of representatives from member states' parliaments and the European Parliament[2] and presided over by the former German federal president Roman Herzog, was a first step in creating a European Union constitutional order. Though not yet in force, it can be qualified as a pre-constitutional document with great influence on the *supra*national as well as on the national legal orders.

This event took place during the third phase of the post-war period at a time of general European constitutional development. The end of the Second World War opened a new era in European constitutional thinking. The general trend through various phases is a transition from state orientation towards a more anthropocentric approach: the dignity of man is conceived as the highest and most sacred value at the top of each constitutional order. On this basis an effective fundamental rights protection evolves, often institutionally backed by a constitutional court. New instruments such as recognition of the principle of proportionality as a limitation on state intervention into the individual's sphere and the guarantee of fundamental rights (starting from the German "Wesensgehaltsgarantie" laid down in article 19 of the German Basic law of 1949) become common in European Constitutional Law in the second half of the twentieth century. State power as well as *supra*national power concentrate on the welfare of the individual. The anthropocentric approach in the legal as well as the political dimension of all public power is clearly expressed by the Preamble of the European Union Charter: "The Union places the individual at the heart of its activities. . . ." This is the expression of the new orientation initiated in Europe in the middle of the twentieth century and developed further in the following decades.

The post-war period of European Constitutional Law can be divided into three distinct phases showing the path of constitutional development. The first phase lasts from the late forties to the late sixties when post-war constitutions, such as the Italian and in particular the German, are establishing systems which embody the new orientation by ensuring that the Constitution and the Constitutional court prevail over the legislator and by attributing highest importance to human values and fundamental rights. In this first period one tendency that particularly advances matters is already apparent: this is the internationalisation of the individual's protection which began with the Universal Declaration on Human Rights in 1948 and led in 1950 to the European Convention on

2. *See* Europäische Grundrechte-Zeitschrift (EuGRZ) 570 (2000).

Human Rights (ECHR) within the Council of Europe. The European Convention plays, much more than the later UN Conventions of 1966, an eminent role in European constitutional thinking.

The second phase takes place in the seventies when new approaches are taken in the Greek, the Spanish and the Portuguese Constitutions as reactions to the former totalitarian regimes in these countries. These constitutions take over the progressive elements of the German Constitution as shaped by the jurisprudence of the Constitutional Court.

The third and most advanced phase is that of the constitutional reforms in Central and Eastern Europe. These countries adopt a clear anthropocentric approach expressing man's dignity as the highest value, proclaiming the rule of law ("Rechtsstaat"), limiting the intervention of the legislator in the sphere of individual freedoms and assuring the supremacy of the constitution by an effective constitutional court.[3] This phase takes over and consolidates the progressive constitutional law of the two preceding phases. At the same time, this new constitutional thinking is transferred, on the basis of the member states concepts, into the European Community legal order. Thus, three levels influencing one another coexist in Europe: the level of national constitutions, the level of the EC/EU constitutional system and the European Convention on Human Rights (ECHR).[4]

This is the ideological background and conceptual basis of the European Union Fundamental Rights Charter. Thus, it is an instrument built upon the continuous development of Constitutional Law described above. As a consequence, the Charter is an homogenous instrument with an updated standard.

It is also an evolutionary instrument in both a larger and a narrower sense. On the one hand, the Charter corresponds, as mentioned, to the evolution of Constitutional Law in general, and on the other hand, it corresponds to what has evolved in Community Law itself. The Charter takes over in particular the judge-made fundamental rights developed by the European Court of Justice in the form of unwritten general principles of Community Law. In addition, some dispositions of the EC primary law, i.e., of the EC Treaty, are inserted in the Charter. These provisions are objective constitutional principles and dispositions that go far beyond

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3. *See* R. Arnold, *Le principe de l'État de droit dans les nouvelles Constitutions de l'Europe centrale et orientale, in* STUDIES IN MEMORY OF ROLV RYSSDAL (FORMER PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS) 65-78 (P. Mahoney, F. Matscher, H. Petzold, L. Wildhafer eds, 2000).

4. *See also* R. ARNOLD, BEGRIFF UND ENTWICKLUNG DES EUROPÄISCHEN VERFASSUNGSRECHTS, FESTSCHRIFT H. MAURER 855-68 (2001).

fundamental rights protection, a fact that justifies characterisation of the Charter as a complex (pre-)constitutional document that goes beyond the realm of fundamental rights per se.

The Charter does not try to find new solutions. That would of course be impossible and unnecessary because the long European fundamental rights tradition has already reached a high standard and would be hard to improve upon. Thus, as to quality of the individual protection, there is no need nor any possibility for the adoption of new concepts. There is also the issue of tradition. The Charter is part of the basic law of the *supra*national order, i.e., a source of EC law. Homogeneity with the existing primary and secondary EC law is indispensable. The Charter cannot be contrary to the tradition of the autonomous EC legal order. Therefore, the Charter must not only be derivative but also homogenous with the existing order as to which it is superior. This necessarily implies that the Charter corresponds to the legal tradition of this body of norms and must take over the substantial fundamental rights concepts developed by legal order itself. The Charter can repeat, on a constitutional level, what has evolved on the level of ordinary law (function of constitutionalising), can write down what has been developed as unwritten judge-made law (function of positivising), can unite dispersed legal texts into one charter (function of codifying), can make a systematic concept of what has developed case by case (function of systemising), can reformulate (without substantial modification) the existing text and make them clearer and more comprehensible (function of clarifying). The legal tradition to be observed in this context is not strictly limited to the EC order, but embraces also the above-mentioned interconnected levels: the national constitutions and the European Convention on Human Rights. Therefore, the Charter can and does take over guarantees from these legal orders. Thus, a couple of dispositions of the Strasbourg Convention are adopted by the Charter as its own guarantees, and constitutional dispositions from national constitutions have also been inserted. This can be qualified as a process of *reception.*

It is evident that the texts formulated in the Charter belong to the EC legal order (their normative quality dating from the time they enter into force) as the other texts of the Charter do. Reception means the adoption of foreign source texts as sources for another legal order. The texts taken over from the ECHR or the European Social Charter cannot be conceived as sources of a different order maintaining their original normative character and being valid as non-EC Law sources within the Charter. The Charter is not composed of dispositions from various legal

systems and does not form a multilevel complex. The Charter is, as to its legal source, an homogenous, autonomous instrument of EC law.

C. *The Charter as a Normative Instrument*

The proclamation of the Charter is commonly seen as a purely political event which does not bestow juridical validity upon it. The question arises whether, despite this fact, the Charter is already normatively obligatory or will be obligatory in the future.[5]

The Nice proclamation can be characterised as an act of self-obligation on the part of the member states so that when the member states act through their executive heads, they must follow the Charter. This can be important in the case of the application of Community Law by the member states, a field which is also covered by the Charter, in accordance with article 52. This self-obligation must also be valid for Pillars II and III of the European Union in so far as the member states are acting in cooperation. As to the Community institutions, they have declared themselves to be bound by the Charter, which means the Charter is binding in all their activities.

There are two other imaginable forms of normativisation of the Charter: to make it part of the EC primary law, i.e., to integrate it into the existing EC/EU Treaty or, what seems to be the most appropriate form for constitutional law, to submit it to the peoples of the member states for approval and thus create constitutional law in a formal sense.

Incorporating the Charter into the Treaty can be realised in three ways: (1) making it part of the principal text, (2) adding it as an annex to the EC Treaty, or (3) leaving it outside the Treaty, but formulating a reference to it in the EC/EU Treaty itself. If member states, especially Great Britain, accept that the Charter shall acquire a normative character, it is probable that such a solution will be found at the planned Conference in 2004. The Charter would acquire through incorporation into the Treaties[6] the same legal force as primary law, but not a rank superior to it. The European Court of Justice will be competent to interpret the Charter. National courts, too, will have to interpret it, because national authorities will be bound by the Charter when applying Community Law.

An appropriate place for a reference to be made to the Charter would be article 6, § 2, of the EU Treaty[7] where reference in the current

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5. *See also* CHR. CALLIES, EUROPÄISCHE ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT (EuZW) 267-68 (2001); GRABENWARTER, DEUTSCHES VERWALTUNGSBLATT (DVBl) 11-12 (2001).

6. *See* J.-Cl. Piris, 24 EUR. L. REV. 557, 559-65 (1999).

7. *See* S. Alber & U. Widmaier, EuGRZ 2000, at 497-510.

text can be found to the European Convention on Human Rights and the general principles of Community Law. It will be shown below that in reality there is no need for such an express reference because the general principles of Community Law embrace what is written in the Charter for the protection of the individual.

The most appropriate solution would be the submission of the Charter to the peoples of the member states. The power to create formal constitutional instruments embodying a Fundamental Rights Charter as a part of European Constitution is attributable to the peoples of the member states. The peoples dispose of a European "*pouvoir constituant*" which enables them to create a Basic Law for the European Union. This competence is not restricted to their own state territories, but must be recognised in them after they have transferred a great deal of their internal sovereign rights to the *supra*national level. As the EC/EU is to a great extent a functional substitute for the member states, the possibility of constitution-making must be recognised also on this level. The term "Constitution" is not reserved to the state but can be transferred to new phenomena consisting of multistate communities with *supra*national character, namely the EC as Pillar I of the European Union. The present situation of highly accumulated powers at this level entails the need to establish a "basic order" as it is traditionally called in states constitution. It is necessary to limit the powers to protect the individuals against interference with their liberty. In other words: the functional shift of state power to *supra*national organisations must be accompanied by guarantees similar to those found at the national level.

The constitution-making power of the people is not converted into the constitution-making power of the member states by putting the Charter (or other constitutional instruments) into the form of a Treaty. Choosing that modality would attribute the constituent power to the executive (the heads of state which ratify the treaties) and to the parliaments that approve them. These are the previously established institutions of the state, whereas the constituent power belongs to society, to the people as an unstructured body. Its consent to this treaty could only be interpreted as the exercise of its *pouvoir constituant* in those member states where the people must consent to an international or *supra*national treaty.

If the peoples of the member states would directly approve and thus legitimate the Fundamental Rights Charter, the latter would receive normative force as a constitutional instrument in a formal sense. The fact that it would not be a complete constitution (embracing fundamental rights and institutional dispositions) is no obstacle; there are state

systems such as the Czech Republic where a separate Fundamental Rights Charter exists as an institutional part of constitutional law. Similar examples also exist in Austria and Sweden.

If the peoples of the member states accept the European Union Fundamental Rights Charter, the Charter would assume the highest rank in the hierarchy of norms, superior even to the EC primary law. A further question, however, arises in this context: in whose hands will the *pouvoir constituant* lie? Will it be an addition to the constituent powers of all the member states' peoples or will it be a unique *pouvoir constituant européen* attributed to the totality of all European Union citizens? The practical consequences are important. The second approach implies that adoption takes place when more than fifty percent of all European citizens approve, whereas the first approach would require a majority in all the member states. If the people of one member state were to fail to give majority approval, it would not be bound by the constitutional document submitted.

The second approach is preferable. If a constitutional document is to be created for the whole European Union, the validity of this document refers to a power exercised by institutions responsible for the whole territory of the member states. The Charter shall bind the *supra*national institutions so that the beneficiaries of the Charter are the whole citizenry comprising the Community. This perspective assumes that the whole European Union citizenry has a unique *pouvoir constituant européen* capable of approving a European constitutional document by majority vote. As a consequence, whether the Charter or another constitutional instrument would enter into force or not for a single member state would not depend upon a majority vote in that state. If the majority of all European Union citizens approve, the constitutional document becomes binding for all the existing member states.

II. SOME REMARKS ON THE CHARTER'S CONTENT

A. The Complex Character of the Provisions

The Charter uses the term of "Fundamental Rights" which is a concept familiar in Germany but less familiar in other constitutional systems. In France, for example, the term "*droits fondamentaux*" is of rather recent origin. In the recent jurisprudence of the Conseil Constitutionnel it is used in addition to the term "*liberté publique*." The divergences in concepts and terminology in European states, however, do not present an obstacle to the interpretation of the EU Charter. Its fundamental rights concept is essentially shaped by the ECHR and

reflects to some extent German structural aspects (as outlined in the Hauer decision of the ECJ[8]). Thus, the Charter is more oriented towards fundamental rights with written guarantees, as in Germany and Spain, than towards unwritten, flexible systems as in France or the United Kingdom. The protective effects of the Charter rights are to be broadly interpreted and would undergo legislative restrictions only to the extent they would conform to proportionality and would not interfere with the very essence of the rights.

Besides fundamental rights the Charter also contains objective principles of a general character. These are the principles of democracy and the rule of law which according to the preamble constitute the very foundation of the European Union. Another type of general principle enunciated in the Charter is not strictly speaking a fundamental right. Some examples of this type are the obligations to ensure high levels of environmental protection (art. 37), consumer protection (art. 38) and human health protection (art. 35).

The Charter also incorporates rules which, in German constitutional thinking, belong to the objective principle of the rule of law. Article 20 of the German Basic Law is a source of norms which regulates the relation between the individual and the administration. The Charter formulated a fundamental subjective right to good administration (art. 41) on the basis of important aspects developed by the jurisprudence of the European Court. Parallel to the rule of law concept as known in the internal constitutional order of member states, the ECJ has developed a set of rules referring to the "Community of Law" (Rechtsgemeinschaft) which now appears in the Charter. This guarantee includes the right of every person to be heard before any individual measure is taken which would adversely affect him or her. Furthermore it includes the right of every person to have access to his or her file and requires the administration to give reasons for its decision. These rights are clearly derived from the autonomous jurisprudence of the European Court of Justice and the European Court of First Instance.[9] A further consequence of "Community of Law" is the responsibility of the EC for any damage caused by its institutions or its servants in the performance of their duties. This responsibility is also laid down in article 41 of the Charter and was foreseen by article 288 of the EC Treaty. Other rights derived from the same concept are for example the right of access to documents (art. 42 as guaranteed by art. 255 of the EC Treaty), the right to petition

8. Rs 44/79, Slg. 1979, 3727.

9. See explanation to article 41, note from the presidium, Charte 4473/00, fundamental. rights@consilium.eu.int, at 36.

(art. 44, as laid down in arts. 21 and 194 of the EC Treaty) and the right to an effective remedy and to a fair trial (art. 47), a right derived partly from the European Convention on Human Rights, especially from its article 6, and partly from the Community jurisprudence itself. Articles 48 and 49 of the Charter, embodying the presumption of innocence and the right of defence as well as the principles of legality and proportionality in the field of criminal offences and penalties, are further striking examples of "Community of Law" aspects transformed into subjective fundamental rights by the Charter. It can be seen, therefore, that fundamental rights protection in a stricter sense is combined in the Charter with elements of rule of law, thus transforming the relation between the individual and the administration and matters of justice into individual guarantees.

The range of protective norms in the Charter is large and shows a tendency to transform objective norms into individual rights. Even if certain guarantees have an objective character in a part of the constitutional orders of the member states, but are conceived as subjective rights in the European Convention on Human Rights or under Community Law, the Charter takes them over as rights. Therefore, the Charter contributes to a process of individualisation of constitutional norms.

Furthermore, because of its complex character the Fundamental Rights Charter can be qualified (once it enters into force) as a sort of embryonic Constitution or Constitution *in nuce*. The Charter itself contains elements of a formal constitution though it is not yet complete.

B. A Document of Codification and Reception

The Charter is inspired by three interconnected sources of law: Community Law, the law of the Council of Europe, i.e., in particular the European Convention on Human Rights (ECHR) and the European Social Charter, and the law of the member states. Formulating norms derived from the community legal order means a codification of the dispersed norms of that order and the transformation of unwritten, judge-made principles of EC Law into written dispositions. Taking over dispositions of the ECHR and the European Social Charter means a *reception*, i.e., the normativisation of dispositions already existing in a legal order distinct from that of the EC/EU. The Charter did not use the technique of cross-referencing to the foreign body of law, but created autonomous formulations within the Charter. In the Charter's chapter on Justice, the ECHR plays an especially important role whereas in the

chapter on Solidarity, the European Charter of Social Rights is the main source of reception.

It must be said that there is linkage between these different bodies of law which article 6, § 2, of the EU Treaty mentions. The European Communities are not formally bound by the European Convention on Human Rights nor by the European Social Charter. The mentioned article, however, unilaterally obliges the Community institutions to observe the Strasbourg Convention as well as the so-called general principles of EC Law. If EC judges apply the ECHR, they do not apply it directly but are inspired by the contents of its dispositions which they conceive as general principles of Community Law, i.e., as a source of EC Law itself.

The same is true of the Constitutional Law of the member states which the EC judges and other institutions refer to when shaping the unwritten general principles of EC Law. The common fundamental rights tradition in the member states, despite some conceptual divergences, forms the basis for this approach. It cannot always be clearly decided whether the rights formulated in the Charter are derived directly from the national traditions or are derived from the European Courts' formulation of general principles of Community Law based on the aforementioned common tradition.

C. The Anthropocentric Approach

The anthropocentric approach of the Charter manifests itself clearly in Chapter I which enshrines human dignity as the supreme value in the whole European Union. The Charter is not only a body of subjective rights, but also an ordering of objective values. Both aspects are combined in the Charter. These objective values are constituent elements of the EC/EU constitutional order and are binding upon both *supra*national and national institutions. They form an important part of the common values referred to in article 6, § 1, of the EU Treaty and can be conceived as the supreme ideological concepts of the European Union.

Anthropocentrism is also expressed in the protection of these rights. The fundamental rights must be effectively interpreted in the light of societal developments. The Charter must be a "living instrument." It is important in this context—and this constitutes a further sign of anthropocentrism—that the rights are assured by the courts. As far as the European Court of Justice is concerned, this is a kind of constitutional jurisdiction. Furthermore, the principle of proportionality and the fundamental rights guarantees are expressly laid down in the Charter (art.

52, § 1). As already mentioned, these factors are characteristic of a constitutional order based on the concept of anthropocentrism.

D. The Charter as a Modern Instrument

The Charter also formulates rights which protect the individual from the misuse of modern technology. Thus, in Chapter I concerning human dignity, article 3 establishes the right to the integrity of the person and sets forth protective norms in the fields of medicine and biology, e.g., a prohibition of eugenic practices and the reproductive cloning of human beings. A further example is article 8 which protects the personal data of the individual.

The Charter also contains dispositions which are not connected to technological developments and do not normally appear in traditional constitutions but are signs of a new sensibility toward certain groups in society. Thus article 25 sets forth the right of the elderly to lead a life of dignity and independence and to participate in social and cultural life; article 26 recognises the rights of persons with disabilities and article 24 grants to children such protection and care as is necessary for their well-being.

E. The Structure

The Charter is divided into six Chapters[10] beginning with Chapter I on the dignity of man. Article 1 declares: "Human dignity is inviolable. It must be respected and protected." This provision is very similar to article 1 of the German Basic Law. The chapter on dignity contains the already mentioned right to the integrity of the person (art. 3) and the prohibition of torture, inhuman and degrading treatment and punishment, slavery and forced labour (arts. 4 and 5). Article 4 is directly inspired by article 3 of the ECHR, and similarly article 5 is modelled upon article 4, § 1 and § 2, of the same Convention. It must be mentioned in this context that the provisions which are textually derived from the ECHR should be interpreted, according to article 52, § 3, of the Charter, in the light of this Convention and the jurisprudence of the Strasbourg Court. This article seeks to avoid divergent interpretation at the different levels of fundamental rights protection in Europe and it envisions a reception of

10. For an analysis of the contents of the Charter, see S. MAGIERA, DIE ÖFFENTLICHE VERWALTUNG (DÖV) 1021-24 (2000); Chr. Grabenwarter, DVBl. 1-10 (2001); R. KNÖLL, NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT (NVwZ) 392-93 (2001); Chr. Callies, EuZW 262-66 (2000); K.A. SCHACHTSCHNEIDER, RECHT UND POLITIK 20-26 (2001).

the Strasbourg jurisprudence. Thus it provides a well-established basis for interpretation of the new Charter.

Chapter II entitled "Freedoms" is rather heterogeneous. To a great extent it contains classical liberties, such as the right to liberty and security which are taken from the formulation of article 5, § 1, of the ECHR, the right to respect for private and family life, home and communications (art. 7) which corresponds to article 8 of the ECHR, freedom of thought, conscience and religion (art. 10) which takes over article 9 of the ECHR, freedom of expression and information (art. 11) which follows article 10 of the ECHR, and freedom of assembly and association (art. 12) which are the equivalent of article 11 of the ECHR.

Somewhat in contrast to liberties such as these which are conceived as subjective rights protected from infringement by *supra*national as well as national government executing Community Law, there are also rights in this chapter which entitle persons to receive certain kinds of benefits from the EC or the member states. Article 14 of the Charter embodies the right to education and access to vocational and continuing training. This right is modelled after article 2 of the Protocol to the European Convention on Human Rights and, with respect to vocational and continuing training, derives from article 10 of the European Social Charter.[11]

The freedom to choose an occupation and to engage in work (art. 15) as well as the freedom to conduct a business (art. 16) are specific rights developed by the jurisprudence of the European Court of Justice in combination with the so-called fundamental freedoms (to seek employment, to work, to exercise the right of establishment and to provide services in any member state) which are written down in the EC Treaty itself. Articles 15 and 16 are very closely connected to the internal market and are conceived in the Charter as individual rights. In member states such as Germany, some aspects of these rights are embraced within the notion of professional freedom, notably the freedom to choose a profession and to exercise it freely (art. 12 of its Basic Law).

The right of property (art. 17) is a classic right that was taken from article 1 of the Protocol to the ECHR. The protection of intellectual property (art. 17, § 2) is a newly formulated right which has explicitly been mentioned because of its growing importance and the existence of Community secondary legislation on this issue.[12]

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11. See explanation to the Charter, article 14 n.1.
12. Explanation to article 17, at 20.

The heterogeneity of Chapter II is shown by the fact that the protection of property is followed by the right to asylum and to protection in the event of removal, expulsion or extradition (arts. 18 and 19). These are important rights connected to the Geneva Convention on Refugees (see also art. 63 of the EC Treaty) and to article 4 of the Protocol No. 4 to the Strasbourg Convention.[13] Thus, the chapter on freedoms contains personal rights and economic rights without a very clear systematic order.

Chapter III is dedicated to equality. The basic provision is article 20 enshrining equality before the law followed by the nondiscrimination clauses (art. 21, §§ 1-2) which correspond to article 12 and 13 of the EC Treaty regarding nondiscrimination on grounds of nationality, race, belief, and so forth. Article 22 establishes a right of respect for cultural, religious and linguistic diversity. Equality between men and women is laid down in article 23 to an extent which corresponds to the legal situation in the EC. The rights of children are protected under article 24. The well-being and best interests of the child must be considered by public authorities or private institutions as the primary goal. Article 25 lays down the already mentioned rights of the elderly and article 26 refers to the integration of persons with disabilities.

Thus, equality is understood in a large sense. The Charter mandates nondiscrimination but also requires respect for groups who are, by their nature or their situation, in an unequal, inferior position in comparison with normal persons. Besides that, so-called "active" or affirmative discrimination is not excluded if member states take measures to compensate for the relative disadvantages borne by such persons.

Chapter IV deals with solidarity. This chapter takes over many rights from the European Social Charter which belongs to the law of the Council of Europe and from the nonbinding Community Charter of the Fundamental Social Rights of Workers.[14] Among these rights relating to solidarity the right of collective bargaining and action (art. 21) is of great importance. The right to strike, for example, is expressly assured by this article. Article 30 protects the individual from unjustified dismissal and article 31 establishes the right of every worker to health, safety and dignity at the workplace. The protection of family (art. 33), social

13. See explanations to these articles with further details.

14. On this topic, see LA PROTECTION DES DROITS SOCIAUX FONDAMENTAUX DANS LES ÉTATS MEMBRES DE L'UE (I. Iliopoulos-Strangas ed., 2000); C. GREWE, REVUE UNIVERSELLE DES DROITS DE L'HOMME (RUDH) 85-92 (2000); N. BERNSDORFF, VIERTELJAHRESSCHRIFT FÜR SOZIALRECHT (VSSR) 1-23 (2001); A. WEBER, NEUE JURISTISCHE WOCHENSCHRIFT (NJW) 540-41 (2000); A. V. BOGDANDY, JURISTENZEITUNG (JZ) 160 (2001).