

# **THE CHARTER ON FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

## **IN THE LIGHT OF:**

- **The European Convention for the Protection of Human Rights and Fundamental Freedoms**
- **The European Social Charter**

Document prepared by Marie-José Schmitt, Chargée de mission of the Conference of INGOs for matters concerning the European Social Charter, representative of the European Action of the Disabled (AEH)

**June 2016**



## FOREWARD

The Turin Process launched at the High Level Conference in Turin on 17 and 18 October 2014 aims at recalling and strengthening the link between the legislation of the European Union within the Treaty of Lisbon (the Charter on Fundamental Rights of the European Union) and the previous treaties of the Council of Europe (The European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter). Such link between the three documents is the more important today as the economic and political crisis of the last years destabilized the States and left very severe and long lasting effects on the population and especially on the most vulnerable groups of persons.

The civil society is the first one to be concerned and, as a consequence, its duty is now to mobilize in support of the future guarantee of peoples' civil, social, economic and cultural rights in Europe. This is why the Conference of the INGOs of the Council of Europe has worked out this document allowing for a better understanding of the substantial and historical links of these three legal instruments.

The lack of balance between economic freedoms and State obligations to guarantee individuals' rights undermines democracy and human rights. Only once all rights are recognised and protected will it be possible to reestablish the necessary confidence between the civil society and politicians, a relationship that is nowadays often lacking dialogue and compromise. States and International Organisations have to make the necessary political choices so as to protect all persons, and we, as the organised civil society have also to play our part in bringing our vigilant contribution to the implementation of these treaties.

We should never forget that civil, political, economic social and cultural rights are indivisible and that their respect can't be negotiated.

Anna Rurka

President of the Conference of the INGOs of the Council of Europe

## INTRODUCTION

The INGOs with participative status at the Council of Europe have gathered over years a good experience in following up the implementation of the founding texts of European ethics and laws, especially the European Convention for the Protection of Human Rights and Fundamental Freedoms ( in short European Convention on Human Rights) and the European Social Charter. We know how many barriers we can find on the road leading to a full implementation in people's daily life of the rights listed in these international texts.

On line with this expertise it appeared to be useful, in 2008, to create a working document allowing to consider the Charter on Fundamental Rights of the European Union (called "EU Charter" hereafter) in the light of its references to the main previous existing treaties that are already binding the States.

Indeed, the rights that are listed in this Charter are not new rights; they are, on the contrary, solidly embedded in the Treaties having established their implementation since over half a century. It is because of its roots that the European Charter on Fundamental Rights is getting its important value.

Today, in 2016, we publish again this working document because in the difficult after-crisis times and with the many questions raised about the European society, it is paramount to recall the binding rights and duties that are at the very basis of Europe.

This short working document will allow to come back to our Treaties with a simultaneous reading following the EU Charter article by article in the light of the founding texts.

## REMARKS

Before reading the texts, let's have a look at the Preamble of the EU Charter. Too often the Preamble of international texts is not really considered and this should not happen because preambles contain useful reminders of purpose, principles and values shedding their light on the road to be followed.

We quote here the two first recitals of this Preamble written just before the year 2000

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

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

The writers of the Preamble of the EU Charter then carefully included this Charter within the context of international law that is ruling since over half a century the relationship of European citizens among themselves and with their State in the different life domains.

The Preamble gives the following precisions;

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

*Court of Justice of the European Communities and of the European Court of Human Rights.”*

We would like to insist here on this wording.

It is said that the Charter “reaffirms”. This means that the European Union is taking as its own goals, those principles and rights that are already listed in other treaties, even if, as the synoptic presentation will show it, the wording is sometimes different, shorter or somewhat updated.

The Preamble also quotes the principle of subsidiarity meaning that the Charter does not bring about any change in the present respective competences of the European Union and of the States.

This respect of the limits of competences does also bear, -so says the Preamble-, on the previous commitments of the States as to the European Convention on Human Rights and Fundamental Freedoms as well as to the Social Charter.

By adding the whole set of rights of the EU Charter to the Treaty of Lisbon, the European Union strongly stressed that the respect of these rights constitutes the basis of the Union’s ethics..

## **METHOD**

In order to facilitate an overview of the EU Charter together with its links with the European Convention on Human Rights and Fundamental Freedoms as well as with the European Social Charter, we have made a synoptic presentation of these texts. For each article of the Charter we have mentioned, according to the case, its reference in the European Convention on Human Rights or in the European Social Charter.

In so doing we remained at the level of the articles and of the additional protocols without going further in depth into the jurisprudence gathered over years which could cast a special light

on the concerned articles. There are too many documents produced by the European Court of Human Rights and too many conclusions made by the European Committee of Social Rights for quoting them all here in this working document. As already said above, the Preamble of the Charter includes the reference to this case-law and to its steady evolution.

For keeping this document within the limits of a reasonable size, we also did not mention the other Treaties and Conventions that have been the source of some few articles.

The synoptic presentation that follows is not a study of the content of the EU Charter. The aim is to bring together the texts, article by article, so as to have a better understanding of the EU Charter in the light of its roots that are its legal basis. But it also reveals some interesting evolutions in the wording of concepts and in the priorities that have been set.

The synoptic presentation shows also that the EU Charter is a reminder, in the form of basic principles and rules, of the rights that had –for most of them - already been more detailed in the texts of reference.

But whereas the Charter contains all the conceptual articles of the European Convention of Human Rights as well as all the 31 articles of the European Social Charter, it is organised in a different way, with seven chapters:

Chapter I	Dignity
Chapter II	Freedoms
Chapter III	Equality
Chapter IV	Solidarity
Chapter V	Citizen's rights
Chapter VI	Justice
Chapter VII	General Provisions

The Chapter V, Citizen's Rights, is the only one having no reference because the rights that are listed in this chapter apply to

the relationship between the citizens of the European Union and the different bodies of the European Union and are new rights. In Chapter VI Justice and VII, General Provisions, we notice some precisions given in the references that are quoted.

The European Union has given a mandate to the Agency of Fundamental Rights to make studies allowing to analyse and evaluate the implementation of the EU Charter. Experience shows that a proper implementation of this Charter will always depend on the real commitment of the European Union. It will also depend on the States' will to ratify those treaties and protocols that are at the basis of this EU Charter. It will finally depend on the citizens' vigilance as to the protection of people's rights and also on the vigilance of their representative organisations.

# THE CHARTER ON FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

## Preamble<sup>1</sup>

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values. Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union<sup>2</sup> and by creating an area of freedom, security and justice.

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

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

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European

---

<sup>1</sup> 18.12.2000 EN Official Journal of the European Communities C 364/11

<sup>2</sup> Underlined for our presentation

Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

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

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

# CHAPTER I

## DIGNITY

### Article 1 Human dignity (The Charter of Fundamental Rights)

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

### **Reference: European Convention on Human Rights Protocol 13 Vilnius (2002)**

#### **Preamble:**

“THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto, convinced that everyone’s right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings”...

### Article 2 Right to life (EU Charter)

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

### **Reference: European Convention on Human Rights**

#### Article 2 Right to life

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - a. in defense of any person from unlawful violence;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

**Protocol N° 6 Strasbourg, 1983** concerning the abolition of death penalty

Article 1 Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.<sup>3</sup>

**Protocol N° 13 Vilnius 2002** Concerning the abolition of the death penalty in all circumstances<sup>4</sup>

Article 1 Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention<sup>5</sup>.

Article 3 Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol<sup>6</sup>.

---

<sup>3</sup> This article has been suppressed by the Protocol of Vilnius 2002

<sup>4</sup> Underlined for the purpose of this presentation

<sup>5</sup> Article 15 Derogation in time of emergency

<sup>6</sup> Article 57 Reservations

### **Article 3 Right to the integrity of the person**

#### **(EU Charter)**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - a. the free and informed consent of the person concerned, according to the procedures laid down by law,
  - b. the prohibition of eugenic practices, in particular those aiming at the selection of persons, the prohibition on making the human body and its parts as such a source of financial gain,
  - c. the prohibition of the reproductive cloning of human beings.

### **Article 4 Prohibition of torture and inhuman or degrading treatment or punishment**

#### **(EU Charter)**

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

### **Reference: European Convention on Human Rights**

#### **Article 3 Prohibition of torture**

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

### **Article 5 Prohibition of slavery and forced labour**

#### **(EU Charter)**

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

## **Reference: European Convention on Human Rights**

### Article 4 Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude
2. No one shall be required to perform forced or compulsory labour
3. For the purpose of this article the term “forced or compulsory labour” shall not include:
  - a. any work required or done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d. any work or service which forms part of normal civic obligations.

## CHAPTER II FREEDOMS

### Article 6 Right to liberty and security (EU Charter)

Everyone has the right to liberty and security of his person.

#### **Reference: European Convention on Human Rights**

##### Article 5 Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a the lawful detention of a person after conviction by a competent court;
  - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
  - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent authority;
  - e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - f the lawful arrest or detention of a person to prevent his effecting unauthorized entry into the country of a person against whom action is being taken with a view to deportation or extradition.

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

### **Article 7 Respect for private and family life** **(EU Charter)**

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

### **Reference: European Convention on Human Rights**

#### **Article 8 Right to respect for private and family life**

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

## **Article 8 Protection of personal data**

### **(EU Charter)**

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

## **Article 9 Right to marry and right to found a family**

### **(EU Charter)**

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

### **Reference: European Convention on Human Rights**

Article 12 Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

### **Reference: European Social Charter**

Article 16 The right of the family to social, legal and economic protection.

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of the society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

## **Article 10 Freedom of thought, conscience and religion** **(EU Charter)**

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

### **Reference: European Convention on Human Rights**

#### Article 9 Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes the right to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety or for the protection of the rights and freedoms of others.

## **Article 11 Freedom of expression and information** **(EU Charter)**

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

### **Reference: European Convention on Human Rights**

#### Article 10 Freedom of expression

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 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.

### **Article 12 Freedom of assembly and of association** **(EU Charter)**

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

### **Reference: European Convention on Human Rights**

#### **Article 11 Freedom of assembly and association**

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition

of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

### **Reference: European Social Charter**

#### **Article 5 The right to organise**

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

#### **Article 13 Freedom of the arts and sciences** **(EU Charter)**

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

#### **Article 14 Right to education** **(EU Charter)**

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

**Reference: European Convention on Human Rights  
Additional Protocol Paris 1952**

**Article 2 Right to education**

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

**Reference: European Social Charter**

**Article 10 The right to vocational training**

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

- 1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
- 2 to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
- 3 to provide or promote, as necessary:
  - a adequate and readily available training facilities for adult workers;
  - b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
- 4 to provide or promote, as necessary, special measures for the retraining and reintegration of the long term unemployed;<sup>7</sup>
- 5 to encourage the full utilization of the facilities provided by appropriate measures such as:
  - a reducing or abolishing any fees or charges;
  - b granting financial assistance in appropriate cases;

---

<sup>7</sup> This paragraph 4 does not exist in the Charter of 1961

- c including the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
- d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young worker generally.

**Article 15 Freedom to choose an occupation and right to engage in work**  
**(EU Charter)**

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

**Reference: European Social Charter**

**Article 1 The right to work**

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable level of employment as possible, with a view to the attainment of full employment;
- 2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
- 3 to establish or maintain free employment services for all workers;
- 4 to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 18 The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

- 1 to apply existing regulations in a spirit of liberality;
- 2 to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- 3 to liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
- 4 the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

- 1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
- 2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
- 3 to promote cooperation, as appropriate, between social services, public and private, in emigration and immigration countries;
- 4 to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not

less favourable than that of their own nationals in respect of the following matters:

- a. remuneration and other employment and working conditions
  - b. membership of trade unions and enjoyment of the benefit of collective bargaining;
  - c. accommodation;
- 5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
  - 6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
  - 7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
  - 8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
  - 9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
  - 10 to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
  - 11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their family;<sup>8</sup>
  - 12 to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

---

<sup>8</sup> the paragraphs 11 and 12 are not included in the Charter of 1961

## **Article 16 Freedom to conduct a business**

### **(EU Charter)**

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

## **Article 17 Right to property**

### **(EU Charter)**

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

## **Reference: European Convention on Human Rights Additional Protocol Paris 1952**

### **Article 1 Protection of property**

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

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

## **Article 18 Right to asylum**

### **(EU Charter)**

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

## **Article 19 Protection in the event of removal, expulsion or extradition**

### **(EU Charter)**

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

### **Reference: European Convention on Human Rights Protocol N°4 Strasbourg 1963**

Article 4 Prohibition of collective expulsion of aliens  
Collective expulsion of aliens is prohibited.

### **Protocol N°7 Strasbourg 1984**

Article 1\_ Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled there from except in pursuance of a decision reached in accordance with law and shall be allowed:
  - a to submit reasons against his expulsion,
  - b to have his case reviewed, and
  - c to be represented for these purposes before the competent authority or a person or persons designed by that authority.
2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b, and c of the Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

## CHAPTER III EQUALITY

### Article 20 Equality before the law (EU Charter)

Everyone is equal before the law.

### Article 21 Non-discrimination (EU Charter)

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

### **Reference: European Convention on Human Rights**

#### Article 14 Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **Protocol 12 Rome 2000**

#### Article 1 General prohibition of discrimination

##### Paragraph 2.

No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1<sup>9</sup>

---

<sup>9</sup> Paragraph 1 is the same text as article 14 of the Convention cited above

## **Reference : European Social Charter Part V**

### Article E Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

### Article 22 Cultural, religious and linguistic diversity (EU Charter)

The Union shall respect cultural, religious and linguistic diversity.

### Article 23 Equality between men and women (EU Charter)

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

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

## **Reference: European Convention on Human Rights Additional Protocol 7 Strasbourg 1984**

### Article 5 Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

## **Reference: European Social Charter**

Article 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the

Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a access to employment, protection against dismissal and occupational reintegration;
- b vocational guidance, training, retraining and rehabilitation;
- c terms of employment and working conditions, including remuneration;
- d career development, including promotion.

### **Article 24 The rights of the child**

#### **(EU Charter)**

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

#### **Reference: European Social Charter**

Article 17 The right of mothers and children to social and economic protection.

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public or private organisations, to take all appropriate and necessary measures designed:

- 1 to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular the

- establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- 2 to protect children and young persons against negligence, violence or exploitation;
  - 3 to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
  - 4 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

### **Article 25 The rights of the elderly** **(EU Charter )**

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

### **Reference: European Social**

Article 23 The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
  - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  - b the health care and the services necessitated by their state;

- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

### **Article 26 Integration of persons with disabilities (EU Charter)**

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

#### **Reference: European Social Charter 1961<sup>10</sup>**

Article 15 The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

With a view to ensuring the effective exercise of the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement, the Contracting Parties undertake:

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;
2. to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

#### **Reference: European Social Charter 1996**

Article 15 The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

---

<sup>10</sup> We kept the two texts as they are very different and show the change in the concept of disability between 1961 and 1996

- 1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private;
- 2 to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialized placement and support services;
- 3 to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

## CHAPTER IV SOLIDARITY

### Article 27 Workers' right to information and consultation within the undertaking

#### (EU Charter)

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

#### **Reference: European Social Charter**

Article 21 The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- a. to be informed regularly or at appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
- b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

### Article 28 Right of collective bargaining and action

#### (EU Charter)

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the

appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

**Reference: European Social Charter**

Article 6 The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered to.

**Reference: European Social Charter**

Article 28: The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

- a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
- b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29: The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

**Article 29 Right of access to placement services**  
(EU Charter)

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

**Reference: European Social Charter**

Article 9 The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity; this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

**Article 30 Protection in the event of unjustified dismissal**  
(EU Charter)

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

## **Reference: European Social Charter**

Article 24 The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct, or based on the operational requirements of the undertaking, establishment or service;
- b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

## **Article 31 Fair and just working conditions** **(EU Charter of Fundamental Rights)**

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

### **Reference: European Social Charter**

#### Article 2: The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- 1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
- 2 to provide for public holidays with pay;
- 3 to provide for a minimum of four weeks' annual holiday with pay;
- 4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either reduction of the working hours or additional paid holidays for workers engaged in such occupations;
- 5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
- 6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
- 7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.<sup>11</sup>

### **Reference: European Social Charter**

#### Article 3 The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

- 1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and working environment. The primary aim of this policy shall be to

---

<sup>11</sup> The paragraphs 6 and 7 are not in the Charter of 1961

improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimizing the causes of hazards inherent in the working environment;

- 2 to issue safety and health regulations;
- 3 to provide for the enforcement of such regulations by measures of supervision;
- 4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

### **Reference: European Social Charter**

#### Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

- 1 to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
- 2 to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

### **Article 32 Prohibition of child labour and protection of young people at work** **(EU Charter)**

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

Young people admitted to work must have working conditions appropriate to their age and be protected against economic

exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

**Reference: European Social Charter**

Article 7 The right of children and young persons to protection  
With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

- 1 to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals and education;
- 2 to provide that the minimum age of admission to employment shall be 18 years<sup>12</sup> with respect to prescribed occupations regarded as dangerous or unhealthy;
- 3 to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
- 4 to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development and particularly their need for vocational training;
- 5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
- 6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
- 7 to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks annual holiday with pay<sup>13</sup>;
- 8 to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

---

<sup>12</sup> The Charter of 1961 reads « to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy “

<sup>13</sup> The charter of 1961 says “ three weeks”.

- 9 to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
- 10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

### **Article 33 Family and professional life** **(EU Charter)**

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

### **Reference European Social Charter**

Article 8 The right of employed women to protection of maternity  
With a view of ensuring then effective exercise of the right of employed women to protection of maternity, the Contracting Parties undertake:

- 1 to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
- 2 to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such time that the notice would expire during such a period;
- 3 to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
- 4 to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

- 5 to prohibit the employment of pregnant women, women who have recently given birth and women nursing their infants in underground mining, and, as appropriate, on all other work which is unsuitable for them by reasons of its dangerous, unhealthy, or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 27 The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

- 1 to take appropriate measures:
  - a to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
  - b to take account of their needs in terms of conditions of employment and social security;
  - c to develop or promote services, public or private, in particular child day care services and other children arrangements;
- 2 to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
- 3 to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

### **Article 34 Social security and social assistance**

**(EU Charter)**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance

with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

### **Reference European Social Charter**

#### **Article 12 The right to social security**

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security<sup>14</sup>;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
  - a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
  - b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

---

<sup>14</sup> The Charter of 1961 mentions the International Labour Convention N° 102

### Article 13 The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance and, in case of sickness, the care necessitated by his condition;
- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraph 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

### Article 14 The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

- 1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
- 2 to encourage the participation of individuals and voluntary and other organisations in the establishment and maintenance of such services.

### Article 30 The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. to review these measures with a view to their adaptation if necessary.

#### Article 31 The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1 to promote access to housing of an adequate standard;
- 2 to prevent and reduce homelessness with a view to its gradual elimination;
- 3 to make the price of housing accessible to those without adequate resources.

#### Article 35 Health care (EU Charter)

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

#### **Reference European Social Charter**

##### Article 11 The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed, inter alia,

- 1 to remove as far as possible the causes of ill-health;
- 2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- 3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

**Article 36 Access to services of general economic interest**  
**(EU Charter)**

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

**Article 37 Environmental protection**  
**(EU Charter)**

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

**Article 38 Consumer protection**  
**(EU Charter)**

Union policies shall ensure a high level of consumer protection.

## **CHAPTER V CITIZENS' RIGHTS**

### **Article 39 Right to vote and to stand as a candidate at elections to the European Parliament**

#### **(EU Charter)**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

### **Article 40 Right to vote and to stand as a candidate at municipal elections**

#### **(EU Charter)**

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

### **Article 41 Right to good administration**

#### **(EU Charter)**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
  - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

### **Article 42 Right of access to documents**

#### **(EU Charter)**

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

### **Article 43 Ombudsman**

#### **(EU Charter)**

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

### **Article 44 Right to petition**

#### **EU Charter**

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

### **Article 45 Freedom of movement and of residence**

#### **(EU Charter)**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted,

in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

**Article 46 Diplomatic and consular protection**

**(EU Charter)**

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

## CHAPTER VI JUSTICE

### Article 47 Right to an effective remedy and to a fair trial (EU Charter)

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

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

### **Reference: European Convention on Human Rights**

#### Article 6 Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
  - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

- b to have adequate time and facilities for the preparation of his defense;
- c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d to examine or have examined witness against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

### Article 13 Right to an effective remedy

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

### **Additional Protocol N° 7 Strasbourg 1984**

#### Article 2 Right of appeal in criminal matters

- 1 Everyone convicted of a criminal offence by a tribunal shall have a right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
- 2 This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

#### Article 3 Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the

law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

#### **Article 48 Presumption of innocence and right of defence**

##### **(EU Charter)**

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

#### **Article 49 Principles of legality and proportionality of criminal offences and penalties**

##### **(EU Charter)**

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

#### **Reference: European Convention on Human Rights**

#### **Article 7 No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one

that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

**Article 50 Right not to be tried or punished twice in criminal proceedings for the same criminal offence**  
**(EU Charter)**

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

**Reference: European Convention on Human Rights**

**Article 4 Right not to be tried or punished twice**

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

## **CHAPTER VII**

### **GENERAL PROVISIONS**

#### **Article 51 Scope** **(EU Charter)**

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

#### **Article 52 Scope of guaranteed rights** **(EU Charter)**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

### **Article 53 Level of protection**

#### **(EU Charter)**

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

### **Article 54 Prohibition of abuse of rights**

#### **(EU Charter)**

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

### **Reference European Convention on Human Rights**

#### **Article 17 Prohibition of abuse of rights**

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

---