

# A critique of the Charter of Fundamental Rights

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The Charter of Fundamental Rights of the European Union was launched in late 2000 at Nice by the Council of Ministers, the European Parliament and the European Commission.<sup>ii[2]</sup> It is therefore hardly surprising that the Charter of Fundamental Rights is a time bomb which threatens to transfer powers wholesale from individuals and democratically elected politicians to unaccountable judges and even to abolish the rule of law. There are of course some individual Articles contained in this Charter which are wholly unexceptionable and even welcome. However, the real problem is that the ECJ is not really a Court but a political body committed to ever closer centralisation of power in Europe.

Fortunately, the British government's claim that the CFR has only declaratory status appears to be confirmed by the fact that it wasn't included in the European Communities (Amendment) Bill. But when the CFR does become full justiciable (at the latest after the next Treaty in 2004), we will find that the language used throughout is so unclear that it will unavoidably be interpreted at the discretion of highly politicised European judges. The power they will be vested with is immense and unchecked.

Already, the European Parliament and the Commission have unilaterally declared that they will consider themselves to be bound by the CFR – although this has no legal force on member states or the Council of Ministers. Furthermore, Advocate General Tizzano suggested that the ECJ refer to the Charter in a recent case relating to Working Time Regulations. The case was related to SI 1998/1833 which implements Council Directive 93/104. The Directive stipulates that employees should have the 'right' to four weeks annual paid holiday. The implementation was disputed because the British government insisted that employers would only have to grant four weeks leave to employees that had been continuously employed for thirteen weeks. The ECJ ruled against the government on 26 June 2001 but without referring to the CFR (although it did refer to the Community Charter of the Fundamental Social Rights of Workers of 1989, as it often does relatively uncontroversially). The case in question was C-173/99 *R.v. Secretary of State for Trade and Industry ex parte BECTU*. Advocate general Tizzano had argued that the CFR represents "the most reliable and definitive confirmation of the fact that the right to paid annual leave constitutes a fundamental right". He wanted Article 31(2) to be taken into consideration as it states quite

explicitly that “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.” How much longer before the ECJ begins to refer to the CFR?

The actual text of the Charter of Fundamental Rights follows in italics with my commentary in normal font.

### *Preamble*

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

This restates the EU’s fundamental purpose: political centralisation. It also regurgitates that old chestnut: the EU has common values based on the shared acceptance of socialist, Politically Correct and undemocratic principles.

*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 reference to a ‘spiritual and moral heritage’ actually implies that religion has no place in the Charter. The claim that the EU is based on the principles of democracy is truly Orwellian. To say that the EU is based on the principle of the rule of law would cut no ice with someone like Bernard Connolly.<sup>iii[3]</sup> The “area of freedom, security and justice” has quasi-communist undertones and is in fact a direct reference to *Corpus Juris*, the planned EU-wide body of criminal law.

*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.*

Talk of respecting cultural and national diversity is entirely ludicrous in such a centralising document – what is proposed here is nothing short of total harmonisation. References to balanced and sustainable development are equally little strange coming from an organisation which continues to endorse two environmentally disastrous policies: the CAP and the CFP. Clearly, the sentences above must be seen as little more than a sop to the environmentalist interest groups that took part in the “drafting convention” which worked on the CFR. Finally, the last sentence reiterates the common market, free market aspect of the EU, presumably for the benefit of free traders in countries such as Britain.

*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 is nonsensical: why should it be necessary to strengthen rights in the light of social *progress*? Furthermore, note the lie: “making those rights more visible” implies that the CFR contains nothing new and that all the following Articles are no more than a list of what already exists.

*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.*

*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*

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

How is “human dignity” to be defined? Is being poor a violation of “human dignity”? Does this mean that the ECJ will be able to appeal to this Article whenever it wishes to enforce a regulation or strike down a law that is not to its pleasing? Can third parties sue in paternalistic fashion to prevent others from having their dignity violated?

### *Article 2 Right to life*

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

Does “everyone” include unborn foetuses? One can confidently forecast numerous legal battles ahead about the definition of “executed”. What about wars, riots or revolutions? What about the police having to shoot armed terrorists or robbers? What about self defence? Is rationing in the NHS, in particular the scandalous limited availability of health care to the elderly

(which is akin to Euthanasia), equivalent to putting to death? Is that an execution?

### *Article 3*

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

1. *Everyone has the right to respect for his or her physical and mental integrity.*

This is a highly opaque sentence.

*2. In the fields of medicine and biology, the following must be respected in particular:*

- *the free and informed consent of the person concerned, according to the procedures laid down by law,*
- *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,*
- *the prohibition of the reproductive cloning of human beings.*

How can you have informed consent if a person is in a coma? In the US, it is legal to sell one's blood – a policy of this kind would not only be deemed illegal in the EU but would serve as further 'proof' that the US regularly violates the human rights of its citizens.

### *Article 4*

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

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

Once again, how do you define those terms? Is a life sentence for murder "cruel" and against the 'rights' of criminals? What is torture? Mental torture? Is the wearing of handcuffs degrading?

### *Article 5*

#### *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. *Trafficking in human beings is prohibited.*

So will compulsory labour in prisons be made illegal by the EU? Is imprisonment synonymous with slavery? What about forced labour by prisoners? What about special long term contracts such as those of

footballers? The Geneva Convention allows the employment of POWs, this would ban it.

## *Chapter II - Freedoms*

### *Article 6*

#### *Right to liberty and security*

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

To talk of liberty in the context of the CFR appears out of place, unless by using the word “freedom” one is referring to a Rousseauian concept of liberty where being free means doing what is in “the general interest” (in practice what the state wants). If you do not obey the EU, you are not being free, so you should be forced to obey to become free. What is the right to security? Can you sue your government if you fall victim to crime? What about security against the state?

### *Article 7*

#### *Respect for private and family life*

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

What does this mean? Will it cause problems for telecommuting and working from home? Does it imply restrictions on the number of working hours? Will companies be allowed to monitor workers' emails? What impact does this have on the media and how it treats celebrities, ordinary members of the public or royalty? How will this impact free speech?

### *Article 8*

#### *Protection of personal data*

- 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.*

This Article will impose huge costs on businesses. What about journalists' contact books? What is an “independent” authority? What about students accessing data relating to classmates or alumni? Will all this still be legal?

### *Article 9*

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

*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.*

The disclaimer “according to national laws” means that this Article is at first sight redundant – although the ECJ is in the habit of disregarding irritating caveats. The disclaimer was put in to pacify those who feared this would allow gay marriage or polygamy but practises allowed in another member state will necessarily be invoked in legal disputes. What about, though, the right to get divorced?

#### *Article 10*

##### *Freedom of thought, conscience and religion*

- 1. 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.*

Does this permit so-called cults? Does this mean that a Christian priest is allowed to convert to Islam and still remain a priest? Does this mean that French school children will be allowed to wear religious symbols (such as Islamic veils) to school and pray in classrooms? What about the separation of church and state? Can employees of the Labour Party join the Conservative Party?

- 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.*

The caveat is again “in accordance to national laws” but practices allowed in another member state will necessarily be invoked in legal disputes, thus there will be a temptation to extend the reach of conscientious objection. Also, who says that conscientious objection is restricted to military affairs?

#### *Article 11*

##### *Freedom of expression and information*

- 1. 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.*

Who is “everyone”? What about civil servants and the military? What about paid spokespersons? Will journalists at the *Guardian* have the right to write pro-Tory Articles in defiance of that newspaper’s editorial line? What about fringe or extremist parties?

- 2. 2. The freedom and pluralism of the media shall be respected.*

Is the reference to the pluralism of the media supposed to mean that states will impose a BBC-type impartiality requirement on broadcasters and journalism? Are Rupert Murdoch and Conrad Black in the firing line? What about freedom of expression? Will there be an "independent" media watchdog set up to monitor what even privately owned news organisations say and to enforce "balance"? Welcome to 1984.

#### *Article 12*

##### *Freedom of assembly and of association*

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.*

Does freedom of assembly include the right of, say, white neo-nazis to organise meetings where black people are excluded? This Article will also lead to unions being allowed in special industries where unionisation is currently illegal (such as fire services). The provisions on trade unions will probably be used to impose further costs on business, thus reducing competitiveness.

2. *Political parties at Union level contribute to expressing the political will of the citizens of the Union.*

These are terrible.

#### *Article 13*

##### *Freedom of the arts and sciences*

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

But remember that Article 3 bans scientific research in the areas eugenics and cloning, so there is a contradiction between two Articles within the Charter. Furthermore, what sorts of constraints? Free of financial constraints?

#### *Article 14*

##### *Right to education*

1. *Everyone has the right to education and to have access to vocational and continuing training.*

Who is everyone? Any age? What about people with special needs? What about children that are expelled from school due to bad behaviour?

2. *This right includes the possibility to receive free compulsory education.*

There is a contradiction here. Something that is *compulsory* cannot merely be one option or *possibility*! Compulsory and free up to what age, by the way? It is likely that once again practices in other member states will be used to try and extend the age of free education to the highest age anywhere in the Union. Will universities be made 'free' (i.e. contradicting the UK government's policy of tuition fees)?

*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.*

This Article could mean anything. Can you have schools run by 'cults'? Who decides what sorts of schools should be allowed – presumably the all-powerful judiciary. What is the 'respect of democratic principles?' Does democracy equal pro-EU? Does this mean that all schools will have to teach pro-EU propaganda?

#### *Article 15*

*Freedom to choose an occupation and right to engage in work*

*1. 1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.*

Does everyone include illegal immigrants? What about banned company directors? What about contracts that stipulate certain time-contingent restrictions on working for competitors?

*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.*

What about prisoners? Will paedophiles have the right to work with young children?

*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.*

#### *Article 16*

*Freedom to conduct a business*

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

Coming from the socialist EU this is patent nonsense.

*Article 17*  
*Right to property*

1. *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 insofar as is necessary for the general interest.*

Once again, nonsense. Dangerous nonsense, actually, because the Article hints at an approach to property rights which differs greatly from that of common law countries: in the EU, the state grants people the right to own property. It implicitly owns everything except for what it allows individuals to have. The right to bequeath possessions: does this mean that inheritance tax is to be abolished? What is the public interest? Is it whatever the government decides? Do we have a right to appeal? With such caveats, what is the point of granting citizens a right to property anyway?

2. *Intellectual property shall be protected.*

*Article 18*  
*Right to asylum*

*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.*

The right to asylum thus varies according to each new EU Treaty. How can this be a “fundamental” right?

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

1. *1. Collective expulsions are prohibited.*

Does this mean that illegal immigrants will be allowed to stay in a country? Does this mean that squatters will have the right to stay in a building they have illegally taken over?

2. *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.*

Extradition to the US will be forbidden. Degrading punishment is not defined.

### *Chapter III - Equality*

#### *Article 20*

##### *Equality before the law*

*Everyone is equal before the law.*

Does this mean that the principle of legal immunity is to be abolished?

#### *Article 21*

##### *Non-discrimination*

- 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.*

Sexual orientation: does this mean that paedophilia and incest will be legalised? Furthermore, the floodgates of legal action will be opened if companies have a smaller than average proportion of, say, older people, younger people or poorer people. Can Sinn Fein have appealed for being excluded from the House of Commons? These sorts of measures should be decided at national level.

- 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.*

Could the UK ambassador to France be a German national?

#### *Article 22*

##### *Cultural, religious and linguistic diversity*

*The Union shall respect cultural, religious and linguistic diversity.*

This is another sentence of extreme unclarity which could lead to anything happening.

#### *Article 23*

##### *Equality between men and women*

*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.*

This opens the floodgates for mass legal action. Furthermore, it is ludicrously contradictory in that it endorses positive discrimination.

#### *Article 24*

##### *The rights of the child*

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.*

This Article apparently abolishes the family and parental authority and ushers in a new regime of state control. The first sentence is meaningless. The second sentence could say that parents no longer have the right to order their offspring to, say, behave with good manners. The third sentence could mean that children will be able to take their own decisions from an age to be decided by the courts.

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.*

Meaningless.

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.*

#### *Article 25*

##### *The rights of the elderly*

*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.*

Meaningless. Does this impact the level of state pensions? Does this impact the level of social services?

#### *Article 26*

##### *Integration of persons with disabilities*

*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.*

This is very vague and will probably lead to extensive and costly regulations being imposed on private organisations. It could also lead to an increase in social spending.

## *Chapter IV - Solidarity*

### *Article 27*

#### *Workers' right to information and consultation within the undertaking*

*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.*

This will impose huge costs on the economy and roll back deregulation. What does in “good time” mean? What does “by Community law and national laws and practices” signify? Who wins: the EU or nation-states (this, of course, is a rhetorical question).

### *Article 28*

#### *Right of collective bargaining and action*

*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.*

Article 28 will impose huge costs on the economy and roll back deregulation. It may impose a ‘right to strike.’

### *Article 29*

#### *Right of access to placement services*

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

This Article calls for free job centre type services. Will headhunters also be free?

### *Article 30*

#### *Protection in the event of unjustified dismissal*

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

As before, this will impose huge costs on the economy and roll back deregulation. Once again, what concretely does “Community law and national laws and practices” actually mean?

### *Article 31*

#### *Fair and just working conditions*

- 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.*

Once again, this potentially opens the door to unlimited regulation and interference. The concepts given are not defined.

*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.*

More regulations.

#### *Article 32*

##### *Prohibition of child labour and protection of young people at work*

*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.*

What are the limited derogations? Paper boys? Baby sitters? The courts will have to decide. Why does the document use the blatantly Marxist term “economic exploitation”? How are all these terms defined? Does having a nasty boss interfere with a child’s mental health? The amount of judicial discretion introduced into the system is quite staggering.

#### *Article 33*

##### *Family and professional life*

*1. 1. The family shall enjoy legal, economic and social protection.*

But Article 24 effectively abolishes the family. What is a family, anyway? What does it mean to have 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.*

More costly rules. Does this include gay families? What about the armed forces?

#### *Article 34*

##### *Social security and social assistance*

*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 procedures 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 procedures laid down by Community law and national laws and practices.*

Article 34(2) may impact the claiming of benefits in other member states and could lead to pressure for harmonisation to the highest level.

#### *Article 35 Health care*

*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.*

This Article denies the reality of rationing. Sadly, just stating something nice doesn't automatically make it happen.

#### *Article 36 Access to services of general economic interest*

*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.*

What is a service of general economic interest? This Article appears to endorse groups that give hand outs to areas that are eligible for social-cohesion style subsidies – this could violate single market rules.

#### *Article 37 Environmental protection*

*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.*

Policies [sic]. What is the principle of sustainable development? How do you measure a high level of environmental protection?

*Article 38  
Consumer Protection*

*Union policies shall ensure a high level of consumer protection.*

Meaningless. Opens the door to unlimited regulation.

*Chapter V - Citizen's Rights*

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

*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.*

The real questions are whether or not the European Parliament is a useful institution; whether it should be abolished; and whether Britain should take part in it.

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

*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*

*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.*

These statements could be funny if it their implications were not so serious. What about the Bernard Connolly or Paul van Buitenen cases? What about the mass fraud and dishonesty which characterises so much of what the EU is about? In practice, the EU and its institutions are clearly in daily breach of the Charter.

#### *Article 42*

##### *Right of access to documents*

*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.*

What about classified documents?

#### *Article 43*

##### *Ombudsman*

*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.*

This article appears to grant the ECJ a special derogation: it will be even less accountable than the other EU bodies. Given that it is becoming ever more powerful, this is particularly worrying.

#### *Article 44*

##### *Right to petition*

*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.*

This Article is a waste of time. Incidentally, Article 44 could be understood as endorsing professional lobbying.

#### *Article 45*

##### *Freedom of movement and of residence*

*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.*

Football hooligans, terrorists and thugs would thus apparently have the right to roam freely across the EU...

*Article 46  
Diplomatic and consular protection*

*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*

*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 insofar as such aid is necessary to ensure effective access to justice.*

Terms such as “the law of the Union” assume complete legal unification. A reasonable period of time? Is that 24 hours or is that six months? What is an impartial tribunal? Does that include a jury or only judges?<sup>iv[4]</sup>

*Article 48  
Presumption of innocence and right of defence*

*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 48(1) could be good but is meaningless: what does it mean to be presumed innocent? Can one be locked up even when presumed innocent for prolonged periods of time? Article 48(2) is equally meaningless because too vague.

## *Article 49*

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

1. 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.*

So being found guilty by the International War Crime Tribunal means that one is also guilty under national law.

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.*

Article 49(3) may lead to many cases being contested. Is it disproportionate to jail someone for life for, say, rape? This gives excessive powers to the judiciary and takes away the rights of member states to choose their own codes of punishment and to make their own laws in the area of criminal justice.

## *Article 50*

### *Right not to be tried or punished twice in criminal proceedings for the same criminal offence*

*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.*

Perhaps someone should remind Tony Blair of this. In the most recent Queen's speech he outlines several proposals which include the abolition of the prohibition of double jeopardy. Nevertheless, the use of "finally acquitted" muddies the waters – how effective would such an Article be for the protection of civil liberties.

## *Chapter VII: General Provisions*

The following provisions include some apparent safeguards to prevent the CFR being used for federalist purposes. In practice they are all useless as the Charter is already being referred to in ECJ decisions.

### *Article 51: Scope*

1. 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.*

Subsidiarity is a meaningless concept.

2. 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.*

This is sheer nonsense.

#### *Article 52: Scope of guaranteed rights*

1. 1. *Any limitations 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.*

In other words rights can simply be suspended at whim by the EU! This is the most dangerous section of the entire Charter.

2. 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. 3. *Insofar as this Charter contains 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*

*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*

*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.*

Does this mean that any criticism of the EU will soon become illegal? What about free speech? Time truly is running out.

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<sup>ii</sup>[2] See Georges Berthu, MEP (2000) 'The Charter of Fundamental Rights : an insider's fight against the Monnet Method', *European Journal* 8(2) : 17-18 (November/December) ; Georges Berthu, MEP (2001) 'Start to prepare for 2004', *European Journal* 8(5) : 7-8 (April).

<sup>iii</sup>[3] Bernard Connolly (2001) 'A dissident speaks out', *European Journal* 8(6) : 2-4 (May)

<sup>iv</sup>[4] On issue of criminal justice see Allister Heath (2001) 'The rise of Corpus Juris', *European Journal* 8(6) : 10-12 (May) ; Allister Heath (2001) 'The European Takeover of law and Order' *European Journal* 8(5) : 10-12 (April).