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REPORT

on the situation as regards fundamental rights in the European Union (2002)
(2002/2013(INI))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Fodé Sylla

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	6
EXPLANATORY STATEMENT	27
ANNEX I	111
ANNEX II	112
ANNEX III	113
MOTION FOR A RESOLUTION - B5-0154/2003	114
MOTION FOR A RESOLUTION - B5-0155/2003	116
OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT	118
OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES	121

PROCEDURAL PAGE

At the sitting of 17 January 2002, the President of Parliament announced that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the situation as regards fundamental rights in the European Union (2002).

At the sitting of 13 March 2003, the President of Parliament announced that he had also referred the matter to the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions for their opinions.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Fodé Sylla rapporteur and its meeting of 10 October 2001.

At its meeting of 20 March 2003, the committee decided to include in its report the following motions for resolutions:

- B5-0154/2003, by Mauro Nobilia and others, on the appointment of a European Ombudsman for the protection of minors, referred on 10 March 2003 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible;
- B5-0155/2003, by Mauro Nobilia and others, on the establishment of a European juvenile delinquency monitoring centre, referred on 10 March 2003 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible.

The committee considered the draft report at its meeting of 10 July 2003.

At the last meeting it adopted the motion for a resolution by 24 votes to 17 with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Giacomo Santini (vice-chairman), Fodé Sylla (rapporteur), María del Pilar Ayuso González (for Bernd Posselt pursuant to Rule 153(2)), Mary Elizabeth Banotti, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato (for Mario Borghesio), Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero, Carlos Coelho, Gérard M.J. Deprez, Anne Ferreira (for Adeline Hazan pursuant to Rule 153(2)), Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Cristina Gutiérrez Cortines (for Hartmut Nassauer pursuant to Rule 153(2)), Marie-Thérèse Hermange (for Thierry Cornillet), María Esther Herranz García (for Timothy Kirkhope pursuant to Rule 153(2)), Margot Keßler, Eva Klamt, Alain Krivine (for Giuseppe Di Lello Finuoli), Jean Lambert (for Pierre Jonckheer), Baroness Ludford, Lucio Manisco (for Ole Krarup), Patricia McKenna (for Patsy Sørensen), Manuel Medina Ortega (for Sérgio Sousa Pinto), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Giuseppe Brienza), Hubert Pirker, José Ribeiro e Castro, Martine Roure, Heide Rühle, Ilka Schröder, Ole Sørensen (for Bill Newton Dunn), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Ozan Ceyhun).

The opinions of the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Women's Rights and Equal Opportunities are attached. The Committee on Employment and Social Affairs decided on 2 July 2003 not to deliver an opinion, the Committee on the Environment, Public Health and Consumer Policy decided on 19 March 2003 not to deliver an opinion and the Committee on Petitions decided on 10 June 2003 not to deliver an opinion.

The report was tabled on 21 August 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the situation as regards fundamental rights in the European Union (2002) (2002/2013(INI))

The European Parliament,

- having regard to the motions for resolutions by:
 - (a) Mauro Nobilia and others, on the appointment of a European Ombudsman for the protection of minors (B5-0154/2003),
 - (b) Mauro Nobilia and others, on the establishment of a European juvenile delinquency monitoring centre (B5-0155/2003),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to Articles 6 and 7 of the TEU and Article 13 of the EC Treaty,
- having regard to the EU's Fourth Annual Report on Human Rights,
- having regard to all the international conventions in this area,
- having regard to the reports of the European Monitoring Centre on Racism and Xenophobia, of the specialised bodies of the Council of Europe and of the relevant NGOs,
- having regard to the public hearing of 17 and 18 February 2003 with European youth,
- having regard to the public hearing of 24 April 2003 with representatives of the national parliaments, NGOs and journalists on the situation as regards fundamental rights in the EU,
- having regard to the decisions of the Court of Justice of the European Communities and the European Court of Human Rights,
- having regard to the summary report drawn up by the coordinator of the independent network of human rights experts from the EU Member States under the Commission's authority,
- having regard to its resolutions of 21 June 2001¹ and 15 January 2003² on the situation as regards fundamental rights in the European Union in 2000 and 2001,
- having regard to Rules 163 and 48 of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Women's Rights and Equal Opportunities (A5-0281/2003),

¹ OJ C 65 (E), 14.3.2002, p. 350.

² T5-0012/2003.

INTRODUCTION

1. Notes that the Charter of Fundamental Rights, which summarises the basic values on which the EU is founded, i.e. all the principles it sets out, has been 'recognised' (Title II, Article 7) and appears in Part II of the draft Constitution prepared by the Convention; regrets, however, that this 'recognition' and this incorporation in the draft Constitution are inadequate, since no explicit reference is made to the legally binding nature of the Charter and no provision is made for direct, individual referrals to the Court of Justice of the European Union;
2. Points out that, under new Article 7(1) of the TEU, the EU institutions, and in particular the European Parliament, can monitor, each according to its sphere of competence, strict respect for human rights and fundamental freedoms on the part of the Member States;
3. Welcomes the report on the situation of fundamental rights in the European Union and its Member States in 2002 by the EU network of independent experts in fundamental rights, which is very informative and useful and contains important material for use in developing EU human rights policy, in both the shorter and the longer term;
4. Considers therefore that, in order to be able to monitor the implementation of the Charter in as rigorous and objective a manner as possible, the EP's annual rapporteur must be given all the necessary resources, including:
 - the summary report of the coordinator of the independent network of national experts in fundamental rights, of which the first edition was presented in March 2003 and whose value and usefulness should be emphasised even if an effort should be made to ensure that in future the report is submitted earlier to the Commission and the EP's rapporteur and is more operational (e.g. include a clear survey of the EP's priorities and the impact of its recommendations on the application of fundamental rights during the year in question),
 - as comprehensive a list as possible, incorporated in that report, of the good practices noted during the year,
 - much closer cooperation with the specialised committees of EU national and regional parliaments and relevant NGOs or observatories in the field of human rights and freedoms, and an interinstitutional procedure which, on the basis of the report by human rights experts, involves the European Parliament, the Council and the Commission (annual report on human rights; NGO forum),
 - in the light of the Council's responsibility for the application of fundamental rights in the EU (annual report and monitoring of the Member States, Article 7(1)), attendance by the senior members of the Council's COHOM working group at meetings of the Committee on Citizens' Freedoms and Rights and, possibly, the holding of ad hoc meetings with the EP's rapporteur and the shadow rapporteurs,
 - access to an Internet site dealing specifically with fundamental rights in the EU and regularly updated, along the lines of the pages which already exist and are still being improved on the EP website, and also including a discussion forum with European citizens,
 - a detailed and unalterable road map, to be determined for the forthcoming parliamentary term, in terms of dates (date of presentation and adoption of the draft report in committee and in plenary; date and number of hearings), work in parallel and in

conjunction with the Committee on Foreign Affairs and support from the committees delivering an opinion;

5. Takes the view that that Internet site should also contain all the texts which have legal force on the territory of the European Union and the report drawn up by the national human rights experts, with a view to enabling each individual to gain a better understanding of his or her rights and to verify that they are being observed;
6. Considers that these conditions must be met if the EP annual report on the situation as regards fundamental rights in the EU is genuinely to be taken into consideration, valued and possibly even feared; this is all the more important in terms of the report's implications as regards the risk of violation of fundamental rights in the Member States, as envisaged in the new early warning system under Article 7(1) of the Treaty of Nice;
7. Reiterates that the enlarged EU must be based on strict respect for the values set out in the Charter of Fundamental Rights; notes, however, that in the 15 Member States in 2002 the situation gave cause for concern in many respects and, as far as certain aspects are concerned, even seems to have deteriorated; points out that it is not sufficient to proclaim rights but that steps must be taken to enforce respect for such rights;
8. Points out, furthermore, that it is important for the EP annual report on the situation as regards fundamental rights to seen as an opportunity to exchange information on best practice, i.e. to highlight the EU's added value with regard to respect for values, while taking account of the context and cultural environment in each Member State;

CHAPTER I: Respect for human dignity

Right to life

9. Approves the signing by all the Member States of Protocol 13 to the ECHR concerning the abolition of the death penalty in all circumstances (war) and urges the Member States to ratify this protocol as soon as possible, with the exception of Belgium, Denmark, Ireland and Sweden, which have already ratified it;
10. Unreservedly condemns terrorism, which is a denial of the fundamental right to life and threatens to destabilise democracies, irrespective of the form it takes and regardless of whether its origins or activities lie within the Union or outside it;
11. Points out, however, that, since terrorism is designed to undermine the rule of law, policies on the prevention and punishment of terrorism must seek, as a matter of priority, to maintain and strengthen the rule of law;
12. Reiterates that terrorism inflicts irreparable harm and huge suffering on its victims and their families; consequently favours the adoption of measures that take account of their specific circumstances, such as a European compensation instrument;
13. Reiterates its support for measures to combat terrorism, but points out that the adoption thereof must fall within the bounds of the rule of law and ensure full respect for human rights and public freedoms;

14. Expresses its concern at the consequences of international cooperation with the United States, which applies different and lower standards than the EU as regards both notification of personal data required from airline companies or by Europol and the conditions of detention of Community nationals at the Guantanamo base,
15. Notes, again with respect to the right to life, that the increasingly topical issue of decriminalising voluntary active euthanasia was raised in several Member States in 2002, an extremely delicate subject on which, however, a medical and ethical debate at European level cannot be evaded;

Prohibition of torture and inhuman treatment

16. Deeply regrets that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has still not been ratified by Ireland (Resolution 39/46);
17. Strongly condemns all forms of reinstatement, legitimisation or justification of torture, and calls on Member States under all circumstances to enforce an absolute and unlimited ban on torture, particularly when politicians, members of the judiciary or police officers call it into question;
18. Welcomes the adoption of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, whose aim is to establish a system of regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment and to set up a 'Prevention Subcommittee' coming under the authority of the Committee Against Torture (CAT) and, in each State Party, a national prevention mechanism in the form of one or two independent bodies to visit places where people are deprived of their freedom; calls on the EU Member States to sign and ratify that Optional Protocol promptly;
19. Notes once again the disproportionate use of force by the police, which in 2002 resulted in the deaths of at least ten people in the EU, despite the fact that they did not represent any real danger, and inadmissible acts of brutality in police stations;
20. Notes also that the situation of prisoners in the EU deteriorated in some Member States in 2002, mainly as a result of overcrowding in prisons (Portugal, Belgium, Italy and France) which leads to tension between prisoners and prison warders, violence between prisoners, inadequate surveillance (increase in suicide and attempted suicide rates) and a whole range of obstacles to any social reintegration measures; in particular, notes with concern the increase in non-Community citizens and drug addicts among the prison population and fears that this is partly due, on the one hand, to the absence of adequate social policies for integrating immigrants and, on the other, to basically repressive policies on assistance for social reintegration;
21. Considers it essential, therefore, especially as the EU prepares for enlargement, that the Member States take far more determined measures with a view, in particular, to:
 - improving the training and recruitment of police and prison staff,

- setting up independent agencies to monitor police activities and the running of prisons wherever this has not yet been done (Austria, Greece and the United Kingdom did so in 2002),
- introducing, where appropriate, and allowing effective use of appeal procedures against disciplinary sanctions imposed in places of detention; allowing prisoners to have access to a lawyer from the outset and, where necessary, to a doctor, and to inform their relatives,
- encouraging the introduction of administrative penalties and/or fines for minor offences, and of alternative penalties, such as community work, developing open or semi-open prison systems as far as possible and employing probation arrangements,
- providing prisoners, especially those on long sentences, with sufficient activities, without them being exploited, and educational and cultural opportunities, and specific rehabilitation programmes geared to a return to civil society, both for prisoners from the country where they are imprisoned and for those who come from abroad and wish to return to their country of origin after serving their prison sentence,
- ensuring that malfunctions in police and prison services are investigated more rapidly by the courts and prosecuted uncompromisingly on the basis of the seriousness of the acts committed,
- ensuring at least minimum standards for the health and living conditions of prisoners,
- examining detention procedures in order to ensure that human rights are not violated, that detention periods are not unnecessarily long and that the grounds for detention are reviewed regularly;

22. Calls also on the Member States concerned, as a matter of urgency, to take action vis-à-vis certain categories of prisoners, in particular to:
 - keep detention of minors, whether in prison, secure re-education centres or holding centres for immigrants, to a minimum (Belgium, France, Luxembourg and the United Kingdom),
 - envisage the release of or alternative confinement for prisoners who are very old or suffer from serious and incurable diseases (France),
 - ensure that drug addicts have access to medical treatment and the necessary substitution therapies without discrimination,
 - improve supervision of psychiatric hospitals (informing patients of their rights and preventing any abuses) (Belgium and Denmark);
23. Considers, at a general level, that efforts must also be made in a European area of freedom, security and justice, to mobilise European capacities to improve the operation of the police and prison system, for example:
 - by encouraging the gathering of information on best practice and allowing exchanges of information relating to the police, prisons and psychiatric hospitals between those responsible for such matters in the various Member States,
 - by encouraging Member States to become involved in the Council of Europe's Police and Human Rights programme,
 - by drawing up a framework decision on minimum standards to protect the rights of prisoners in the EU;

Prohibition of slavery and forced labour

24. Emphasises again that trafficking in human beings must be condemned and combated energetically since it is fundamentally contrary to human dignity and leads to sexual exploitation and labour exploitation under slavery-type conditions, the victims being most frequently women, girls and children;
25. Recommends therefore that:
- all the Member States ratify the International Convention on Organised Crime,
 - the Member States which have not yet done so ratify as soon as possible the Optional Protocol to the Convention on the Rights of the Child, regarding the sale of children, child prostitution and child pornography,
 - all Member States ratify the Convention on Cyber Crime, with the exception of Denmark and Luxembourg, which have already done so;
26. Emphasises that the EU should adopt an effective policy against trafficking in human beings, including:
- promotion of the Brussels Declaration, adopted by both Council and Commission, with all the governments of its present and future Member States and the governments of countries of origin and transit,
 - the establishment of an information exchange system,
 - the establishment of a European database, in agreement with Europol and Interpol, focusing on disappeared persons who are believed to be victims of trafficking in human beings,
 - more effective judicial protection of victims by adopting the Council directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities, the Commission proposal for which was approved by Parliament in December 2002,
 - the establishment of special programmes to eradicate poverty in countries of origin;
27. Urges that a comprehensive European policy against human trafficking, the modern form of slavery, addresses the entire trafficking chain, comprising countries of origin, transit and destination alike, targeting recruiters, people who transport the victims, exploiters, other intermediaries, clients, and beneficiaries;

CHAPTER II: Guaranteeing freedom

28. Believes that there can be no effective protection of people's dignity without rigorous guarantees relating to the various civil and political freedoms;

Protection of personal data

29. Urges:
- Luxembourg and Spain to sign and all Member States, except for Germany and Sweden, to ratify as soon as possible the Additional Protocol to the Convention for the protection of individuals with Regard to Automatic Processing of Personal Data, regarding supervisory authorities and cross-border data flows,
 - France to transpose Directive 95/46/EC on the protection of personal data in domestic law,

- the EU to endow itself with a legally binding instrument which offers, in the areas covered by the second and third pillars, guarantees equivalent to those laid down in Directive 95/46/EC on the protection of personal data;
 - the Member States and the Union to verify that the regulations on keeping communications data comply with the case law of the European Court of Human Rights, i.e. that they are limited in time, proportionate and necessary in a democratic society, and, if not, to amend or repeal them;
30. Expresses concern at the substance of Directive 2002/58/EC, which clears the way for data retention in connection with electronic communications, and calls once again for the adoption of measures to provide protection against illegal communications interception systems;
31. Expresses serious concern at the agreements now being negotiated or already adopted involving the forwarding of personal data between the EU and third bodies (Interpol, etc.) or third States (USA, etc.) which do not offer the same level of data protection; takes the view that such agreements must at all events maintain the level of data protection guaranteed by Directive 95/46/EC; in that connection, urges that such agreements should systematically make provision for the establishment of a supervisory body responsible for monitoring full compliance with the above-mentioned guarantees when the agreements are implemented;
32. Expresses concern, in particular, at the requirement imposed by the US authorities on airlines to provide access to the personal data they hold concerning passengers on transatlantic flights; regards that requirement as incompatible with Community law and calls, therefore, for the legal effects of such measures to be suspended immediately and until such time as they provide the level of data protection guaranteed by Community law;

Freedom of thought, conscience and religion

33. Calls on the Member States and the EU to promote interfaith dialogue insofar as it condemns all forms of fanaticism and fundamentalism and to guarantee the principle of secularism, which does not rule out the teaching of the history of religions in school; considers that such a dialogue and such teaching ought to devote proportionate attention to non-religious world views;
34. Calls, while approving the progress made in Greece with regard to respect for freedom of religion and belief, for the criminal law provisions on proselytism to be repealed and for Muslims to be able to obtain authorisation to build mosques and have cemeteries where they can bury their dead in accordance with their religious traditions;
35. Recommends once again that Finland and Greece amend their legislation on the duration of alternative civilian service with a view to removing any punitive and discriminatory aspects;
36. Warns the Member States once again against the dangers posed by the activities of so-called cults which are a threat to the physical or mental integrity of individuals, and calls

on the Member States, by means of their normal criminal and civil law, to combat unlawful practices and abuses on the part of these so-called cults;

Freedom of expression and information

37. Recommends once again that Belgium, Denmark and Ireland sign and ratify the Council of Europe Convention on Transfrontier Television and calls on Greece, Luxembourg, the Netherlands and Sweden to ratify the Convention (Portugal ratified it in 2002); calls on the countries concerned and Portugal to ratify the Protocol of 1 October 1998 amending the Convention;
38. Deplores the fact that no legislative solution has yet been found in the EU to the problem of the concentration of media power in the hands of a few mega groups, and recalls its resolution of 20 November 2002 in which it insisted that a European media market should be established to counteract a growing disparity in national rules and safeguard the freedom and diversity of information; deplores the fact that in Italy in particular a situation is continuing in which media power is concentrated in the hands of the Prime Minister, without any rules on conflict of interest having been adopted;
39. Reiterates that any ideology is legitimate provided that it expresses itself through democratic channels and in doing so condemns terrorist organisations that threaten and murder individuals because they are elected representatives or active members of a given political group;
40. Categorically rejects any violence, intimidation or threat that may interfere with the free exercise of the journalistic profession; calls, therefore, on all states to uphold and protect the right to freedom of opinion and expression, and reiterates its solidarity with journalists – including those within the EU – who are attacked for standing firm and exercising this right freely;
41. Calls on the Commission in this respect to:
 - arrange for consultations with a view to drawing up a new updated Green Paper,
 - guarantee that public and private media provide citizens with accurate information, avoiding discrimination and guaranteeing access to various groups, cultures and opinions, in particular by ensuring equal access to the media in elections or referendums;
 - consider setting up a European regulatory framework for the end of 2005,
 - envisage with the Member States specific measures to combat acts of violence of which journalists are victims in the exercise of their profession;

Freedom of assembly and of association

42. Urges Austria and Luxembourg to amend their legislation prohibiting foreigners or non-nationals from standing for election to works councils as this law is contrary to trade union freedoms;

Right to education

43. Calls on the Member States to seek to ensure by all possible means free and effective schooling for all children, including those from very poor families and from certain Roma

communities or refugee families, and including children with disabilities who have particular access needs; urges Member States to do their utmost to ensure the effective integration in education systems of the children of refugees, asylum-seekers and immigrants;

Right of asylum and protection in the event of removal, expulsion or extradition

44. Strongly recommends that:
 - Austria and Portugal ratify the Geneva Convention relating to the Status of Stateless Persons,
 - Spain, France, Finland, Greece, Italy, Luxembourg and Portugal ratify the Convention on the Reduction of Statelessness,
 - Greece sign and ratify Protocol 4 to the ECHR (prohibition of collective expulsions), Spain and the United Kingdom ratify Protocol 4 to the ECHR, Belgium, Germany and the United Kingdom sign and ratify Protocol 7 to the ECHR (conditions of expulsion) and the Netherlands, Portugal and Spain ratify Protocol 7;
45. Condemns the delays in adopting the instruments fundamental to the common asylum and immigration policy and regrets the fact that the agreements already secured have all been concluded on the basis of lowest common denominators; points out that such a policy must:
 - respect to the letter the rights of asylum-seekers, be based on a non-restrictive interpretation of the Geneva Convention and its 1967 protocol, and cover persecution by non-government agents, persecution on grounds of sex and persecution in the context of generalised armed conflict,
 - be based on the recommendations and conclusions of the United Nations High Commission for Refugees and guarantee the full integration into society of persons who have been granted the right of asylum;
46. Notes that some progress was made in 2002 towards a harmonised common asylum and immigration policy, but regrets that the common policy agreed between the Member States is based on minimum standards which have been set too low and that the emphasis in asylum and immigration policy is on repressive and negative measures;
47. Calls on the Member States to restrict the detention of asylum-seekers solely to exceptional cases which comply with the grounds laid down in the UNHCR guidelines on the criteria and standards applicable to the detention of asylum-seekers;
48. Expresses concern at the high number of persons who lost their lives in 2002 whilst seeking refuge in the European Union; takes the view that this dramatic situation calls for the implementation of a balanced policy providing for legal immigration channels;
49. Calls on the Member States to keep detention to a minimum, to provide facilities for the reception of asylum-seekers, in particular at airports, to offer them assistance from lawyers and interpreters, to afford them the possibility of communicating with the relevant NGOs and with their families and to ensure that appeals have suspensive effect;
50. Calls on the Council to adopt as soon as possible the draft directive providing for secondary protection for persons who are not covered by the Geneva Convention but who

cannot be returned to their country of origin because of (a) the threat of torture or inhuman or degrading treatment, (b) the repercussions of generalised violence or events which are seriously undermining public order, or (c) on humanitarian grounds;

51. Condemns the serious situation faced by unaccompanied minors seeking asylum, in particular in Austria, Belgium, Spain and Italy;
52. Urges the Member States to amend the rules on and the practice of expulsions as these are too often carried out illegally and undermine human dignity; calls in the strongest terms on the Member States in general to monitor the conditions under which collective expulsions are carried out and the practice of forced expulsions, which have sometimes resulted in deaths;
53. Urges the Member States to refrain from taking any action with a view to amending the text of the Geneva Convention;
54. Calls on the Member States to refuse to extradite persons to countries where they might be condemned to death for their crimes or might face torture or inhuman or degrading treatment;
55. Urges the Convention and the IGC to propose the abolition of the Aznar protocol to the Treaty of Amsterdam, which, as the UNHCR has repeatedly stated, breaches the Geneva Convention by imposing restrictions on the right of individuals to seek asylum;

CHAPTER III: Towards equality

Principle of non-discrimination

56. Considers it regrettable that only Austria, Denmark, Sweden, Portugal and the Netherlands have ratified the European Convention on Nationality;
57. Insists that the rights in the Charter of Fundamental Rights must be respected, including in particular the right to seek asylum, the right to effective legal protection and respect for the principle of non-refoulement;
58. Recommends once again that Denmark, Spain, France, Sweden and the United Kingdom sign Protocol 12 (non-discrimination) to the ECHR and that all the Member States ratify it;
59. Recommends once again that France, the only State not to have done so, sign the Convention for the Protection of National Minorities; notes that the convention applies to only ten Member States;
60. Strongly recommends that Belgium, Greece, Ireland and Portugal sign the European Charter for Regional or Minority Languages and that France and Luxembourg ratify it;
61. Calls on the Member States to guarantee that all children present on their territory will be granted access to education regardless of their families' administrative situation;

62. Urges the Member States to guarantee that any person living on their territory will be granted access to health care regardless of their administrative situation;

Combating racism and xenophobia

63. Notes the continuation of racially-motivated physical attacks in 2002, particularly in Spain and France, and the resurgence of racially-motivated verbal attacks on Muslims, particularly on the music scene in Germany, and of racist messages on Internet sites and football sites in Italy;
64. Expresses concern at the increase in anti-Islamic and anti-Semitic manifestations of hatred and discrimination following the 11 September 2001 attacks; welcomes, however, the awareness-raising campaigns conducted by several governments (UK, Sweden, Germany, Finland, Portugal), forewarning the public against the dangers of stereotyping and the Manichaeian view of a clash of 'civilisations';
65. Recommends therefore that the Member States speed up the process of fully and effectively transposing the anti-discrimination directives adopted by the Council in 2000;
66. Approves and supports at European level the proposals for the adoption of a multiannual Community action plan seeking to promote safer Internet use;
67. Welcomes in particular the action taken by the United Kingdom in circulating to all civil servants a code of conduct to be adhered to in relations with all members of the public, whatever their origin, with a view to promoting equal treatment;
68. Calls on Spain, Greece, France, Portugal and Italy to adopt a more proactive policy with a view to eradicating racist behaviour;
69. Welcomes the efforts made by the United Kingdom, Germany, the Netherlands, Sweden, Ireland, Finland and Denmark to set up a system for the gathering of reliable data, which is an essential prerequisite for an effective anti-racism policy; calls on Member States such as Greece, Spain, Portugal, Belgium and Italy to follow suit;
70. Welcomes the measures taken by several Member States with a view to making it more difficult for political parties disseminating racist and xenophobic propaganda to put their views across, and calls on Greece, Denmark, the Netherlands, Austria and Italy to be more proactive in this area; urges those democratic parties in the EU and the applicant countries that have not yet done so to sign the 1998 Charter of European Political Parties for a Non-Racist Society;
71. Calls on the Commission to prepare an analysis and report on the implementation of the Race Directive (2001) and to highlight any discrepancies in Member States in their transposition of the Directive;

Discrimination against minorities

72. Advocates, in keeping with the principle of non bis in idem, an end to double punishments (sentencing + expulsion);

73. Urges the Member States to relax their naturalisation procedures with a view to ensuring that residents of foreign origin can obtain full citizenship if they so wish;
74. Deplores the continuation in 2002 of racist acts targeting Roma people and foreign workers;
75. Welcomes the Finnish proposal to set up a permanent European Roma forum and the efforts made by the Greece authorities to introduce a Roma integration programme;
76. Calls on the European institutions to adopt an integrated common approach to solving the problems experienced by the Roma minority, which regrettably continues to suffer from many forms of discrimination;
77. Calls on France to sign the Council of Europe Framework Convention for the Protection of National Minorities; urges Belgium, Greece, Luxembourg and the Netherlands to ratify the Convention;
78. Calls on the Member States that have ratified the Convention for the Protection of National Minorities to persevere with their efforts not only to enable minorities to preserve and develop their identities but also to promote their emancipation and social integration;
79. Calls on Belgium, Greece, Ireland and Portugal to sign the European Charter for Regional or Minority Languages; urges France and Italy to ratify it;
80. Calls on the Council of Europe to adopt a protocol to the Charter for Regional or Minority Languages regarding action to promote sign language aimed at reducing discrimination against deaf people (of which there are 1.6 million in the EU) as regards sign language teaching and access to the labour market;

Discrimination based on sexual orientation

81. Calls once again on the Member States to abolish all forms of discrimination - whether legislative or de facto - which are still suffered by homosexuals, in particular as regards the right to marry and adopt children;
82. Welcomes the fact that several advances were made in 2002 in Austria (abolition of Article 209 of the criminal code), Finland (recognition of the rights of transsexuals) and Belgium (homosexual marriage);
83. Calls nonetheless on Austria to terminate all current proceedings under Article 209 (old) of the Criminal Code and institute rehabilitation measures for those convicted under this provision; calls also for the new Article 207b of the Criminal Code to be applied in a non-discriminatory manner;
84. Calls on Portugal, Ireland and Greece rapidly to amend their legislation under which the age of consent is dependent on sexual orientation, given the discriminatory nature of such provisions;

85. Recommends that the Member States more generally recognise non-marital relationships, both heterosexual and homosexual, and confer the same rights on partners in these relationships as on those who are married, inter alia by taking the necessary steps to enable couples to exercise freedom of movement within the Union;
86. Expresses concern at the dilution of the Employment Framework Directive (2001) and urges the Commission to prepare an analysis of the implementation and transposition of the Directive, highlighting any anomalies in Member States;

Equality between men and women

87. Recommends that Belgium and Luxembourg ratify the Additional Protocol to the UN Convention on all forms of discrimination against women and that the United Kingdom sign and ratify this protocol;
88. Welcomes the adoption of Directive 2002/73/EC on the implementation of the principle of equal treatment for men and women; expresses the hope that the independent body which, under the directive's terms, will be responsible for assisting victims of gender-based discrimination, will investigate discrimination, publish reports and make recommendations on all matters relating to discrimination and will be set up at the earliest opportunity in each Member State;
89. Regrets that the professional integration of women (particularly from minority groups) is still far from being fully achieved, despite the fact that in 2002 several positive steps were taken in this connection in Greece, Italy, Sweden, Belgium and Spain (quotas for the appointment of women to board-level and management posts);
90. Demands that the Greek government abolish the penal provisions as described in article 43b of the Greek Law Decree No 2623/1953/A-268, which impose a sentence of two to twelve months' imprisonment on women who violate the ban on women entering Mount Athos; reiterates its request that the ban on women entering Mount Athos should be lifted and notes that such a ban is a violation of the principle and the international conventions on gender equality, non-discrimination on the basis of gender and the provisions relating to free movement of persons provided by the Greek Constitution and Community law;
91. Calls on the Member States actively to improve the position of women, inter alia by taking temporary special measures with a view to accelerating de facto equality between men and women, in accordance with their obligations under the UN Convention on the Elimination of All Forms of Discrimination of Women (CEDAW), especially articles 3 and 4 thereof; recommends that European institutions, when evaluating the legality of the positive action measures on the basis of article 141(4) TEC, Declaration No 28 to the Amsterdam Treaty and the Directives on the basis of Article 13 TEC, take into account the substantive equality approach following from this Convention, which means (inter alia) that temporary special measures are regarded as suitable instruments to reach de facto equality instead of an inroad to the formal principle of equal treatment;

92. Notes with concern that despite the improvements achieved over the last five years, gender gaps (including pay gaps of 16 % on average) are still considerable and need to be tackled in order to meet the Lisbon and Stockholm employment rate targets;

Rights of the child

93. Recommends that Belgium, Spain, Finland and the Netherlands sign and ratify the European Convention on the Adoption of Children and calls on France and Luxembourg to ratify the Convention;
94. Recommends once again that Germany, Belgium, the Netherlands, Finland and Spain sign and ratify the European Convention on the Legal Status of Children Born out of Wedlock, and calls on France and Italy to ratify it;
95. Welcomes the fact that in 2002 Germany, emulating Greece, ratified the European Convention on the Exercise of Children's Rights; calls on the other Member States rapidly to sign and ratify the convention; calls on the United Kingdom (in whose territory minors aged under 18 are still being recruited into the army) to ratify the Optional Protocol to the International Convention on the Rights of the Child;
96. Calls on Denmark, Finland, Ireland, Portugal, Spain, Sweden and the United Kingdom to sign and ratify the European Convention on the Repatriation of Minors, and on Germany, France, Austria, Belgium, the Netherlands, Luxembourg and Greece to ratify it;
97. Calls on the Member States, with particular reference to Spain, Belgium and the United Kingdom, to take more effective action to prevent violence against children (removal of references to 'reasonable' punishment, prohibition of preventive custody for children and prevention of genital mutilation of girls);
98. Welcomes the adoption by Denmark, Sweden and Belgium of several laws improving the position of children during court proceedings; welcomes the fact that, in general, the interests and opinions of children are increasingly being taken into account, and calls for children to be given proper legal status in the future EU constitutional treaty;
99. Calls on the Member States to combat school absenteeism and to guarantee full access to education to all children living on EU territory, including Roma children, the children of refugees and children with disabilities;

Rights of the elderly

100. Welcomes the ratification of the revised Social Charter (Article 23) by Finland and Portugal, and urges Germany and the Netherlands to sign and ratify it, and Austria, Belgium, Denmark, Greece, Luxembourg, Spain and the United Kingdom to ratify it;
101. Calls on the European institutions and on governments or competent authorities to end the direct and indirect discrimination to which the elderly are subjected (particularly as regards access to the labour market between the ages of 50 and 65 and to multipurpose, multidisciplinary occupational training at the same period of their working lives, as well as to reintegration arrangements making good use of their experience) and to protect the

dignity of sick and disabled elderly persons (adequate pensions, particularly for elderly women; ill-treatment in retirement homes; combating isolation);

Rights of persons with disabilities

102. Recommends that Belgium and the United Kingdom ratify the Vocational Rehabilitation and Employment (Disabled Persons) Convention;
103. Welcomes several measures taken by the EU in 2002 which improve accessibility to services for people with disabilities, in particular in the areas of Transport and Information and Communications Technology, and urges Member States to act in a timely manner in the transposition of the Directive establishing a General Framework for Equal Treatment in Employment;
104. Draws attention to the fact that the term 'disability' covers all physical, sensory, intellectual and psychological impairments and multiple impairments and that such impairments vary according to the disability and age of the individual in question; deplores the existence of cases in which persons with disabilities do not yet enjoy the same political, social, economic and cultural rights as other citizens; proposes that measures taken during the European Year of People with Disabilities (2003) should include the setting of a minimum quota of jobs to be occupied by persons with disabilities in companies with more than fifty employees;

CHAPTER IV: Towards solidarity

105. Restates the view that failure to show respect for economic and social rights, with particular reference to fair and just working conditions and reasonable living conditions (housing, access to public health and transport services), seriously undermines human dignity and in practice prevents individuals from exercising their fundamental rights;

Workers' right to information and consultation within the undertaking

106. Welcomes the adoption of Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;
107. Calls for a strengthening of non-discrimination provisions included in the Treaty in light of the current Treaty revision process;

Right of collective bargaining and action

108. Recommends that Ireland, Spain, Denmark and the United Kingdom amend the provisions of their legislation that do not comply with the articles dealing with collective bargaining in the revised Social Charter and the Social Charter;
109. Calls on Member States to agree to a common position with respect to, and reiterates the European Parliament support for, a UN Convention on the Human Rights of Disabled People which must build on the provisions of the UN Standard Rules in such a way as to fully recognise and promote the rights of disabled people and that such a UN Convention must be legally binding;

110. Calls on Germany, Denmark, France, Italy and Ireland to amend the provisions of their legislation that are contrary to the right to strike for civil servants, as upheld by the revised Social Charter;

Protection in the event of unjustified dismissal

111. Welcomes the adoption of Directive 2002/74/EC, which extended the protection of employees in the event of the insolvency of their employer to cover part-time workers and temporary workers;
112. Endorses wholeheartedly the setting up of a European Monitoring Centre on Change within the European Foundation for the Improvement of Living and Working Conditions; expresses the hope that the monitoring centre will help anticipate economic and technological change through the conduct of forward studies and thus make it easier for workers to adjust to all forms of change;
113. Urges the Commission to submit proposals setting out preventive strategies vis-à-vis the harrowing consequences of redundancies, whose economic and psychological effects on workers are disastrous and inadmissible;

Fair and just working conditions

114. Recommends once again that:
- the Members States ratify the International Convention of 18 December 1990 on the Protection of the Rights of All Migrant Workers and Members of Their Families,
 - Austria and Finland ratify the 1964 European Code of Social Security,
 - Germany, Denmark, Finland, France, Greece, Ireland, Sweden and the United Kingdom ratify the European Convention on Social Security;
115. Notes that in Europe four main social groups are subjected to discrimination (foreigners, temporary workers, persons with disabilities and women) and urges the Member States and the institutions to take the necessary action to put an end to such discrimination, inter alia by ensuring respect for maximum working hours, access to the workplace, guaranteeing genuine occupational safety (5 000 fatal accidents in the EU in 2002) and health, safeguarding against harassment at work (9% of EU workers) and setting a fair minimum wage (Ireland, Spain and Greece, where the minimum wage is less than 50% of the average net wage);

Prohibition of child labour and protection of young people at work

116. Welcomes the ratification by Germany and Belgium in 2002 of the ILO Convention on the Worst Forms of Child Labour;
117. Deplores the fact that in several Member States (Italy, Portugal, France and the Netherlands) the rules on child labour set out in the Social Charter and the revised Social Charter are not yet being observed, and calls on these Member States to amend their legislation accordingly;

Reconciling family and professional life

- 118. Urges all the Member States to facilitate as far as possible family reunification for legally resident migrant workers;
- 119. Recommends that the institutions and Member States seek to formulate an optimum strategy for reconciling family and professional life by means of measures relating to leave, child care and other facilities;

Social security, social assistance and, in particular, action to combat social exclusion

- 120. Emphasises that the two main component parts of the European 'social model' (the right to social security and combating exclusion) must be preserved;
- 121. Deplores the fact that a large number of Member States (Austria, Belgium, Germany, Luxembourg, Ireland, Spain and Greece) refuse to pay family allowances in cases where dependent children of migrant workers do not live on their territory, or have a minimum period of residence or employment requirement which places non-nationals at a disadvantage;
- 122. Recommends that Belgium, Greece, Denmark, Ireland, the Netherlands, Germany and Finland ensure the accumulation of insurance and employment periods for migrant workers;
- 123. Emphasises that the Community programme to combat exclusion, which sets a target of a 10% reduction by 2010 of the proportion of persons living below the poverty line in the EU, must be implemented in an effective manner;

Health care

- 124. Welcomes the adoption on 23 September 2002 of the programme of Community action in the field of public health (2003-2008);
- 125. Calls on Belgium (vaccination rate), Greece (combating smoking), Italy and Ireland (occupational health), Sweden (inadequate medical check-ups), France and Austria (recent restriction of free access to medical care for the most disadvantaged sections of the population) to pay greater attention to public health issues and to amend their legislation as indicated in the 2002 reports of the European Committee of Social Rights;

CHAPTER V: Strengthening European citizenship

Right to vote in European and local elections

- 126. Recommends once again that Austria, Belgium, Germany, Spain, France, Greece, Ireland, Luxembourg and Portugal sign and ratify the European Convention on the Participation of Foreigners in Public Life at Local Level and that the United Kingdom ratify it;

127. Urges both the institutions and the Member States to take all appropriate steps to ensure the highest possible turnout at the next elections to the European Parliament in June 2004, particularly by means of targeted information and awareness-raising campaigns that enhance the European Union's image and profile;
128. Recommends in particular that the Member States do their utmost to facilitate the inclusion on their electoral rolls of nationals of other Member States living on their territory, with a view to making it easier for them to vote and to stand as candidates at local and European elections;
129. Calls on Member States to undertake appropriate measures to ensure that all elections are materially accessible to all people with disabilities;
130. Calls on the Member States and political parties to continue their efforts to foster balanced representation of women and men in local and European elections;
131. Reiterates its calls on the governments, especially those of countries where women's participation in decision-making bodies is still lower than 30%, to review the differential impact of the electoral systems on the political representation of gender in elected bodies and consider the adjustment or reform of these systems, in order to achieve a gender balance;
132. Considers furthermore that the concept of European citizenship should go beyond Member State nationality and that long-term residents (three years) who are third-country nationals should be entitled to take part in local elections and elections to the European Parliament;

Right to good administration and access to documents

133. Draws attention to the major role played by the European Ombudsman in applying the principle of good administration and access to documents;
134. Calls on the European Union to implement Regulation 1049/2001 on access to documents in a spirit of transparency, to apply the derogations and provisions concerning the special treatment of sensitive documents only when this proves absolutely necessary, and to adopt as soon as possible an instrument which brings the rules governing access to the documents of the agencies and institutions of the European Union into line with that regulation;
135. Calls on the EU institutions to apply in full the right of citizens to access to documents, in particular:
 - by guaranteeing access to opinions of the Legal Services in cases where they are not equivalent to lawyer-client communications following judicial proceedings;
 - by inviting the Council to ensure access not only to the positions of national delegations but also to their identity, in particular when it is discussing or adopting regulations or legislation;
 - by inviting the Commission to end the practice whereby when a Member State vetoes the publication of a document of which it is the author, the Commission systematically does not make the document public;

- by inviting the Member States to apply at least the European rules on access to documents to the documents drawn up at national level on the drafting and implementation of European policies;

136. Urges the Council and the Commission to grant at least to Members of the European Parliament systematic access to any documents linked to the legislative process to which citizens do not have direct access pursuant to Regulation (EC) 1049/2001¹;

Freedom of movement and of residence

137. Calls on the Commission, the Council and the Member States to take all the measures required to implement in full the principle of freedom of movement for persons, pursuant to Article 14 of the EC Treaty;
138. Calls on the Commission and Member States to remove the remaining barriers to the free movement of persons, particularly as regards freedom of establishment; deplores the inadmissible barriers to freedom of movement and of residence for the Roma in some EU Member States, which make them second-class citizens;
139. Calls for legislation on the free movement of persons to be simplified in keeping with the principle that any third-country national should enjoy full freedom of movement, residence and establishment as soon as he or she has legal status as a long-stay resident;
140. Welcomes the fact that the Council has reached political agreement on the proposal for a directive on the status of third-country nationals who are long-term residents, which inter alia guarantees them the right to freedom of movement within the EU;

CHAPTER VI: Fair access to justice

141. Welcomes the Commission Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union; encourages the Commission to take the next step – i.e. to submit the proposal for a framework decision – swiftly;
142. Calls on the Council to adopt a framework decision on common standards governing procedural law, for example on the rules concerning pre-trial orders and due process, including the criteria governing investigative methods and the definition of proof, with a view to guaranteeing a uniform level of protection of fundamental rights throughout the EU; takes the view that such a framework decision should come into force at the same time as the European arrest warrant;
143. Urges the Commission to organise the translation and publication of a ‘statement of rights’ to be distributed to persons facing interrogation when they arrive either at the relevant police station or the place where the interrogation is to be held;
144. Welcomes the intention of the Commission to present in July 2003 a Green Paper on the approximation, recognition and execution of criminal penalties in the European Union;

¹ In the case of the Council, this concerns documents with the reference 'LIMITE'.

strongly recommends that this Green Paper be followed by a framework decision on the same topic before the end of 2003;

145. Welcomes the adoption of the directive to improve access to justice in cross-border disputes, which has the aim of guaranteeing effective access to justice for EU citizens and third-country nationals legally resident in the EU who do not have sufficient resources;
146. Welcomes the developments in the case law of the Court of First Instance and Court of Justice of the European Communities relating to examinations for compliance with the Charter of Fundamental Rights of the European Union (*Max.mobil v Commission*) and relating to protection of the legal rights of private individuals (*Jégo-Quéré v Commission*);
147. Is concerned about the large number and seriousness of the violations confirmed by the European Court of Human Rights of the right to have judgment given within a reasonable time (Italy and Belgium) and the right of access to justice, due process and a fair trial (Italy, Sweden, United Kingdom, Finland, Spain, Greece, Austria and France);
148. Urges the Member States to comply precisely and promptly with the judgments of the European Court of Human Rights concerning the guarantees of due process and to amend their legislation in accordance with those judgments;
149. Reiterates its concern about the large number of cases in which the ECHR has found a reasonable time to have been exceeded in the case of Italy; does not consider this conducive to confidence in the rule of law, and calls on Italy to take all necessary measures to ensure that legal proceedings are prompt and fair;
150. Considers the substance of this resolution to be without prejudice to the interpretation and development (including in the future) of the rights, freedoms and principles applicable to citizens within the European Union as laid down in the Charter of Fundamental Rights of the European Union;
151. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice of the European Communities, the European Court of Human Rights, the European Ombudsman, the Council of Europe and the governments and parliaments of the Member States and candidate countries.

EXPLANATORY STATEMENT¹

This report on the situation as regards fundamental rights in the European Union (2002) is based, like the two previous reports, on the structure of the Charter of Fundamental Rights.

It also highlights a number of central issues which I consider to be real political priorities, such as:

- the fight against all forms of discrimination,
- conditions of arrest and detention,
- the consequences of 11 September,
- press freedom.

The European Union is facing a new challenge, namely enlargement. In future, it will have a duty to ensure that it retains its capacity to defend and that it spreads its universal and fundamental values, especially respect for human dignity, freedom, democracy, respect for all fundamental rights and the rule of law.

More needs to be done, in particular with regard to the fight against discrimination, the integration of people with physical or psychological disabilities, the fight for freedom of information and expression, improved protection of children and women, protection of minorities in general, the promotion of equal opportunities and rejection of all new forms of slavery.

In my view, this report constitutes a valuable point of reference for elaborating and implementing EU policies. It is also an open method of coordination which highlights good practices in the Member States and makes it possible to draw a comparison between initiatives and ensure compatibility between them. It provides a means of allowing and supporting the establishment of the prevention mechanism under Article 7 of the Treaty on European Union. It should also contribute to publicising and sharing the European Parliament's commitment in this specific area and, lastly, it promotes transparency and facilitates dialogue with civil society.

The EU is determined to strengthen this relationship, at the level of both the governments of the Member States and the EU institutions. Dialogue and cooperation between governments and civil society and support for defenders of fundamental rights are also of vital importance, the aim being, of course, to achieve progress in the implementation of human rights and fundamental freedoms world-wide.

My objective is not therefore to draw up a report containing an exhaustive list of violations of fundamental rights, but rather to make the Charter readable so that each citizen can identify with it. This entails drawing attention to good practices in the field of fundamental rights. We therefore have a duty to work towards greater awareness, the provision of relevant information and greater involvement, i.e. to encourage all our fellow citizens to become more active in this area.

This will mean seeking to achieve an appropriate balance and avoiding platitudes. It will also mean leaving aside some of one's own preferences and applying a different working method.

¹ For national legislation and case law developments in 2002, see the summary report of the work of the European network of national human rights experts: http://europa.eu.int/comm/justice_home/news/intro/news_intro_en.htm

In this perspective, an initial hearing was held on 17 and 18 February 2003 at the European Parliament, with the support of the Franco-German Office for Youth and the 'Composante Française Bouge l'Europe' to involve around one hundred young Europeans in the work on the Charter. This also provided an opportunity to celebrate the fortieth anniversary of the Franco-German cooperation agreements, known as the Elysée Treaty. At the close of this very valuable hearing, four delegates were appointed. They were given the task of contributing to the gradual drafting of this report and taking part in all the events leading up to the presentation of and vote on the report.

Finally, during the European Parliament's annual hearing on the situation as regards fundamental rights, in which all the EU institutions and the main non-governmental organisations involved in this area took part, we were able to gather extremely useful information, which has been incorporated in the report.

The report will consider, first of all, the repercussions of '11 September' and, secondly, the issue of prisons. I shall explain in these sections the object of my work and my overall approach.

I felt it important to penetrate the prison environment and provide a clear picture of conditions of arrest and detention so as to present the whole issue in a new light, the aim being to make this environment more human in all the Member States. As Yves Simon, the French writer and composer, stated in an article which appeared in 'Libération' on 22 February 2000, *'because prisons cause physical and mental trauma and no text makes it compulsory for them to kill off any hope for the future'*. In the prison context, I consider it essential to combat all forms of violence and emphasise education and reintegration policies. As Victor Hugo wrote: *'whoever opens a school door closes a prison door'*. I also believe in rebuilding prisoners' personalities and this requires specialist medical assistance.

As regards 11 September, however serious the event may have been and however strong the emotions it gave rise to, it in no way justifies a 'total security' approach. In this connection, I wish to recall the following: in 1994, shortly after Nelson Mandela had acceded to power in South Africa, a Rand Corporation report was published on terrorism. This report had not yet taken account of the change and included the ANC among the terrorist organisations! What about the way in which members of the French resistance were considered under the German occupation? Were they not considered to be terrorists and subjected to the worst abuses? The UN has identified more than 142 definitions of terrorism. Everyone has an opponent.

Only an examination of the context can provide an objective view of the situation. A situation of terrorism may be seen by some as the work of a guerilla group and by others as a resistance movement. It is also viewed differently according to other underlying factors. For example, according to whether it is part of a struggle against rulers who use violence against their own people or to the nature and independence of the country's judicial power. Clearly, the justification for an armed response must be assessed on a case-by-case basis.

Nonetheless, the perception of danger has generally altered the balance between security and freedom since 11 September.

Security, seen as a restriction on freedom, now has extremely positive connotations. Any measured approach to the problem has been abandoned. Moreover, state authorities no longer seem to have a monopoly of the most powerful nuclear, bacteriological and chemical weapons.

In this context, fear of a single attack which could cause immeasurable destruction contributes to many abuses.

I therefore believe that the utmost vigilance is required. I condemn the growing number of emergency laws because they represent a threat to democracy. In emergency situations, security involves measures which are always considered temporary and are intended to be abandoned as soon as possible. However, in practice, 'temporary' means 'long-term'. As a result, civil liberties and the basic social contract are undermined.

The war on terrorism is not so much a strategy as a slogan or ritual formula. However, we should not forget that terrorism violates the right to life and dignity of the victims it claims. In the face of this 'furtive' enemy, long-term reflection is needed. We must focus on the contradictory aspects of illegal organisations, identify the inconsistency between their proclaimed goals and results, point to the power and legitimacy gap between those involved and organise protection measures through discrete and yet ongoing action.

Finally, we must combat all forms of discrimination, prejudices and stereotypes. Steps must be taken to promote genuine social cohesion, encourage mutual discovery, develop a culture of brotherhood, contribute to the coexistence of groups with different value systems. There is no need to seek watertight protection of territories through modern-day 'Maginot Lines'. The best form of protection in today's world is to acquire genuine values, apply them and serve as an example.

In conclusion, we have experienced two major upheavals. The first was the fall of the Berlin Wall and the second, the 11 September events. These seem to be opposites. The first led to a wind of freedom around the world and also a sense of confusion. The second was a massive blow to the United States. Since then, the US administration is strongly tempted to view every issue in security terms. I suggest adopting a different attitude, which involves tackling the various threats we face, such as terrorism, the proliferation of weapons of mass destruction, fundamentalism and regional crises, in a spirit of solidarity and justice in order to build a genuinely multipolar world.

The key to this is collective responsibility in a world in which the use of force should only be seen as a last resort. Together, let us build a culture of peace and tolerance! Let us safeguard cultural diversity!

As regards the European area of freedom, security and justice, some progress has undeniably been made. In other areas, progress has been disappointing: improvements are needed and new areas need to be explored. It is quite clear that the concepts of freedom, security and justice are inseparable.

Freedom means more than simply free movement within an area without internal borders. Living in such an area while fearing for one's physical integrity is surely an unacceptable devaluation of the fundamental concept of 'freedom'.

An effective judicial system that is accessible for everyone is essential. Citizens should be at the heart of this new area, of our policies and of our plans.

I wish to focus my political action on the Charter of Fundamental Rights in order to make it genuinely effective and ensure that the European area becomes a tangible reality.

CHAPTER I: RESPECTING HUMAN DIGNITY

The right to life (Article 2)

Combating international terrorism

I. Combating international terrorism

The effort to combat terrorism, a fundamental and intolerable violation of personal security, is a vital part of meeting the obligation to protect the right to life.

However, emergency measures, be they European or national, are often adopted hastily and are liable in many instances to violate the fundamental human rights by reason of the lack of legal certainty, the failure to provide guarantees or the extensions to police powers that they entail.

On the whole, as the FIDH points out, the emergency laws introduced in this context are contributing to a climate of growing legal uncertainty. This is illustrated in the case of the UK by the adoption of the Anti-terrorism, Crime and Security Act 2001, which authorises detention without evidence or trial. Moreover, it appears that this law, which the FIDH describes as unfair and arbitrary, is being used improperly since only 3 of the 604 arrests carried out on the basis of its provisions have actually led to charges of terrorism.¹

A. Legal developments

(a) International conventions

- United Nations:

International Convention for the Suppression of Terrorist Bombings²

Signed on 15 December 1997 by all the Member States; entered into force on 23 May 2001.

International Convention for the Suppression of the Financing of Terrorism³

Signed on 9 December 1999; has not yet entered into force. In 2002, the Convention was ratified by France, Austria, Denmark, Spain, Greece, Italy, Portugal and Sweden. Ratified by Finland at the beginning of 2003.

¹ 'Le respect des droits fondamentaux : situation dans l'UE en 2002'. Joint report by FIDH-AE and FIDH, April 2003, p. 13.

² <http://untreaty.un.org/English/Terrorism/Conv11.pdf>

³ <http://untreaty.un.org/English/Terrorism/Conv12.pdf>

In September 2002, 31 recommendations on combating terrorism were submitted by the United Nations. The first of these in order of priority stresses the importance of 'signing, ratifying and effectively implementing' the twelve United Nations counter-terrorism conventions, particularly that aimed at suppressing the financing of terrorism¹.

UN action against terrorism²:

- Council of Europe:

Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances³

'Brief presentation of the draft guidelines on human rights and the fight against terrorism currently being drawn up by the CDDH'⁴

Recommendations and resolutions of the Parliamentary Assembly and Committee of Ministers

- Recommendation 1550 (2002) on combating terrorism and respect for human rights
- Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers at its 804th meeting (11 July 2002)
- Report of the Committee on Legal Affairs and Human Rights, 'The fight against terrorism and respect for human rights' (Document 9331, 22 January 2002).

Visit by a CPT delegation to the United Kingdom from 18 to 22 February 2002 to examine treatment of persons suspected of international terrorism and detained pursuant to the provisions of the Anti-Terrorism, Crime and Security Act 2001.

(b) 2002 European legislation

European Union

Conclusions of the Seville European Council meeting from 21 to 22 June 2002.

Proposals for Council framework decisions

Member States must bring their laws into line with the framework decision on the European arrest warrant by the end of 2002.

This framework decision concerns a list of 32 offences, without verification of double criminality above a threshold of three years' imprisonment. In the case of other offences, double criminality may be verified. The warrant will also apply to nationals of the country to which it is addressed. It will enter into force at the beginning of 2004. Each Member State will be free to state whether it will apply the arrest warrant to offences committed before that date. Most Member States have stated their intention not to apply a time limit.

¹ <http://www.un.org/terrorism/>

² <http://www.un.org/terrorism/>

³ Ratifications: <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=187>

⁴ Steering Committee for Human Rights (CDDH), Doc. CM/Inf(2002)16, 4 April 2002.

- Combating terrorism (COM(2001)521, 19.9.2001) and the European arrest warrant and the surrender procedures between the Member States (COM(2001)522, 19 September 2001).

These two framework decisions were formally adopted at the JHA Council meeting of 13 June 2002. The basic political agreement had already been reached on these texts at the end of 2001. In relation to the existing situation, in which most Member States had no specific rules on terrorism, and to the traditional extradition system, these texts represent significant steps forward, in line, for the most part, with the aims and concerns expressed by the European Parliament. Moreover, in February 2002, six Member States decided at the informal Council meeting in Santiago de Compostela to anticipate the entry into force of the European arrest warrant during the first half of 2003.

Parliament formally approved the two proposals at its sitting of 6 February 2002.

Reports adopted by the EP in 2002:

- Area of freedom, security and justice: compensation to crime victims¹
- Combating terrorism: evaluating legal systems and police cooperation provisions (Spanish initiatives)².

B. Assessment

1. The definition of terrorism is imprecise

The principle of legality in criminal proceedings requires the offence of 'terrorism' to be defined with sufficient precision. But consideration of current developments does not support the conclusion that all the difficulties arising in that connection have been surmounted. Far from it.

Constituent components, such as the degree of seriousness and the purpose of the action, are not such as to characterise with sufficient precision a terrorist offence as defined by the framework decision, by comparison with other common law offences.

The definitions accepted hitherto into national law (transposition of the framework decision) have not helped to make the definition of a terrorist act more precise. In some cases, there is even a tendency to conflate organised crime and terrorism.

The same tendency has been noted in Ireland where the passing of the Criminal Justice (Terrorist Offences) Bill 2002 has caused the line between 'public order offences' and terrorist offences to become blurred as any offence which is committed with the intent of 'unduly compelling the government to perform or abstain from an act' is now deemed a terrorist activity. In the FIDH's view, this is tantamount to criminalising social movements since such offences are frequently committed during authorised demonstrations³.

¹ Roberta Angelilli, A5-0309/2002.

² Gerardo Galeote Quecedo, A5-03035/2002.

³ 'Le respect des droits fondamentaux : situation dans l'UE en 2002'. Joint report by FIDH-AE and FIDH, April 2003, p. 13.

2. Mutual recognition of criminal law decisions between Member States does not provide sufficient guarantees

The framework decision on the European arrest warrant and surrender procedures between the Member States is based on the principle of mutual recognition of criminal law decisions and depends on the concept of mutual trust between Member States.

But the guarantees provided are insufficient. Only two safeguard clauses have in fact been included, viz.:

- surrender can be refused if there are reasons to believe that the warrant has been issued for the purpose of pursuing a person by reason of gender, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation;
- the procedure can be suspended (Article 7) in the event of serious violation by a Member State - viz. the issuing Member State - of EU fundamental values.

Those guarantees fall short of what would have been desirable. The absence of guarantees of respect for fundamental rights within the State issuing the arrest warrant could constitute a reason for non-execution of surrender obligations. In addition, the reference in the preamble to Articles 6 and 7 of the TEU has limited scope. Execution of the European arrest warrant occurs in practice on an individual basis, whereas the circumstances referred to in Article 7 of the TEU are of a general nature.

3. The risks of cooperation with the United States

The urgency of efforts to combat terrorism compel more intensive international cooperation. But such cooperation between States that apply different and less exacting standards than those of the EU can jeopardise the protection of fundamental rights (including, apart from the death penalty, the risk of torture, denial of a fair trial, or failure to respect the right of asylum). Judicial cooperation with the United States, and the requirement that data of a personal nature be forwarded, are two aspects that illustrate the problem).

Attention has been drawn to the difficulties raised by the conclusion of a judicial cooperation agreement with the United States by the European Parliament. The EU's negotiating mandate sets the boundaries to the exercise, in particular as regards the non-execution of capital punishment.

Moreover, the fact that there still exist bilateral law-enforcement cooperation contacts between the United States and some Member States means that the United States could satisfy its requirements by way of such contacts. The option of by-passing limits fixed by the European Parliament in particular could thus be invoked to the detriment of individual rights.

The main obstacle is, of course, United States insistence on maintaining the death penalty. In that connection the situation of European prisoners captured in Afghanistan and now detained in the Guantanamo base poses problems for six Member States concerning the fate of some fifteen pro-Taliban fighters of European origin.

The European Parliament, for its part, adopted a resolution in February 2002 on the detainees in Guantanamo Bay, calling on the UN to establish a tribunal to deal with Afghanistan¹.

4. Extension of powers of investigation, surveillance and prosecution

Terrorism has one feature in common with international crime, namely the fact that it is carried out by organisations. Member States consequently tend to create the offence of belonging to an organisation, without additional proof of terrorist activity, thereby creating the risk of applying exceptional procedures to non-terrorists.

The different initiatives taken by the EU and its Member States thus all imply, to varying degrees, imposing restrictions on fundamental rights, in particular the right to respect for private life, rights of defence in criminal law proceedings, and the right to freedom and safety. In particular:

a) Profiling of presumed perpetrators of terrorist acts

The Council recommendation on drawing up ‘terrorist profiles’ opens the way to serious threats to public freedoms. The inclusion of certain identification features probably requires much more stringent precautions, not least because the connection with immigration policy is explicit. The implementing arrangements do not appear sufficient in terms of the truth and reliability of information, and the complete absence of monitoring cannot be justified.

b) Transmission of data of a personal character from the EU to the United States

Aviation data

Personal data, transmission of which is required by the United States, exceeds what is strictly necessary to identify the person concerned; the more so in that Directive 95/46/EC requires certain guarantees on the part of the receiving state, but which United States law does not provide for at present.

Data held by Europol

Article 18 of the Europol Convention lays down the conditions under which data of a personal nature can be forwarded to third States. There is, however, good reason to doubt the quality of the guarantees that can be provided by the United States, which has not ratified Council of Europe Convention No 108. That is why criticisms have been made by a number of Member States (the Court of Justice has no power in this connection, and the EP is not consulted on this type of agreement, which is not subject to ratification at national level).

c) Stepping up communications surveillance

There is cause for concern at the increasing violations of respect for private life, including the retention of telecommunications data.

¹ PE 313.865, 7.2.2002

Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector stipulates that Member States may adopt legislative measures authorising the holding of data, but for a limited period and only on grounds expressly laid down (e.g. national security, defence and public security, prosecution of criminal offences, etc).

d) Extension of law-enforcement powers and services

Use of intelligence-service methods for criminal investigations

The police are authorised, in their efforts to combat terrorism, to borrow from armed-forces intelligence services such techniques as infiltration by agents or interception of communications. That is true, in particular, of Germany, Austria and Belgium.

In Belgium, the January 2003 law legalises such methods, which represent especially high risks of violation of private life or the rights of the defence. The situation is all the more alarming in that the use of such methods is proactive, i.e. they are deployed before any evidence of a material offence has been identified.

Special procedures for prosecuting terrorist offences

A specific feature of State reactions is, moreover, the choice of a special criminal-law procedure for certain serious offences, such as terrorism. Characteristics include:

- establishing authorities specialising in prosecuting terrorist offences, e.g. the creation of a federal prosecutor's department in Belgium, and of the federal agency for the protection of the constitution and combating terrorism in Austria, special measures restricting the rights of the defence, the option of carrying out searches outside of the legal hours, vehicle inspections, luggage searches in France (law on internal security);
- increasing the length of the maximum period for preliminary enquiries in Italy;
- restrictions on free choice of defence lawyer in Spain and Greece.

Deprivation of freedom

In the United Kingdom, the new 2001 anti-terrorism legislation gives the Home Secretary extended powers to arrest and detain foreign nationals suspected of being terrorists by way of derogation from Article 5 of the ECHR. It was for that reason that the CPT conducted an ad hoc visit from 18 to 22 February 2002 to examine the treatment of persons suspected of international terrorism and interned without trial in high-security prisons for an indefinite period.

5. Restrictive application of legislation relating to stays by foreigners

At the Council's request, the Commission specified the judicial mechanisms available to Member States for excluding from international protection persons suspected of terrorist activities, in particular the options available under the so-called exclusion clause of Article 1(F) of the Geneva Convention on the status of refugees. The UNHCR, for its part, rightly considers

that States must introduce measures backed by appropriate judicial guarantees before putting such exclusion clauses into effect.

Following the stepping up of exchanges between the authorities responsible for examining asylum applications and the intelligence services, some Member States have a tendency to deport or extradite 'suspect foreigners' to states where they risk being subjected to cruel, inhuman or degrading punishments and treatment (Sweden, in particular).

Internal terrorism

A. Legal developments

Spain adopted a new law on political parties on 27 June 2002¹. The law – which does in fact comply with the principles governing freedom, democracy, respect for human rights and fundamental freedoms and the rule of law – lays down a procedure and criteria enabling a political party to be banned by a decision of the courts. Article 9 of the law stipulates that a political party can be banned and disbanded when it engages in activities that violate democratic principles and human rights.

A provisional decision to suspend the activities of the Basque Batasuna party for a period of three years was taken on 26 August 2002 by the National Court and this ruling was confirmed by the High Court following an appeal. The decision was taken in the context of criminal proceedings relating to acts committed prior to August 2002.

A bill on the prevention and freezing of the financing of terrorism was tabled in the parliament on 11 March 2002². This bill is based on UN Security Council Resolution 1373 (2001) and the conclusions of the extraordinary European Council meeting of 21 September 2001. The bill will make it possible to freeze accounts and other financial assets.

B. Overview of current situation

In 2002, the EU again experienced a significant number of terrorist attacks.

- In Northern Ireland, AI recorded 80 bomb attacks and 19 killings³.
- In Finland, seven people were killed on 11 October 2002 as a result of an explosion in a shopping centre (the Myyrmanni), in which there were between 1000 and 2000 people⁴. In Spain 32 attacks by ETA left 5 people dead and 90 injured.
- In Northern Ireland, two members of Sinn Fein (Catholic nationalists), the political wing of the Irish Republican Army (IRA), were charged with terrorism. Police seized lists containing the names of some 2000 public figures - some of them high-ranking politicians - together with details (addresses, itineraries), which they presented as 'target lists' drawn up by the IRA⁵.

¹ Organic Law 6/2002.

² 121/000072.

³ Amnesty International, UK: Escalating sectarian violence must be addressed, 18 January 2002.

⁴ Le Monde, 12 October 2002.

⁵ Le Monde, 7 October 2002.

A number of people were arrested in the Member States and are currently detained: in Germany, Belgium, Spain, Italy and the United Kingdom¹.

Euthanasia

(Voluntary active) euthanasia is the possibility of voluntarily inflicting death on a person who, in certain circumstances, has expressed the wish to die.

A. Legal developments

Case law

In the case of *Pretty v. United Kingdom* (29 April 2002), the European Court of Human Rights ruled for the first time on the question of criminal prohibition of assisted suicide². The plaintiff was a victim of an incurable disease, and incapable of committing suicide unassisted. The Court rejected the application on the grounds that Article 2 of the ECHR, which guarantees every individual the right to life, did not, in the Court's interpretation, also guarantee the 'right to die'.

National law

Elsewhere on the legislative front, Belgium became the second European Union country after the Netherlands³ to decriminalise euthanasia, with *voluntary active euthanasia* being defined as the fact of inducing another person's death by acceding to that person's request, subject to strict conditions (intentionally ending the life of another person at their request, that person having reached the age of majority, being judicially capable and conscious, suffering from an incurable illness and in constant and unbearable psychological and physical pain), in accordance with the Belgian euthanasia law of 28 May 2002⁴.

B. Overview of current situation

On 20 January 2003 the Council of Europe published a study⁵ on euthanasia and assisted suicide in the laws and/or practices of 34 member states and the United States, which has observer status with the organisation. According to the press release which announced the publication of the study, conducted by the Steering Committee on Bioethics (CDBI) following adoption in 1999 by the Parliamentary Assembly of the Council of Europe of Recommendation 1418 on the protection of the human rights and dignity of the terminally ill and the dying, the answers to the questionnaire on which the study is based reveal that 'euthanasia is only legally possible in one country: Belgium (9 countries did not give specific replies). Assisted suicide is legally possible in two countries: Estonia and Switzerland (10 countries did not give specific replies)'. However, the fact that the Netherlands, for example, whose law of April 2001 is similar to the Belgian law

¹ Le Monde, 18 February 2002 and 12 March 2002.

² As specified by the UK's 1961 *Suicide Act*.

³ Law of 12 April 2001 submitting to judicial review the ending of life in response to a request for assistance with suicide, and amending the penal code and the law on the disposal of the dead; entered into force on 1 April 2002.

⁴ Euthanasia law of 28 May 2002, *M.B.*, 22 June 2002

⁵ <http://www.coe.int/euthanasia-report>.

of 2002 for which it actually served as basis¹, did not specify whether euthanasia was possible under Dutch law illustrates the problems raised by such comparative approaches, especially when based on differing views of the meaning of 'euthanasia', which may include non-voluntary euthanasia as well as euthanasia carried out at the patient's request, or be interpreted as euthanasia practised at the patient's request, whether or not other objective conditions are met.

Prohibition of torture and inhuman or degrading treatment or punishment (Article 4)

A. Legal developments

(a) International conventions

- United Nations

- The Convention against torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) has yet to be ratified by Ireland (Resolution 39/46).

- The United Kingdom has not yet ratified the Protocol to the Convention on the protection of children (hence the recruitment of under-18s to the army).

On 18 December 2002 the General Assembly of the United Nations adopted the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1984. The Protocol establishes a system of regular visits to places of detention in order to prevent torture and other cruel, inhuman and degrading treatment or punishment.

The Optional Protocol provides for both the establishment of a 'Sub-Committee on Prevention' coming under the Committee against Torture (CAT) and, in each State party, the setting-up of a national prevention mechanism comprising one or two independent bodies responsible for monitoring places where people are deprived of their freedom.

CAT reports on Luxembourg (CR/28/2), Denmark (CR/28/1) and Sweden (CR/28/6).

Council of Europe:

All Member States signed Protocol No 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, on 3 May 2002. They have not yet ratified the protocol.

- The Convention on Cybercrime (STE 185) of 23 November 2001 has been signed by most Member States.

¹ There are, however, significant differences between the Belgian and Dutch laws: while the Dutch law applies to minors from the age of 12 (parental consent required from 12 to 15), the Belgian law only applies to requests submitted by conscious adults.

- The United Kingdom suspended Article 5 of the ECHR (request for derogation, in accordance with Article 15 - time of war or public emergency - in order to apply counter-terrorism legislation).

Recommendations of the Parliamentary Assembly of the Council of Europe adopted in 2002

- 12th General Report on the CPT's Activities (2001), published on 3 September 2002

This report confirms the tendency to waive the confidentiality of and swiftly publish national reports. The CPT places special emphasis on standards to be respected in the field of police custody.

In 2002, the CPT published the reports on its visits to Belgium, Denmark, Greece, the Netherlands, the United Kingdom and Spain.

Conclusions of the Commissioner for Human Rights on the rights of persons with mental disabilities¹.

(b) Case law

European Court of Human Rights (Strasbourg)

The Court's case law (2002)² highlights the positive obligation incumbent upon the State to make proportionate use of force and to ensure acceptable conditions of detention.

(c) International conferences

Multilateral conference on 'European norms and standards: ethics of the police', 21-22 March 2002, Vilnius (Lithuania)

B. Overview of current situation

1. Police-service dysfunction

The different year-2002 reports by the United Nations Committee against Torture (CAT), the European Committee for the Prevention of Torture (CPT) and concerned NGOs have continued, as in previous years, to observe an excessive number of cases of police malfunctioning (in one or more Member States, and often in the majority of them).

Thus, to take only a handful of examples, in Spain, during the Barcelona and Seville Summits, the police used disproportionate force against demonstrators, in particular two Members of the

¹ CommDH(2003)1.

² Case of *Mouisel v. France* No 67263/01 of 14 November 2002 - The Court also found a violation of Article 8 (because Mr A.B.'s correspondence with his lawyer was intercepted) - Eur. Ct. H.R., *A.B. v. the Netherlands* (judgment) No 37328/97, 29 January 2002 - ECHR, 4th section, No 43290/98, final judgment of 28 May 2002.

Portuguese Parliament; similar action had been taken in 2001 in Italy at the Genoa Summit, and in Göteborg in Sweden.

A number of deaths (about ten) are again attributable in 2002 to out-of-control police behaviour in Germany, Austria, Denmark, Portugal and Greece (whence the tabling in 2002 by the government of a bill of law on the use of firearms and police training), not to mention racist violence¹. And some of the 500 members of the terrorist organisation ETA detained in Spain were alleged to have been subjected to physical and mental torture during the period for which they were held incommunicado (five days).

Dysfunctional policing is in particular attributable to:

a) Inadequacy of both the substance of legislation and its implementation, e.g.:

- Failure to include a precise definition of torture in the penal code;
- Absence of independent authorities responsible for supervising police activities or the running of prisons (in 2002, Austria, Greece and the United Kingdom set up independent supervisory agencies);
- Denial of appeal against disciplinary sanctions (currently in Ireland and Belgium), and in Italy, as part of the fight against terrorism, denial, without right of appeal, of the standard prison regime to those suspected of or charged with terrorist offences;
- Denial of access within the first hour to a lawyer, doctor or close relative;
- Failure to video-record interrogations.

b) Inadequate police recruitment and training

Governments should, with the support of the police services, ensure:

- Improvements in recruiting, and the incorporation of fundamental rights into recruitment criteria (cf. European Code of Police Ethics), which must, moreover, mirror, to the extent possible, the multi-ethnic makeup of society;
- The introduction or genuine implementation of regular checks on the smooth running of policing activity;
- Rigorous acknowledgement and investigation of complaints, and the imposition, where applicable, of commensurate penalties;
- Exchanges of best practice (an EU 'police and human rights programme' could be implemented, modelled on that of the Council of Europe).

The capacity of police forces to respect fundamental human rights, one of the main practical pointers to the level of democratisation in any country, must progressively be strengthened.

2. Prison-system dysfunction

Prison dysfunction in the EU is, as observed by the CPT, CAT and NGOs in their reports, characterised in particular by violence between inmates, failures of supervision and prison-warder brutality, and has multiple causes:

¹ See, in particular, the 2002 Amnesty International report.

(a) Violence in prison

To the violence sometimes committed by prison warders, often following a climate of tension, should be added the very frequent acts of violence between prisoners (6000 cases in France in 1999), self-mutilation (3000 cases in France in 1999) and violence against warders (850 cases in France in 1999). The level of violence has tended to rise with the increase in the number of long sentences (OIP data).

(b) Prison overcrowding

The latest Council of Europe statistics show big differences between Member States in prison population density and length of sentences, and their impact on the number of deaths and suicides.

Statistics as at 1 September 2001 (SPACE1) show that in the EU:

- Detention rates per 100 000 population ranged from 58 (Denmark and Finland) to 126 (United Kingdom) and 132 (Portugal);
- Prison population density per 100 places ranged from an average of 80 to 119 (Portugal), 127 (Belgium) and 129 (Italy);
- The proportion of inmates held on remand ranged from 15% of prison population in Sweden and Denmark to 26% in France, 35% in Belgium and 43% in Italy;
- The proportion of sentences of less than one year ranged from 5 to 10% in Belgium, Greece and Portugal to 30% in France and 39% in the Netherlands;
- Prison death-rates varied from 20 per 10 000 detainees in Spain and Sweden to 30 in Italy, 46 in France and 60 in Portugal;
- Prison suicide rates varied from an average of 10 per 10 000 detainees to 19 in Belgium and 24 in France.

(c) Excessive numbers detained in high-security units

In all Member States, detainees considered as representing special security risks are confined in so-called 'high-security' facilities. The practice is justified by the nature of the offences committed, the ways in which such detainees react to prison constraints, or by psychiatric profiling. That group of detainees should, even so, only ever represent a very small proportion of the prison population, which is not, however, the case. The severity of their prison conditions should, moreover, be offset by an adequate programme of activities and the possibility of associating with fellow detainees in order to forestall anti-social behaviour patterns and prepare them for release. The very suitability of this form of detention should, moreover, be subject to regular review. (In France, for example, detainees who were members of the *Action directe* organisation have been held in solitary confinement for 14 years, and repeatedly mount hunger strikes; similarly, Italy applies its so-called 'Article 41a' solitary-confinement regime in about a dozen of its prisons, and extended it under a December 2002 law to include those sentenced for trafficking in human beings or acts of terrorism.)

(d) Prisoners' work

A comparative study of the situation in only six Member States (Germany, United Kingdom, Denmark, Spain, Italy, Netherlands) shows that there are significant disparities in the approach to the principle of compulsory work (only three of the countries - Denmark, Spain and France - rule out the principle of compulsory work for detainees), the effectiveness of the work offered to detainees (24% in Italy, 80% in Germany, almost 100% in the Netherlands) and their work conditions, even though, in all cases, the rules governing such conditions fall outside the sphere of ordinary law, with the exception of safety and health rules. To quote only a few examples, monthly pay ranges from € 200 (Germany, Denmark, Spain and France) to smaller amounts (Netherlands) and even € 45 (United Kingdom)¹. The working hours demanded of detainees vary from 38 hours in most of the countries in question (France, Germany, Denmark and Spain) to 26 hours (Netherlands) and 22 hours (United Kingdom).

(e) Specific categories of prisoners

- The alarming situation of minors

In France, the new provision of the 13 February 2003 law on internal security authorise, in certain circumstances, the provisional detention of minors at age 13 and the creation of closed education centres; the enforcement side of the new law takes precedence over the educational aspect.

Nor is the situation of minors satisfactory in Luxembourg, where the CAT observes that minors are sometimes incarcerated in adult prisons. Similarly, in the United Kingdom, minors have been subjected to mistreatment in a number of specialist institutions, in particular in Northern Ireland. In Belgium, young North Africans are reported to have been exposed to racist abuse in some establishments. The CAT insists that confinement must be a solution of last resort.

- The situation of very old and seriously ill prisoners

AI is concerned at the way in which the French law of 4 March 2002 on the rights of seriously ill prisoners is being applied. According to this law the sentences of prisoners with serious medical conditions whose treatment is incompatible with their continued detention may be suspended. The law has been applied to the case of the former 'préfet', Maurice Papon, but not, for example, to the seriously ill Briton nationalist Alain Solé or to the four members of 'Action directe', who have been in prison for 15 years and are in a critical state of health.

This article of the Code of Criminal Procedure (see legislation above) stipulates that a convicted prisoner's sentence may be suspended, whatever the nature of the sentence, for a length of time which was not specified, if it is established that he suffers from a life-threatening medical condition or that his state of health is incompatible in the long term with his continued detention².

¹ French Senate working document, 'Législation comparée' series, No LC May 2002.

² As at 1 September 2002, this provision potentially concerned 1683 detainees over 60 years of age, 369 over 70, 39 over 80 and 2 over 90 (*Le Monde*, 1 January 2003). This new guarantee for sick prisoners has already benefited Maurice Papon (see Paris Court of Appeal, 18 September 2002: the court added a new condition to the law, namely that the suspension of the sentence will not cause a threat to public order).

3. Dysfunction in other places of detention

- Holding centres

The hardening of EU asylum policy, whose excessively security-oriented and restrictive nature has been criticised by the FIDH¹, has had the effect of increasing the numbers of rejected applicants placed in administrative detention, and of causing cumulative deterioration in living conditions in such centres. In the Roissy Centre, for example, more than one hundred persons are being held in premises with totally unacceptable hygiene facilities, and denied the right of communication with the outside world. Those held have, moreover, been subjected to absolutely unjustified police violence. In Spain, the situation of ever increasing numbers of immigrants in the Canary Islands (5 000 in 2002), in particular in Fuerteventura, where living conditions in the holding centre are unacceptable, is cause for serious concern. Such immigrants, who are given no information in their own language, are, moreover, denied access to interpreters or lawyers, and consequently are in no position to lodge an asylum application.

The FIDH points out that immigration is frequently associated with crime and considers that this is partly due to the fact that the two issues 'cohabited' for some time within the same pillar. In its view, the systematic association of the two subjects automatically leads to a security-biased approach to migration issues².

- Psychiatric hospitals

The CPT (2002 report on Belgium) calls for a review of the 1995 law, which should refer explicitly to the patient's consent to treatment and periodical review of compulsory admissions. The CPT also recommends that psychiatric establishments in Belgium, as in Denmark, should make less frequent use of patient immobilisation (between 120 and 180 days per year in Belgium, in some cases).

The mentally ill are too often ignorant of their rights (right of appeal and right to a private life, including the right to communicate with the outside world), and are vulnerable to abuse by unscrupulous family members.

It is thus all the more necessary to distinguish between admission and treatment, each of which requires a separate decision, the need for which must be certified by an independent medical authority that also assumes responsibility for periodic examination of the patient's condition.

If dysfunction in prisons and other establishments of detention is to be alleviated, the following will have to be rectified:

- Prison overcrowding (successive acts of violence between inmates, compounded by the transmission of infectious diseases), by having more frequent resort to other penalties;
- Excessive confinement to cells (as little as one hour of exercise per day);

¹ 'Le respect des droits fondamentaux: situation dans l'UE en 2002'. Joint report by FIDH-AE and FIDH, April 2003, p. 6.

² 'Le respect des droits fondamentaux: situation dans l'UE en 2002'. Joint report by FIDH-AE and FIDH, April 2003, p. 7.

- Excessive imposition of very long sentences;
- Excessive resort to preventive detention;
- General and medical staff shortages;
- Absence or inadequacy of regular review of the need to keep detainees in high-security facilities for years on end;
- Insufficient opportunities for work (and widely varying remuneration from one Member State to another), or for activity in general;
- Problems with the release of aged and seriously ill inmates;
- Situation of minors in closed establishments and sometimes even in adult prisons, whereas this should always be a solution of last resort;
- Too frequent de facto immunity of police and prison service members from prosecution.

Indeed, the most striking features of judgments handed down in cases of police and prison service dysfunction are arguably the slowness of the procedures followed, and the relative immunity that is usually available to State officials on the grounds of self defence, or the very mild penalties imposed compared with the seriousness of the acts committed.

Given the extent of these problems, consideration might well be given to setting up a European office responsible for collating best practice and enabling exchanges of information in this area between the different Member-State authorities responsible.

Prohibition of slavery and forced labour (Article 5)

Legal developments

(a) International conventions

- United Nations:

The Additional Protocol to the UN Convention on the elimination of all forms of discrimination against women¹, of 6 October 1999, has yet to be ratified by Belgium, Luxembourg and Sweden. In 2002, it entered into force in Germany, Greece, the Netherlands and Portugal. The United Kingdom is the only country which has neither signed nor ratified the protocol.

The International Convention on Organised Crime, which was open for signature until 12 December 2002, has yet to be ratified by the Member States.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography², adopted on 25 May 2000, has been signed by 13 Member States but has yet to be ratified; in 2002, it entered into force in Italy.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force in 2002 in Austria, Belgium, Denmark, Spain, Finland, Italy and Ireland.

¹ Ratifications: <http://www.unhchr.ch/pdf/report.pdf>

² Ratifications: <http://www.unhchr.ch/pdf/report.pdf>

ILO Convention No 182 on the worst forms of child labour¹, of 17 June 1999, has been ratified by all Member States; in 2002, Germany, Belgium and the Netherlands ratified.

- Council of Europe:

The European Convention on the exercise of children's rights² (STE 160), of 25 January 1996, entered into force on 1 July 2000 and was ratified in 2002 by Germany; it has yet to be signed by Austria, the United Kingdom, Belgium, Denmark and the Netherlands and has not been ratified by the following signatory states: Finland, France, Ireland, Italy, Portugal, Spain and Sweden.

The Convention on Cybercrime³ (STE 185), of 23 November 2001, has been signed by all Member states; no Member State has yet ratified it.

The Second Additional Protocol to the European Convention on mutual assistance in criminal matters⁴ (STE 182), which opened for signature on 8 November 2001, has been signed by a number of Member States - Belgium, Denmark, France, Germany, Greece, Ireland, the Netherlands, Portugal, Sweden and the United Kingdom - but has yet to be ratified, with the exception of Denmark, on 15 January 2003.

Recommendations of the Parliamentary Assembly of the Council of Europe

- Recommendation 1526 (2001) on a campaign against trafficking in minors to put a stop to the east European route: the example of Moldova.

Recommendations of the Committee of Ministers of the Council of Europe, adopted in 2002

- Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence

(b) European legislation 2002

European Union

- The Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)⁵, which Member States are expected to transpose into domestic law by 1 August 2004, stipulates that Member States must make punishable those acts resulting from trafficking in human beings where there is 'an abuse of authority or of a position of vulnerability which is such that the person has no real and acceptable alternative but to submit to the abuse involved' or acts committed for the purposes of labour exploitation or sexual exploitation⁶.

¹ Ratifications: <http://ilolex.ilo.ch:1567/scripts/ratifcf.pl?C182>

² Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=160>

³ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=185>

⁴ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=182>

⁵ OJ L 203, 1.8.2002, p. 1. The framework decision repeals Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children (OJ L 63, 4.3.1997, p. 2), insofar as it concerns trafficking in human beings.

⁶ See Article 1(1) of the framework decision. More specifically, such acts must be committed 'for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or

- Council Decision 2002/630/JHA of July 2002 establishing a framework programme on police and judicial cooperation in criminal matters (AGIS)

- Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union (OJ C 142, 14.6.2002).

'Information events on trafficking in human beings'¹

Reports adopted by the EP in 2002:

- 'Annual report on human rights in the world in 2001 and EU human rights policy' (Van Hecke A5-0106/2002)

- 'Area of freedom, security and justice: compensation to crime victims. Green Paper' (Roberta Angelilli, A5-0309/2002)

- 'Short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings' (Patsy Sørensen, A5-0397/2002).

(c) International conferences

European Conference on Preventing and Combating Trafficking in Human Beings, held on 19 and 20 September 2002 and organised by the IOM, the European Commission, the European Parliament and the Member States.

B. Overview of current situation

Trafficking in human beings is unacceptable and an affront to human dignity. It involves sexual or labour exploitation in conditions akin to slavery, and its victims are more often than not women, young girls and children. The divergent approaches taken by the Member States to tackle this problem call for action at European level comprising several types of measures;

- Measures of a legal nature

In relation to trafficking in human beings some major international conventions have yet to be ratified by all Member States (Belgium, Luxembourg and Sweden have still to ratify the Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, while Italy is the only Member State in which the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography has entered into force). Similarly, there has been no move to amend the 1961 Vienna Convention on Diplomatic Relations, which guarantees immunity from criminal jurisdiction for diplomats, in respect of cases in which domestic staff suffer violence or ill-treatment. Furthermore, there are still no plans to include sexual violence against women among the other grounds for persecution in the 1951 Geneva Convention. In this connection, mention should be made of the findings of a report drawn up in 2002 by the Council of Europe on

practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography'.

¹ http://europa.eu.int/comm/employment_social/equ_opp/news/traffick_en.htm

domestic violence¹, according to which domestic violence is the chief cause of death and invalidity among women between the ages of 16 and 44, ahead of cancer, road accidents and wars.

As regards legislation, most Member States do not yet have specific classes of offences adapted to take account of these forms of slavery.

- Enhanced cooperation

The EU would be better placed than the Member States to pursue an effective policy consisting of an exchange of information and the establishment of programmes of action in close cooperation with the various international players. A European database focusing specifically on missing persons who have fallen victim to trafficking in human beings could be established in conjunction with Europol and Interpol, with police and judicial cooperation in criminal matters (AGIS²) developed in support of the STOP programme against trafficking in human beings.

- Protection for victims

The vulnerability and needs of children ought to be better recognised at international and national level. New technologies could be employed to establish a list of children at risk from paedophiles and cybersex could be combated more effectively.

Identified victims ought to be assisted through the provision, as a minimum, of temporary residence documents to facilitate their reintegration and reduce the risks of their becoming victims again. Those victims who agree to cooperate with the legal authorities and testify against traffickers in court ought to be protected from possible reprisals. The use of DNA tests as evidence ought to be extended.

- Research into the root causes of sexual exploitation

Special poverty eradication programmes (measures on social protection, equal access to employment and lasting economic development), targeting primarily population groups including women and young girls in all countries of origin, transit and destination, ought to be implemented.

CHAPTER II: SAFEGUARDING FREEDOMS

Respect for private and family life (Article 7)

A. Legal developments

(a) International conventions:

- United Nations:

¹ Quoted by the European Women's Lobby, in its contribution to the European Parliament hearing of 24 April 2003.

² Framework programme on police and judicial cooperation in criminal matters (Grotius-Oisin).

The International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, already adopted by the EU Member States.

- Council of Europe:

The Convention for the Protection of Human Rights and Fundamental Freedoms¹ (STE 005) of 4 November 1950 (Article 8: Right to respect for private and family life), ratified by all EU Member States.

Article 1 of Additional Protocol No 7 to the European Convention on Human Rights, which provides for procedural safeguards relating to expulsion of aliens, has been ratified by only nine Member States (Austria, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg and Sweden).

(b) European legislation

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector – ‘Directive on privacy and electronic communications’ (see Article 8).

(c) European case law

In a number of judgments rendered in 2002², the European Court of Human Rights and the Court of Justice of the European Communities censured attacks by Member States on private and family life. They held that:

- the right of expulsion ought to be considered in relation to respect for family life;
- the rights of transsexuals ought to be viewed in the light of medical progress, through which it has been possible to assimilate individuals as closely as possible to the gender to which they feel they belong (right to marry);
- the withdrawal of parental authority (mental deficiency) ought to be considered in relation to the maintenance of the necessary links amongst siblings and between children and parents;
- the opening of a detainee’s mail or any type of surveillance not subject to specific regulations ought to be deemed to be in breach of Article 7.

B. Overview of current situation

Several Member States made progress in 2002. Germany, Luxembourg, Greece, Denmark and Finland amended their legislation or case law on the delicate issue of the balance between the right to the protection of the private life of a public figure and the public’s right to information.

¹ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=005>.

² Case [46544/99](#), [Kutzner v D](#) of [21/2/2002](#) - Case [56547/00](#), [P., C. and S. v UK](#) of [16/7/2002](#) - Case [37971/97](#), [Colas Est v F](#) of [16/4/2002](#) - Case [39393/98](#), [MG v UK](#) of [24/9/2002](#) - Case [37328/97](#), [A.B. v Netherlands](#) of [29/01/2002](#) - Case [56811/00](#), [Amrollahi v Denmark](#) of [11/7/2002](#) - Case [Armstrong v UK](#), of [16/7/2002](#), [Taylor-Sabori v UK](#), of [22/10/2002](#), [Allan v UK](#), of [5/11/2002](#)

The Netherlands, Finland and United Kingdom recognised the right of children born through artificial insemination and adopted children to know the identity of their biological parents.

Denmark, Italy and Belgium introduced new, less rigorous rules on removal and family reunification. Sadly, however, as regards family reunification only nine Member States have hitherto ratified Article 1 of Protocol No 7 to the European Convention on Human Rights.

The Netherlands and Italy also clarified their stance as regards the circumstances in which the means of surveillance of individuals are admissible. Lastly, it is unacceptable for a Roma caravan not to be recognised as a residence in certain cases (police violations).

In 2002 the German, UK and Netherlands Governments extended the scope of laws on the authorities' powers of investigation and surveillance¹.

Protection of personal data (Article 8)

A. Legal developments

(a) International conventions:

- United Nations:

The International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966 has been ratified by all EU Member States.

- Council of Europe:

The Convention for the protection of individuals with regard to automatic processing of personal data (STE 108) of 28 January 1981 has been ratified by all EU Member States.

The Additional Protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, regarding supervisory authorities and transborder data flows (STE 181), of 8 November 2001², has not been signed and ratified by Luxembourg and Spain; it has been signed by the Netherlands (on 12 May 2003), by Belgium (in 2002), and by Denmark, Finland, France, Greece, Ireland, Italy, Portugal and the United Kingdom; the Protocol has only been ratified by Sweden (2001), Germany (March 2003) and Austria.

Recommendation of the Council of Europe in 2002

Committee of Ministers:

Recommendation Rec(2002)9 on the protection of personal data collected and processed for insurance purposes

¹ Act relating to the Customs Criminal Office and Customs Investigation Offices of 16 August 2002 (Germany) Staatsblad 2002, 429 and 459 (Netherlands)
Police reform act of 15 September 2002 (UK).

² Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=181>.

(b) European legislation 2002

European Union

Council resolution of 28 January 2002 on a European approach towards a culture of network and information security.

Council Act of 28 February 2002, amending the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third states and third bodies.

Recommendation for a Council decision of 18 March 2002 on the protection of personal data collected and processed for insurance purposes.

Decision No 1247/2002/EC of the European Parliament, of the Council and of the Commission of 1 July 2002 on the regulations and general conditions governing the performance of the European Data-Protection Supervisors Duties.

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

Proposal for a Council framework decision on attacks against information systems (COM(2002) 173 of 19 April 2002).

Proposal for a Council decision adopting a multiannual programme (2003-2005) for the monitoring of eEurope, dissemination of good practices and the improvement of network and information security (MODINIS).

Adoption (JHA Council of 28 and 29 November 2002¹) of the recommendation on the development of 'terrorist profiles'. The aim is to identify terrorist targets and organisations and to collect data on the subject in cooperation with Europol.

Adoption (JHA Council of 19 December 2002) of a draft text aimed at guaranteeing protection of racial, political and religious information: this information will only be supplied when strictly necessary and under state supervision.

On 13 June 2002 the Council amended the provision supplementary to the Europol Convention, i.e. the Council Act of 12 March 1999 governing the transmission of personal data by Europol to third states and third bodies.

EP reports adopted in 2002:

- 'Electronic communications: processing of personal data and protection of privacy' (Marco Cappato, A5-0130/2002).

¹ JHA Council of 28 and 29 November 2002, doc. 14817/02 (Presse 875), Annex II, p. 21. Strangely, this recommendation does not appear in the summary of conclusions.

(c) Case law

European Court of Human Rights

The Court¹ found that, as the applicant had not had full access to his records, which contained the principal sources of information regarding significant periods of his formative years, the respondent state should be condemned for failure to fulfil the positive obligation to protect the applicant's private and family life in respect of his access to his records.

(d) Conferences:

Cardiff International Conference (9-11 September 2002)² on the protection of personal data. The declaration adopted at the end of the Conference states that systematic and compulsory storage of data relating to the use of all means of telecommunication for a period of one year or more is a disproportionate and unacceptable measure.

B. Overview of current situation

Spain and the Netherlands are also looking into new regulations on the conditions governing the use of DNA tests in criminal inquiries.

In contrast, Belgium's published plan³ for computer records of tenants who have defaulted on their rent with a view to protecting lessors is questionable.

The Netherlands, Sweden⁴ and Portugal⁵ have adopted legislation on the use of video surveillance equipment in public places and at work.

The French Council of State⁶ has facilitated access to personal data contained in the Schengen information system. The persons concerned may now have direct access to certain data provided they do not pose a threat to state security, defence or public safety.

In 2002 a major issue for the European institutions was the transmission of personal data to the United States. The problem, to which no definitive solution has yet been found, is to determine how to ensure that the transmission of such data does not result in a violation of the privacy of the people concerned.

The Article 29 Data Protection Working Party delivered an opinion⁷ on the compatibility of the obligation thus imposed on airlines by the US authorities with Directive 95/46/EC of 24 October 1995. Its opinion concludes that the personal data whose transmission is required (PNR) goes beyond the conditions that are strictly necessary for identifying persons.

¹ Case of MG v UK No 39393/98 of 24 September 2002.

² http://europa.eu.int/comm/internal_market/en/dataprot/wpdocs/wp64_it.

³ National Union of Property Owners plan of November 2002.

⁴ Decision of Parliament of 31 January 2002.

⁵ Recommendations adopted by the Data Protection Authority.

⁶ Moon Sun Myung ruling of 6 November 2002.

⁷ Opinion No 6/2002 of 24 October 2002.

Generally speaking, the protection of personal data within the EU is insufficient because existing directives have yet to be transposed in all Member States and, moreover, do not cover unwarranted surveillance measures adopted by the State on grounds of public security or in criminal matters¹.

Freedom of thought, conscience and religion (Article 10)

A. Legal development

(a) International conventions:

- Council of Europe

The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (STE 005) of 4 November 1950 (Article 9: Freedom of thought, conscience and religion).

(b) Case law

In 2002, the European Court of Human Rights delivered a judgment (Agga case) concerning Greece, which specifies a number of important points on the scope of the right to manifest one's religion². Mr Agga was elected by local believers as Mufti of Xhanti. When the Greek State proceeded to appoint another Mufti, Mr Agga refused to step down. Criminal proceedings were brought against him on the basis of Articles 175 and 176 of the Penal Code for having usurped the functions of a minister of a "known religion". The European Court considered that Mr Agga's conviction amounted to an interference with his right under Article 9 of the Convention, "in community with others and in public (...), to manifest his religion (...) in worship [and] teaching". In the Court's view, punishing a person for merely presenting himself as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society. In the absence of any "pressing social need" justifying the conviction, the Court found Article 9 of the Convention to be violated.

In another case concerning Greece, the European Court of Human Rights declared inadmissible the applications by four Greek nationals who considered that the prohibition of any reference to religion in identity cards, even on an optional basis, was incompatible with religious freedom³.

(c) International conferences

- Seminar on 'Human rights, culture and religion: convergences or conflicts?', organised by the Council of Europe Commissioner for Human Rights, Louvain-la-Neuve, 9-10 December 2002.

¹ See Directive 59/46/EC and Directive 97/66/EC.

² Eur. Court of HR, judgment *Agga (2) v. Greece* (application No 50776/99 et al.) of 17 October 2002.

³ Eur. Court of HR, decision of 12 December 2002 on admissibility of applications Nos. 1988/02, 1997/02 and 1977/02 submitted by V. Sofianopoulos, K. Spaidiotis, G Metallinos and S. Kontogiannis.

- Annual Report on International Religious Freedom (2002/03/05). This report contains an introduction, an executive summary, and a chapter describing the status of religious freedom in each of 195 countries throughout the world. Mandated by, and presented to, the U.S. Congress¹.

B. Overview of current situation

(a) Religion

During his visit to Greece (2-5 June 2002), the Council of Europe Commissioner for Human Rights raised the issue of respect for religious freedom and belief with the authorities. While noting that some progress had been made and that Orthodoxy was the dominant religion (97%), Mr Gil Robles expressed the wish that the criminal law on proselytism be repealed and that the Muslim population which has now grown as a result of the high rate of immigration be granted authorisation to build an official mosque in Athens and to have access to a cemetery to bury their dead according to their religious tradition. It should also be added that Greece is the only EU country in which cremation is prohibited.

(b) Specific issues (wearing of headscarf; ritual slaughter)

Dress continued to be a major issue in a number of Member States. In Belgium, the Committee for Equal Opportunities for Men and Women issued Opinion No 54 of 13 September 2002, which considers that a distinction should be made according to whether the wearing of the headscarf is the expression of a personal choice or the manifestation of oppression by the environment of origin. In the latter case, the public authorities should provide effective aid. It is, however, in the context of employment that the issue of wearing religious insignia has manifested itself on several occasions in Germany and Belgium, where the employers were required by the courts to respect the Muslim employees religious freedom. In Sweden, several similar cases of discrimination due to the growing climate of intolerance and negative attitudes in society have been referred to the Ombudsman.

The issue of the ritual slaughter of animals has also caused some controversy in relation to animal protection and been tackled in different ways. (Prohibition on Luxembourg territory, while permission is granted in Germany).

(b) Monitoring sects

The conduct of certain sects can prove dangerous for their followers, and for children in particular, as the 2002 FECRIS² congress in Barcelona highlighted. The activities of certain sects stop children from attending school (there are 5000 children outside the school system in France). Being part of a sect can have serious psychological repercussions for children; for instance, they may form a dichotomous view of the world, lose contact with their family environment and be exposed to dangers to their physical health (no inoculations, under-nourishment, precarious living conditions imposed by the group and the Guru's recommendations regarding diet and length of sleep).

¹ Website: <http://www.state.gov/g/drl/rls/irf/2001/>

² European Federation of Centres of Research and Information on Sectarianism. <http://griess.st.at/gsk/fecris.htm>

FECRIS also established an extremely worrying link between sects and child pornography. It mentions, in this connection, the International Centre for the Dignity of the Child (CIDE), which pointed out, at the aforementioned Congress, that 'sects have many features in common with the sex abuse issue'¹ and referred in this context to paedophilic video cassettes seized in France from the 'Children of God' sect. According to FECRIS, sects in Italy inflict abuse, torture and ritual killings on youngsters – all forms of crime against children².

(d) The status of conscientious objectors

In Greece, the length of alternative civilian service continues to be punitive and discriminatory in nature. Applicants for conscientious objective status complain of delays in the processing of requests (see AI 2002 report, pp 178 and 191). The same was noted by Commissioner Gil Robles during his visit to Greece in 2002, when he asked the authorities to cut the alternative service to a fair length and to transfer administrative responsibility for recognition of conscientious objector status from the Ministry of Defence to an independent civilian public service. As is pointed out by AI, the current law does not comply with international standards since the alternative service is discriminatory and punitive, some 20 conscientious objectors risk facing prison sentences for having publicly denounced the law or for trade union activity.

Finland

AI also calls on the Finnish authorities to make provision for a genuine civilian service which is not punitive for conscientious objectors. At present, conscientious objectors must complete an alternative civilian service of 362 days, which is more than twice what is required of the other recruits under the new legislation.

Freedom of expression and information (Article 11)

Freedom of expression, one of the main factors underpinning a properly functioning democracy, is encountering an increasing number of obstacles within the EU itself.

At the EP public hearing of 24 April 2003 on fundamental rights, two guests, the journalist Gérard Saint Paul (Arte) and the television presenter Mr Magloire, gave their views on freedom of expression and young people's sensitivity to political issues. According to Gérard Saint Paul, freedom of expression requires the written press and broadcasting media to 'print everything' and 'say everything'. Although there is no censorship as such, self-censorship is still practised. Freedom of expression must not be subjected to security considerations and the fight against terrorism cannot justify abuses in this area. Unless there is a strong European counterbalance, a clash of cultures will become inevitable. Information is as vital as bread in any democracy. Magloire referred to young people's capacity for action in response to serious political developments (in particular against the 'Front National' in France before the second round of the presidential election). Young people genuinely see themselves as citizens of Europe, but they totally lose interest in public life if there is nothing to motivate them.

¹ CIDE, International Centre for the dignity of the child, address at the Barcelona Congress held by FECRIS in May 2002.

² Report by the Vice-Chairman of the Italian member association of FECRIS, quoted in the document distributed at the EP hearing of 24 April.

A. Legal developments

(a) International conventions

- Council of Europe:

The European Convention on Transfrontier Television of 5 May 1989¹ (STE 132) was ratified in 2002 by Portugal. Belgium, Denmark and Ireland have not signed, and Greece, Luxembourg, the Netherlands and Sweden have only signed.

The Protocol amending the European Convention on Transfrontier Television² (STE 171) of 1 October 1998 entered into force on 1 March 2002. It entered into force in 2002 in Austria, Finland, France, Germany, Italy, Spain and the United Kingdom. It has yet to be signed by Belgium, Denmark, Greece, Ireland, Luxembourg, the Netherlands, Portugal and Sweden.

The European Convention for the Protection of the Audiovisual Heritage³ (STE 183) was signed in 2002 by France (on 14 March 2002) and Austria (on 5 June 2002).

The Protocol to the European Convention for the Protection of the Audiovisual Heritage, on the protection of television productions⁴ (STE 184), of 8 November 2001, was signed in 2002 by two other Member States (Austria, on 5 June 2002 and France, on 14 March 2002). However, it has not been ratified by the Member States.

The Convention on Cybercrime⁵ (STE 185) of 23 November 2001 has been signed by all the Member States. Ireland signed in 2002⁶ and Luxembourg in 2003⁷. None of the Member States have yet ratified.

The Additional Protocol to the Convention on Cybercrime was signed on 28 January 2003 and nine Member States have already ratified: Austria, Belgium, Finland, France, Germany, Greece, Luxembourg, the Netherlands and Sweden.

Draft Declaration on the freedom of communication on the Internet⁸, drawn up by the Group of Specialists on On-Line Services and Democracy, 15 October 2002.

Recommendations of the Council of Europe

Committee of Ministers:

¹ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=132>.

² Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=171>.

³ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=183>.

⁴ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=184>.

⁵ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=185>.

⁶ On 28 February 2002.

⁷ On 28 January 2003.

⁸ <http://www.humanrights.coe.int/media/documents/Draftdeclaration.rtf>.

Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, adopted on 21 February 2002.

Recommendation Rec(2002) 7 of the Committee of Ministers to member states on measures to enhance the protection of the neighbouring rights of broadcasting organisations.

(b) European legislation 2002

European Union

Proposal for a Council decision adopting a multiannual programme (2003-2005) for the monitoring of eEurope, dissemination of good practices and the improvement of network and information security (MODINIS). Commission proposal: COM(2002) 425 of 26 July 2002.

Commission communication of 28 May 2002 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – Action Plan eEurope 2005: an information society for all¹.

Reports adopted by the EP

‘eEurope 2002: accessibility of public websites’, rapporteur: Bastiaan Belder A5-0147/2002.

‘Insider dealing and market manipulation (market abuse)’, rapporteur: Robert Goebbels A5-0343/2002.

‘European Parliament resolution of 20 November 2002 on media concentration’

(c) Case law 2002

- European Court of Human Rights:

The Court delivered a number of judgments on freedom of expression².

(d) International conferences

Regional conference on defamation and freedom of expression, Strasbourg, 17-18 October 2002.

On 30 September and 1 October the Council of Europe held a conference in Luxembourg on the media in a democratic society. Issues included the protection of journalists’ sources, the limits of freedom of expression under Article 10 of the ECHR and reconciling presumption of innocence with freedom of expression³.

In the EP, the Group of the Greens and the European Free Alliance held a conference on 30 November 2002 on ‘the media, power and democracy’.

¹ COM(2002) 263 final – Not published in Official Journal.

² Case of *Krone Verlag GmbH & co KG v Austria* of 26 February 2002 – Case No 28525/96, *Unabhängige Initiative Informationsvielfalt v Austria* of 26 February 2002 – Case No 29271/95 *Dichand v Austria* of 26 February 2002 – Case No 31611/96, *Nikula v Finland* of 21 March 2002 – Case No 37928/97, *Stambuk v Germany* of 17 October 2002 – Case No 51279/99, *Colombani and others v France* of 25 June 2002.

³ <http://coe.int/T/E/Communication> and Research/Press/events/6.

B. Overview of current situation

Media concentration

The media in all their shapes and forms cannot be considered from the purely economic point of view as ordinary goods and services. In 2002 it fell to the Council of Europe to warn against oligopolies in which the media amounted to nothing more than stepping stones to power.

The concentration of media power in the hands of a small number of massive consortia is alarming. (Take, for example, the situation in Italy, where the head of government is in charge of supervising the RAI group while also being the owner of the country's leading private media consortium¹.) In its resolution of 20 November 2002 the European Parliament to the view that, in the light of developments in the commercial media sector and the development of new technologies, a European media market should be established to counteract a growing disparity in national rules. It called on the Commission:

- to launch a broad consultation process with a view to drawing up an updated Green Paper by the end of 2003,
- to contemplate introducing, by the end of 2005, a European-level regulatory framework such as a specific framework directive to safeguard freedom of expression and encourage cultural diversity,
- to submit to the European Convention on the Future of Europe an appropriate proposal so that the principle of freedom of the media may be given a stronger basis in the future treaty.

These European regulations ought to cover both the Internet and cable networks, apply to network operators and to network access, and provide for preventive monitoring of concentrations. Lastly, the vital role played by independent media regulators has been more than adequately demonstrated, even though several Member States still do not have them².

Other obstacles to freedom of expression

Over and above the overall problem of economic and political independence of the media, a number of other obstacles should be highlighted. These include:

- Violence against journalists

Violence against journalists working to highlight issues of public interest, instances of corruption or abuses committed by the public authorities is worrying. Such acts of violence take the form of police brutality or, most frequently, violence by extremist groups; particularly in Spain newspaper groups have been attacked by the terrorist organisation ETA. In the annual report on Spain of reporters without borders 2002 reference is made to the terror campaign conducted by the ETA in the Basque region of Spain and in the rest of Spain. Within a few days one journalist was killed and another seriously injured..

¹ Mediaset.

² See also the European Audiovisual Observatory. Set up in 1992, this centre gathers and circulates information on the audiovisual industry in Europe. It includes 33 Member States and operates within the legal framework of the Council of Europe.

- The media and the right to a fair trial

The relationship between the right to information and the right to a fair trial has become increasingly blurred. The media coverage of certain indicted individuals is a matter for concern, and press campaigns can interfere with the right to a fair trial.

Owing to the disparities in national legal traditions, it is difficult to envisage a single model for Europe. The presumption of innocence and freedom of information are competing rights between which a satisfactory balance has yet to be struck.

- Ethics and self-regulation

Useful steps include the establishment of a code of good practices, readers panels, involvement in editorial work and greater independence for journalists vis-à-vis internal and external pressures. Discussions should be held between journalists themselves regarding the deterioration in the quality of media content. Journalistic ethics should respect three principles: respect for the truth, the need for independence and an awareness of the possible consequences of texts published. The conscience clause is an important right in this area. Discussions could also deal with co-regulation, which is a form of self-regulation backed up by legal sanctions. On 24 October 2002 the EP adopted a resolution on insider dealing and market manipulation (market abuse)¹. This resolution concerns the press insofar as it concludes that market abuse may be caused by the dissemination of false or misleading information. It calls for the information to be presented fairly and for journalists to mention their interests or any conflicts of interest.

- Protection of sources

The last obstacle to freedom of expression is that of the increasingly frequent attacks on the right of confidentiality, which does not enjoy adequate protection. Journalistic quality can suffer as a result. Obstacles continue to emerge above all in the field of justice, including obligations on the media to hand over films as evidence of serious crimes and reporters being summoned to testify in court. However, in 1996 the European Court of Human Rights had already established that the protection of sources forms an integral part of the freedom of expression as defined in Article 10.

Freedom of assembly and of association (Article 12)

A. Legal developments

(a) International conventions

- United Nations

International Labour Organisation (ILO) Conventions No 11² concerning the rights of association and combination of agricultural workers of 12 November 1921 and No 87³

¹ A5-0343/2002 – Rapporteur: Robert Goebbels, 9359/6/2002 – C5-0384/2002.

² Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=163>

³ Ratifications: <http://www.ilo.org/ilolex/en/docs/declworld.htm>

concerning freedom of association and protection of the right to organise of 9 July 1948 have been ratified by the EU Member States.

- Council of Europe

The revised European Social Charter of 3 May 1996¹ (STE 163) stipulates (Article 5) that: ‘All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests’. In 2002 it was ratified by Finland² and Portugal³, and signed by Austria, Belgium, Denmark, Greece, Luxembourg, Spain and the United Kingdom. It has yet to be signed and ratified by the Netherlands and Germany.

(b) European legislation 2002

European Union

On 5 June 2002 the Commission presented three communications on improving the legislative process under the Community pillar and in the area of justice and home affairs. One of the proposals is entitled ‘Towards a reinforced culture of consultation and dialogue – proposal for general principles and minimum standards for consultation of interested parties by the Commission’ (COM(2002) 277).

Community Charter of Fundamental Social Rights for Workers

Under Article 11 of the Community Charter of Fundamental Social Rights for Workers, employers and workers of the European Community have the right of association in order to constitute professional organisations or trade unions of their choice for the defence of their economic and social interests. It is explicitly stipulated that every employer and every worker has the freedom to join or not to join such organisations without any personal or occupational damage being thereby suffered by him.

(c) Case law

European Court of Human Rights

In the case of Wilson a.o. v UK⁴, the Court held that the granting of wage benefits to a journalist, provided he accepted that his trade union no longer be recognised by the employer, was contrary to Article 11 of the ECHR.

B. Overview of current situation

- The right to organise

¹ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=163>

² On 21 June 2002.

³ On 30 May 2002.

⁴ Case No 30669/96 of 2 July 2002.

The right to organise (Article 5 of the Social Charter) is not observed in Austria or Luxembourg, where foreigners and non-nationals are banned from standing for election to works councils. The negative right to organise – the obligation to join a union in order to benefit from priority hiring – also breaches the Charter. This de jure or de facto union monopoly survives in Ireland, the Netherlands (printing sector), Sweden and France (CGT book industry union).

- Freedom of peaceful assembly

Following the frequent large-scale demonstrations during international summits, several Member States were tempted to control such demonstrations (in Finland, proposal to ban the wearing of hoods and masks; in Ireland, Luxembourg and Belgium, bill to authorise the setting up of private militia).

- Banning of political parties

In Germany proceedings are in progress before the Federal Constitutional Court to ban the right wing of the German National Democratic Party. Similarly, in Spain (see above, Article 2), Organic Law No 6/2002 of 27 June 2002 provides for the suspension of political parties which systematically violate democratic principles. This law does in fact comply with the principles governing freedom, democracy, respect for human rights and fundamental freedoms and the rule of law. In France the ‘Unité radicale’ movement, of which the perpetrator of the attempted attack on Jacques Chirac on 14 July 2002 is a member, has been dissolved.

Right to education (Article 14)

A. Legal developments

Council of Europe

Article 10 of the revised European Social Charter¹ (STE 163) of 3 May 1996 lays down the right to vocational training. It was ratified in 2002 by Finland² and Portugal³, and has been signed by Austria, Belgium, Denmark, Greece, Luxembourg, Spain and the United Kingdom. However, it has yet to be signed and ratified by the Netherlands and Germany.

Recommendations of the Committee of Ministers.

R(2002)6 of 15 May 2002 on higher education policies on lifelong learning.

R(2002)12 of 16 October 2002 on education for democratic citizenship.

European Union

¹ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=163>

² On 21 June 2002.

³ On 30 May 2002.

Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council of 27 June 2002, regarding the framework of European cooperation in the youth field¹.

Tempus II programme 2002-2006² whose aim is to promote the development of higher education systems in the eligible countries through the most balanced cooperation possible with partners from all the Member States of the Community.

Leonardo da Vinci (phase II) 2000-2006 'for a Europe of knowledge'.

B. Overview of current situation

(a) Effective schooling for all

It is vital that we guarantee a minimum level of proper, free education is available to all. However, this guarantee does not extend to children from very poor families who cannot pay for transport, school meals or schoolbooks, to children from certain Roma communities (owing to parking restrictions), or to children of refugees³.

(b) European dimension of education

The Commission has successfully instituted a number of school and university exchange programmes. This European dimension to education must be encouraged but must also receive adequate funding if it is to remain accessible (given the current trend towards grant cuts), and thus prevent us from ending up with a two-speed education system.

Right to asylum (Article 18)

A. Legal developments

(a) International conventions

- United Nations

The Geneva Convention of 28 July 1951 relating to the status of refugees and protocol of 31 January 1967

The Convention relating to the status of stateless persons⁴ of 28 September 1954: in 2002 it had yet to be ratified by two Member States (Austria and Portugal).

¹ OJ C 168, 13.7.2002, pp. 2 – 5.

² OJ L 120, 8.5.1999.

³ The 80 000 reported cases of absenteeism in France in 2002 led to 58 000 warnings and 2 900 suspensions of family allowance payments.

⁴ http://www.unhchr.ch/html/menu3/b/o_c_sp.htm

The Convention on the reduction of statelessness¹ of 30 August 1961 had yet to be ratified by a number of Member States in 2002 (Spain, France, Finland, Greece, Italy, Luxembourg and Portugal).

The Convention against torture and other cruel, inhuman or degrading treatment or punishment² of 10 December 1984 has yet to be ratified by Ireland.

The International Convention on the protection of the rights of all migrant workers and members of their families of 18 December 1990.

The third annual report of the United Nations' Special Rapporteur on the Human Rights of Migrants E/CN.4/2002/94.

The resolutions of the Commission on Human Rights on the human rights of migrants (2002/62), the protection of migrants and their families (2002/59) and violence against women migrant workers (2002/58).

- Council of Europe

Recommendations of the Committee of Ministers

- Recommendation Rec(2002)4 of 26 March 2002 on the legal status of persons admitted for family reunification
- Guidelines on human rights and the fight against terrorism, 11 July 2002 (Section XII)

(b) European legislation 2002

European Union

Green Paper on a Community return policy on illegal residents (COM (2002)175)
Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States (OJ L 31, 6/2/2003, p. 18).

Reports adopted by the EP in 2002 :

'Member State responsible for examining an asylum application lodged by a third-country national' (Luís Marinho, A5-0081/2002), 'Action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)' (Arie M. Oostlander, A5-0085/2002), 'Gradual abolition of checks at the common borders' (Von Bötticher- A5-0078/2002), 'Minimum standards for the qualification and status of third-country nationals and stateless persons as refugees' (Jean Lambert A5-0333/02), 'Directive laying down minimum standards on the reception of applicants for asylum' (Jorge Hernandez-Mollar, A5-0112/2002), 'Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment' (Anna Terron I Cusi)

¹ http://www.unhchr.ch/html/menu3/b/o_reduce.htm

² <http://www.unhchr.ch/pdf/reportfr.pdf>

c) International conference

53rd session of the HCR Executive Committee

In order to reduce the flow of economic and illegal immigrants, the UNHCR is stressing the role of democracy clauses in trade agreements and development measures, as well as aid towards the reintegration of such categories of immigrants. According to the broad lines defined by the High Commissioner, the 'Convention Plan' would provide for special agreements that were binding or at least required a commitment from the signatory countries to ensure more effective and foreseeable responses to massive influxes of refugees and to achieve a more even distribution of the development aid burden and promote self-sufficiency of refugees and repatriated persons (Repatriation, Reintegration, Rehabilitation and Reconstruction). Finally, the UNHCR regrets the limited nature of European funding for his budget.

B. Overview of current situation

In 2002 the EU adopted several acts that constitute the first steps towards a common immigration policy (directives on minimum standards on the reception of asylum applicants and on refugee status, the Dublin II Regulation and the directive on reuniting families).

That said, frequently these acts have only been adopted on the basis of the lowest common denominator. Consequently:

- asylum applicants' rights are limited (the host country is obliged to provide them with an adequate standard of health and adequate means of subsistence, they have access to a very limited range of jobs and families can only be reunited where the means exist);
- the right to family reunification applies solely to the immediate family and children aged under 12;
- the Dublin II Regulation is first and foremost a means of combating illegal immigration and 'asylum shopping' (after one year responsibility for assessing an asylum application falls to the most recent Member State of residence). In most Member States the approval rate for asylum applications is very low, a trend which is liable to be reinforced by the concept of safe third countries which could lead, as pointed out by the FIDH, to a restrictive interpretation of the responsibility of Member States in the field of asylum policy and shift the burden to third countries¹

The danger highlighted by the HCR is that those states most capable of taking responsibility for examining asylum requests may further restrict access to their territory and their procedures. This is illustrated by the aforementioned recent extremely restrictive laws. The UNHCR is also concerned, in connection with the fight against terrorism, at the risk of excessive use of the clause ruling out the right of asylum for applicants who have committed serious offences or crimes prior to their arrival in the host country (Article 1(F) of the Convention). The High Commissioner's office considers the accelerated procedures to be inadequate in such cases since they do not leave any possibility of checking the serious nature of the offence or assessing the relationship between the offence and the consequences of exclusion for the asylum seeker. In

¹ 'Le respect des droits fondamentaux : situation dans l'UE en 2002'. Joint report by FIDH-AE and FIDH, April 2003, p. 19.

ECRE's view, even membership of a terrorist network is not, in itself, sufficient reason to refuse an application for asylum. Especially if it has not even been proved that terrorist acts have been committed or that the applicant intended to commit such acts.

The last of these acts to be adopted by the Council in 2002 – the directive on the minimum standards for procedures for granting and withdrawing refugee status – is of prime importance. It should provide an opportunity for laying down vital safeguards, i.e. a broad interpretation of refugee status (persecution by the State or by non-State agents); the distinction between issues of admissibility and of substance; a thorough interview between the asylum seeker and a qualified person; the existence of the right to judicial remedy and to appeal; and legal assistance.

Lastly, the serious situation of unaccompanied asylum-seeking minors should be pointed out. In Austria, asylum-seeking minors under the age of 14 can be detained for up to six months; in Belgium, an unaccompanied five-year-old Congolese girl was detained for two months in a closed centre entirely unsuited to a child of her age; in Italy and Sweden unaccompanied minors are repatriated without being consulted or properly questioned about any abuse they may have suffered.

Overall, as pointed out by the UNHCR, the asylum situation did not change fundamentally in 2002 and the conditions for asylum seekers even worsened in some respects. According to the UNHCR, the trend recorded in 2002 in all the Member States was towards a growing number of detentions of asylum seekers, often on the basis of discriminatory criteria.

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

A. Legal developments

International conventions

- United Nations

The Convention against torture and other cruel, inhuman or degrading treatment or punishment¹ of 10 December 1984 (not yet ratified by Ireland) stipulates that no State party may expel, return or extradite a person to another State where he risks being submitted to torture (Article 3).

The International Convention on the protection of the rights of all migrant workers and members of their families (Article 22(1)): 'Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually'.

- Council of Europe

Protocol No 4² (STE 046) to the ECHR of 16 September 1963, has yet to be ratified by several Member States (Greece, Spain and the United Kingdom).

¹ <http://www.unhcr.ch/pdf/report.pdf>

² <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=046>

Protocol No 7 to the ECHR¹ (STE 117), of 22 November 1984, has yet to be ratified by several Member States (Germany, Belgium, Spain, The Netherlands, Portugal and the United Kingdom).

The additional Protocol to the European Convention on extradition² (STE 086), of 15 October 1975, has yet to be ratified by Austria, Finland, France, Germany, Greece, Ireland, Italy and the United Kingdom.

European Social Charter, Article 19(8)

Recommendations of the Parliamentary Assembly

- Recommendation 1577 (2002) of 23 September 2002³ on creation of a Charter of intent on clandestine migration
- Recommendation 1547 (2002) of 22 January 2002 on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity

B. Overview of current situation

Current EU expulsion practices are a matter of great concern because they all too frequently violate both the law and human dignity.

a) Expulsions in breach of legal provisions

- owing to an absence of relevant grounds

In the view of the European Committee of Social Rights (ECSR) the laws on the expulsion of migrant workers in Luxembourg (insufficient means of subsistence) and in Spain contravene the Social Charter⁴. Likewise, the Committee has also deemed incompatible with the Charter the automatic expulsion of family members of an deported worker, since individual family members who have benefited from family reunification enjoy the right to remain in the country concerned (Netherlands).

- owing to failure to observe procedure

Expulsions are often carried out under fast-track procedures before a verdict has been given on appeal procedures or before the relevant application has even been looked into. Such is the case in Spain (where immigrants without papers are expelled immediately), and in Greece (where immediate return is practised)⁵. In Italy, Austria and Sweden individuals were expelled in 2002

¹<http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=117>

²<http://conventions.coe.int/treaty/EN/searchsig.asp?NT=086>

³ See Doc 9522, report of the Committee on Migrations, rapporteur Mr Wilkinson

⁴ 2002 report on the occasion of the 40th anniversary of the Social Charter.

⁵ In a 2001 recommendation the Council of Europe Commissioner for Human Rights condemned the practice of turning people back 'at the arrival gate'.

without the right of appeal and with no assessment having been made of the risks they might incur as a result¹.

- collective expulsions

Although a number of conventions² prohibit them, collective expulsions are becoming more widespread and are frequently used in some Member States. (According to the ECHR, collective expulsions would only be admissible if the situation and asylum application of each deportee had been assessed individually in line with existing procedure. All too frequently, this is far from being the case).

In her latest report (E/CN.4/2002/94) published on 15 February 2002, the United Nations Special Rapporteur on the Human Rights of Migrants refers to the expulsion from Spain of two Nigerian women, whose babies, entrusted to acquaintances, remained in Spain. These women were apparently unable to appeal against the expulsion order as they were expelled on the same day³. In the same report, the Rapporteur points to the large number of Moroccan children who were expelled from the autonomous city of Melilla to Morocco and handed over to the police.

b) Expulsions in violation of human dignity

In 2002, expulsions of this nature in France and Germany led to the death of several individuals from asphyxia in transit⁴.

Urgent steps must be taken to enforce the recommendations adopted by the Parliamentary Assembly of the Council of Europe on expulsion procedures in conformity with human rights, namely:

- appointing a group of experts to draw up a code of good conduct and establishing independent monitoring systems for expulsion procedures;
- introducing a complete ban on a number of dangerous practices (partial or total obstruction of the respiratory tract, the use of gags or stun gas, the administration of tranquillisers, etc.) and training the staff responsible for enforcing expulsions;
- limiting the length of detention in waiting zones, restricting prison detention to those who represent a recognised danger, and developing voluntary repatriation programmes.

(c) Readmission agreements

In his report⁵ on the readmission agreement signed by the European Community and the Government of Hong Kong – the first of its type –, the rapporteur, Mr Graham Watson, focuses

¹ Mention should be made here of the progress that might be achieved with the ban on the expulsion of a long-term resident, except where there is a serious threat to public order, contained in Article 13 of the Commission proposal on the status of third-country nationals who are long-term residents.

² Article 19 of the Social Charter; Article 4 of Protocol No. 4 to the European Convention on Human Rights; and the ILO Convention on migrant workers' rights, which recently came into force.

³ According to SOS Racisme, 37 Nigerians were expelled from Spain in 2001 without their cases having been examined individually (2002 report).

⁴ In its 2002 report, Amnesty International mentions the case of Ricardo Barrientos, an Argentine national who died during his expulsion from France.

⁵ Report on Council Decision on the signing of the Agreement between the European Community and the

on the problem raised by Article 16 of the agreement. This ‘non-affection clause’ states that ‘this Agreement shall be without prejudice to rights, obligations and responsibilities arising from international law applicable to the Community, the Member States and the Hong Kong SAR’, but it does not refer explicitly to the relevant instruments of international law, which considerably weakens its impact.

This is also criticised by the HCR, which condemns the absence of reference to the Geneva Convention¹.

The EP report also raises other questions relating to the monitoring mechanisms which the Commission and Council intend to apply in order to ascertain whether these rights are respected in the event of readmission.

CHAPTER III: IN SUPPORT OF EQUALITY

The principle of non-discrimination (Article 21)

1. Combating racism and xenophobia

A. Legal developments

(a) International conventions

- United Nations

On 26 February 2000, at the end of the proceedings of its 56th session, the General Assembly’s Social, Humanitarian and Cultural Committee approved four draft resolutions on racism and racial discrimination.

Austria accepted the application of Article 14 of the Convention on the Elimination of all Forms of Racial Discrimination (system for lodging complaints to the Committee).

- Council of Europe

The European Convention on Nationality² (STE 166) was ratified by Denmark³ and signed by Germany⁴ but has not yet been ratified by Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Spain and the United Kingdom.

The Convention on Cybercrime⁵ (STE 185) was adopted on 8 November 2001 and was opened for signature on 23 November 2001. It has been signed but not ratified by Austria, Belgium,

Government of the Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorisation.

¹ Mentioned in the FIDH report supplied at the EP hearing of 24 April 2003.

² Ratifications: <http://conventions.coe.int/Treaty/EN/seraching.asp?NT=166>.

³ On 24 July 2002.

⁴ On 4 February 2002.

⁵ Ratifications: <http://conventions.coe.int/Treaty/EN/seraching.asp?NT=185>.

Finland, France, Germany, Greece, Ireland (in 2002), Italy, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Denmark and Luxembourg¹.

On 14 February 2002 the PC-RX Committee of Experts published a preliminary draft first additional protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Protocol No 12 to the ECHR² (STE 177) providing for a general prohibition of all forms of discrimination, has not yet been signed by Denmark, Spain, France, Sweden and the United Kingdom and has not been ratified by any Member State.

Recommendations of the Committee of Ministers

- Resolution of the Committee of Ministers Res(2002)8 on the Statute of the European Commission against Racism and Intolerance (ECRI)
- ECRI Programme of action on relations with civil society, adopted on 20 March 2002

Parliamentary Assembly

- Draft recommendation of 10 January 2003 on the use of sign languages

(b) European legislation 2002

- Proposal for a decision of the European Parliament and of the Council of 22 March 2002 amending Decision No 276/1999/EC. This decision includes a multiannual Community action plan up to December 2004 on promoting safer use of the Internet by combating illegal and harmful content and actions, including racism and violence, on global networks;
- Commission communication (COM(2002) 152) of 22 March 2002. Continuation of the multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks.

EP reports adopted in 2002:

- Combating racism and xenophobia: report on Council framework decision for the approximation of laws and closer cooperation (Ozan Ceyhun, A5-0189/2002)

(c) Case law

- Court of Justice of the European Communities

In 2002 the Court ruled against Italy in a case concerning discrimination on grounds of nationality³. Although the provision of the Italian highway code requiring an offender from a different Member State to pay a penalty is not in itself open to criticism, the amount of that penalty should not discriminate against non-nationals.

¹ The last two recently – 22 April 2003 and 28 January 2003.

² Ratifications: <http://conventions.coe.int/Treaty/EN/seraching.asp?NT=177>.

³ Case C-224/00, Commission v Italy, 19 March 2002.

- European Court of Human Rights

- Case of Wessels-Bergervoet v NL¹

The Court noted that Dutch law does not prohibit a married man like the applicant from accumulating pension entitlements. Moreover, as in 1989 he received an old-age pension 38% lower than that which a married man in the same situation would have received, the Court found a violation of Article 14 of the ECHR.

- Case of Willis v UK²

The Court concluded that Article 14 had been violated as the applicant, a widower, had been refused allowances on grounds of a gender-based distinction. The applicant was able to claim far fewer financial benefits than if he had been a woman.

(d) National law

The process of transposition of anti-discrimination directives adopted by the Council in 2000 has generally been slow and has also been incomplete in several cases. This is due to the fact that the countries do not have relevant provisions in civil and administrative law but only in criminal law (in Austria and Greece), that they have no provisions relating to discrimination in employment (Denmark), that there is no consultation of NGOs (Austria) or that the independent committee provided for in the directive to register complaints is not really independent (its membership criteria in Italy are laid down by the government; in Denmark, following the restructuring process, a single committee is responsible for dealing with all human rights matters).

(e) International and European conferences

- Durban World Conference against racism, racial discrimination, xenophobia and related intolerance (South Africa, 31 August – 7 September): Declaration and Action Programme adopted by the Conference and published in January 2002.
- Publication by the CERD of reports on Austria, Belgium and Denmark.
Publication by ECRI of national reports (2001) on Finland, Ireland, Italy and Portugal and its annual activities report.

B. Overview of current situation

The main source of information, other than the NGOs concerned and the ECRI and CERD reports, is the RAXEN network of the European Monitoring Centre on Racism and Xenophobia.

(a) Racially motivated violence

Physical attacks have been limited in number; nonetheless, there have been reports in most Member States of verbal insults against Muslims, including an upsurge in racist messages posted on the Internet.

¹ Case No 34462/97 of 4 June 2002.

² Case No 36042/97 of 11 June 2002.

In the light of the attacks of 11 September 2001 and in view of the Israeli-Palestinian conflict, physical violence and damage, expressions of hatred and discrimination have for the most part been anti-Islamic and anti-Semitic in nature. These acts of violence, which have increased considerably in comparison with previous years, are not merely the work of traditional extreme right parties, but also the result of confrontation between members of these two communities. The Roma community and immigrants in general have continued to suffer racially motivated violence and discrimination. The rise of racism in the music world in Germany and on football sites in Italy should also be noted.

In addition to prejudice, the underlying causes of racist acts include economic concerns set against the background of high unemployment, the failure to adapt and enforce laws to combat racism, the media's role in perpetuating or conveying racist and xenophobic stereotypes, and the excessively liberal approach to extremist parties, which use the airtime granted to them during election periods for propaganda ends.

Consequently, awareness campaigns should primarily target these causes.

(b) Awareness campaigns

Immediately after the 11 September attacks and since then – with the obvious exception of certain unwelcome statements by President Berlusconi and others – in most EU Member States government leaders and democratic parties have frequently spoken out to urge the public to resist making generalisations about any given group and to oppose the overly simplistic view of a clash of cultures.

In a very interesting experiment undertaken in the United Kingdom in 2002, all civil servants were issued with a code of conduct to be followed in dealings with the public, regardless of ethnic origin, with a view to promoting equal opportunities. Awareness initiatives of various kinds have also been launched in Sweden, Germany, Finland and Portugal. Likewise, cross-cultural dialogue has spread in some Member States, in the form of interdenominational dialogue or educational initiatives.

Regrettably, however, few initiatives have been forthcoming – or, indeed, previous initiatives have been abandoned – in Member States such as Denmark, Greece, the Netherlands, Austria (where the current coalition government of Conservatives and the Freedom Party is not only relatively inactive in this area, but is also subsidising a populist party) and Italy (where the Northern League is pursuing its xenophobic propaganda campaign).

(c) Combating racism on the Internet

The need to combat racism on the Internet is one of the conclusions of the Durban Conference. The majority of Member States have begun to take measures, in the form either of codes of conduct for access providers or of initiatives by NGOs such as the International Network Against Cyber Hate (INACH).

However, in order to circumvent these new obstacles, groups spreading racist messages are frequently turning to access providers outside the EU, above all in the United States, where freedom of expression is guaranteed by the Constitution, regardless of the content involved. The Yahoo case in France has nonetheless demonstrated that combating cybercrime is not an

impossible task. The Protocol to the Convention on Cybercrime ought to be ratified by all Member States, since it is a useful additional means of combating racism on the Internet.

(d) Restricting coverage of political parties which spread racist and xenophobic propaganda

Pro active policies to curb the coverage afforded to political parties peddling racist ideas are being pursued in several Member States, including the United Kingdom, Germany (where a ban on the neo-Nazi parties is being contemplated), Sweden and Finland (where 16 of 18 parties have signed the Charter of European Political Parties for a Non-Racist Society).

In contrast, few initiatives have been taken in Greece, Denmark, the Netherlands (in spite of the coverage given to populist or extremist parties during electoral periods), Austria or Italy. In Belgium, the legislation to suspend the funding of political parties advocating racial discrimination is not yet in force in the absence of a royal implementing decree which has been pending for almost four years¹.

The 1998 Charter of European Political Parties for a Non-Racist Society, which notably forbids any government from entering into a coalition with an extremist party of the racist nature, ought to be signed by the largest possible number of parties, particularly those in the new EU Member States.

(e) Reliability of data

Gathering reliable data is a complex task requiring resources. It is no less true, however, that without reliable data it is far more difficult to pursue an effective policy to combat racism, since the extent of the phenomenon, those groups targeted by racism, and the frequency of racist acts cannot be precisely gauged. The gathering of reliable data is, therefore, a vital prerequisite.

Progress has been noted in several Member States (United Kingdom, Germany, the Netherlands, Sweden, Ireland and Finland). In contrast, Member States such as Greece, Italy, Spain, Portugal and Belgium have much ground to make up in this regard.

In the spring of 2002 Finland published the results of the largest survey ever conducted in the country on victims of acts of racism.

2. Discrimination against minorities, particularly the Roma minority

A. Legal developments

Council of Europe

- Framework Convention for the protection of national minorities² (STE 157) of 1 February 1995. Portugal ratified the Convention in 2002. France is therefore the only EU Member State not to have signed the Convention, and Belgium, Greece, Luxembourg and the Netherlands have signed but not yet ratified. The Convention is therefore not applicable in eight Member States.

¹ 'Le respect des droits fondamentaux: situation dans l'UE en 2002'. Joint report by the FIDH-AE and the FIDH, April 2003, p. 16.

² Ratifications: <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=157>

- European Charter for regional or minority languages¹ (STE 148) of 5 November 1992. The Charter has not yet been signed by Belgium, Greece, Ireland and Portugal and has not been ratified by France and Luxembourg, which means that it is not applicable in six Member States.

- Protocol No 12 (STE 177) to the ECHR of 4 November 2000²

On 4 November 2000 the Protocol was signed by several Member States (Germany, Austria, Belgium, Finland, Greece, Ireland, Italy, Luxembourg, the Netherlands and Portugal; France, Sweden, Spain and the United Kingdom have not yet signed). The Protocol has not yet been ratified by Member States.

Recommendations of the Parliamentary Assembly

- Recommendation 1537 (2002) on the legal situation of the Roma in Europe (rapporteur: Mr Csaba Tabajdi) adopted in April 2002.
- Report on the protection of minorities in Belgium (Doc 9395 of 25 March 2002).

Reports and opinions

- Opinion of the European Commission for Democracy through Law (Venice Commission) of 12 March 2002 on possible groups of persons to which the Framework Convention on National Minorities could be applied in Belgium
- Opinion of the Advisory Committee on the Implementation of the Framework Convention by Germany and Austria

Recommendations of the Committee of Ministers

- Resolution Res CMN(2002)10 on the implementation of the Framework Convention by Italy
- Recommendation Rec ChL(2002)1 on the application of the European Charter for Regional or Minority Languages by Germany.

B. Overview of current situation

Protection of minorities in general

The advisory committee set up to monitor the Framework Agreement on the Protection of the National Minorities has published opinions on the situation in the United Kingdom, Germany and Austria:

- as regards the United Kingdom, the committee approves in particular the establishment of a police ombudsman in Northern Ireland. It recommends providing better access to Irish and Scottish Gaelic teaching and to the media in these languages in Northern Ireland. It also regrets the absence of general legislation to protect individuals against religious discrimination (abolition or extension of the law on blasphemy);

¹ Ratifications: <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=148>

² Ratifications: <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=177>

- as regards Austria, the committee stresses the improvements that need to be made for the benefit of the Slovene minority in Styria, as well as of the Czech, Slovak and Hungarian minorities (radio and television programmes, and possibility of using their languages in dealings with government departments);

- as regards Germany, the committee calls on the authorities to improve access to the media for the Danish and Friesian minorities and opportunities to use their languages in dealings with government departments, and to remedy the shortcomings of statistical data in general;

- with reference to Italy, the committee of ministers points out the difficulties encountered by certain minorities (Albanians, Franco-Provenzali, Ladins, etc.) in maintaining and developing their identities.

- Promotion of sign language

There is no common EU approach to sign languages any more than to other minority languages (1.6 million hearing-impaired people). Sign languages are therefore discriminated against in varying degrees according to the Member State (Finland is the country that pays them the greatest respect; the profession of sign language interpreter is recognised in Portugal, Greece and the Netherlands). The hearing-impaired are thus not given the same right to education and employment as hearing people, since their right to communicate is largely ignored. Objectives for improving this situation should be defined, sign language interpreters should be trained, the hearing-impaired should be given educational opportunities, and television programmes in sign language should be broadcast.

Discrimination against the Roma minority

The Roma, Europe's largest minority (there will be 10 to 12 million in the enlarged Europe), continue to suffer discrimination of many kinds (access to public services, education, accommodation, employment). The main issues addressed in 2002 included:

- freedom of movement and residence for the Roma: although for the main part EU nationals, the Roma are required to produce special documents, are subject to inspections and can only camp on specific sites, of which there are in reality far too few and which rarely comply with minimum standards of habitability; in some Member States their stay is limited to 48 hours, and in most to 30 days (giving rise to problems as regards education for their children and availability of employment). One of the major problems is overcoming the reservations of local authorities.

During his visit to Greece in June 2002 the Council of Europe's Commissioner for Human Rights looked into the situation of the Roma community in the country (between 150 000 and 200 000 people, half of whom are settled). The Greek authorities have implemented a plan (2002-2008) for the Roma amounting to EUR 300 million, the priorities being housing and access to services. It is, however, worrying that the implementation of this plan is being threatened by the reluctance of local authorities to cooperate. It is therefore up to the Greek Government to overcome these obstacles.

- public representation of the Roma at all local, regional, national and international levels so that they can take their future in their own hands instead of being helped; hence the particular importance of the Finnish proposal to set up a permanent European Roma forum. Note should

also be taken of the efforts of Greece, which has adopted an integration programme for the Roma.

With an eye to enlargement, the EU should adopt a common, integrated approach to solving the problems faced by this large minority.

3. Homosexuals

A. Legal developments

(a) International conventions

- Council of Europe

Protocol No 12 to the ECHR¹ (STE 177) has not yet been signed by Denmark, Spain, France, Sweden and the United Kingdom, and has not been ratified by any Member State. This protocol provides for the general prohibition of all forms of discrimination.

(b) European legislation

- Council Decision 2000/750/EC of 27 November 2000 establishing a Community action programme to combat discrimination (2001-2006), with a budget of around EUR 100 million.

- It is worth stressing the importance of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and the need to ensure that it is effectively implemented in the Member States in 2002.

- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions². This directive prohibits discrimination on grounds of gender identity in the employment sphere since EU law regards discrimination against transgender persons as a form of sex discrimination.

EP reports

- European Parliament report on the Council Directive on minimum standards for the qualification and status of the third country nationals and stateless persons as refugees or as persons who otherwise need international protection (report by Jean Lambert³).

(c) Case law

- European Court of Human Rights

¹ <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=177>

² Official Journal of the European Union L 269, 5.10.2002, pp.15-20.

³ A5-0333/2002

In the case of *Fretté v. France*¹, the European Court of Human Rights held that, in the absence of consensus at European level, the refusal to give the necessary authorisation for the adoption of a child by a homosexual person was a matter for the discretion of Member States and could not therefore be considered a violation of Article 8 of the European Convention on Human Rights, combined with the non-discrimination rule. This judgment should not, however, be interpreted as meaning that the European Court of Human Rights believes that the disparities which Member States create between categories of people of different sexual orientation in the enjoyment of private or family life are not discriminatory.

(d) International and European conferences

ILGA, 'Recognition of diversity and promotion of equality', Lisbon, 23-27 October 2002, 24th International Conference of the International Lesbian and Gay Association

B. Overview of current situation

Millions of people in Europe are still the object of discrimination on grounds of their sexual orientation or gender. However, some progress was achieved in 2002.

In Austria the Constitutional Court has finally ruled as unconstitutional the provisions of Article 209 of the Penal Code concerning the age of consent for homosexuals, and has called on the legislator to amend this article by 2003. Nonetheless, despite this revision of the penal code, which has been effective since 14 August 2002, legal proceedings begun prior to that are being continued instead of closed. The age of consent continues to differ according to sexual orientation, and hence to be discriminatory, in Portugal, Ireland and Greece.

In Finland the law of 3 May 2002 recognises the rights of transsexuals. A judgment handed down by the Strasbourg Court in the case of *Goodwin v. United Kingdom* did the same.

In Sweden the legislation which makes racial hatred a crime has been extended to cover victimisation on grounds of sexual orientation. Belgium has made same-sex marriage legal.

Member States should adopt a broader legal definition of the family to allow same sex partnerships to be granted the same rights.

In Italy the immigration law of 2002 does not regard persecution on grounds of sexual orientation as constituting a reason for granting asylum. Member States should recognise persecution on the basis of sexual orientation or gender identity in the definition of the status of refugees and asylum seekers.

In general terms, sooner or later the EU will have to take the necessary steps to allow same-sex couples to move freely without losing the rights granted them in their countries of origin.

Finally, Member States should actively raise awareness and promote a mainstreaming approach to anti-discrimination on the grounds of sexual orientation and gender identity within all relevant Community policies, programmes and initiatives.

¹ Eur. Court of HR, Judgment *Fretté v France*, Complaint No 36515/97 of 26 February 2002.

Equality between men and women (Article 23)

A. Legal developments

(a) International conventions

- United Nations

The Convention on consent to marriage, minimum age for marriage and registration of marriages of 10 December 1962, has yet to be ratified by Belgium, France, Greece and Italy¹.

The ILO Convention on paid educational leave² of 24 June 1974 has yet to be ratified by Austria, Denmark, Greece, Italy, Ireland, Luxembourg and Portugal.

The ILO Convention on workers with family responsibilities³ (C156) of 23 April 1981 has yet to be ratified by Austria, Belgium, Denmark, Italy, Ireland, Luxembourg and the United Kingdom.

The ILO Convention on termination of employment⁴ (C158) of 22 June 1982 has yet to be ratified by several Member States – Austria, Belgium, Germany, Denmark, Greece, Italy, Ireland, the Netherlands and the United Kingdom.

The Convention on maternity protection⁵ (C183) of 15 June 2000 has only been ratified by Italy.

The Optional Protocol to the Convention of 6 October 1999 on the elimination of all forms of discrimination against women⁶ entered into force in Germany, Greece, the Netherlands and Portugal in 2002 and has yet to be ratified by Belgium, Luxembourg, the United Kingdom and Sweden.

- Council of Europe

Protocol No 12⁷ to the ECHR (STE 177) has yet to be ratified by the EU Member States.

The Additional Protocol to the European Social Charter⁸ (STE 128) of 5 May 1988 has yet to be ratified by Austria, Germany, France, Luxembourg, Portugal, Ireland and the United Kingdom.

The revised European Social Charter⁹ (STE 163) of 3 May 1996, was ratified by Finland (on 21 June 2002), and Portugal (on 30 May 2002) but has yet to be ratified by several Member States

¹ http://www.unhchr.ch/html/meny3/b/treaty3_.htm

² Ratifications: <http://ilolex.ilo.ch:1567/cgi-lex/ratifce.pl?C140>

³ Ratifications: <http://ilolex.ilo.ch:1567/cgi-lex/ratifce.pl?C156>

⁴ Ratifications: <http://ilolex.ilo.ch:1567/cgi-lex/ratifce.pl?C158>

⁵ Ratifications: <http://ilolex.ilo.ch:1567/cgi-lex/ratifce.pl?C183>

⁶ Ratifications: http://www.unhchr.ch/html/menu3/b/opt_cedaw.htm

⁷ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=177>

⁸ Ratifications: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=128>

⁹ Ratification: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=163>

(Austria, Belgium, Germany, Denmark, Spain, Greece, Luxembourg, the Netherlands and the United Kingdom).

Recommendation of the Committee of Ministers:

Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence

(b) European legislation

European Union:

- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This directive stresses the need to set up an independent body responsible for combating forms of discrimination on grounds of gender, facilitating the exercise of an occupation by the under-represented gender by providing for specific advantages.
- Council Decision of 20 December 2000 establishing a Community action programme relating to the Community framework strategy on gender equality 2001-2005 (OJ L17, 19.1.2001, p. 22).

Gender equality¹ (European Commission)

B. Overview of current situation

2002 saw the adoption of Council and European Parliament Directive 2002/73/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This directive underlines the need to set up an independent body in each Member State with the task of fighting discrimination on the basis of gender and to facilitate the exercise of a profession by the underrepresented sex by providing for specific advantages. To this end, the EP calls on the Member States to introduce the necessary measures to ensure that the damage suffered by a person who is discriminated against is made good.

Integration of women in the workplace is still far from being fully achieved: in Belgium² 80% of women between 25 and 29 are in employment, but they account for 90% of part-time workers and constitute a majority of those in precarious employment. In January 2002 the unemployment rate was 9.9% of men as opposed to 14.0% of women; the latter's average salary was 84% of that of men. In Finland the wages of men working in industry in 2002 was 24% higher than that of women. In the case of Denmark the UN Committee on the Elimination of Discrimination against Women concluded in June 2002 that the international convention in question had not been transposed into national law and that the Constitution contained no specific provision on discrimination against women. In Denmark the share in the employment market of women from ethnic minorities is only 41%.

¹ http://europa.eu.int/comm/employment_social/equ_opp/index_en.htm

² Equal Opportunities Council data

Positive measures have been taken in Greece, Italy, Sweden and Spain.

In Greece a law dating from 1999 setting a quota of 15% of women to be admitted to police college was found by the ECSR to be in violation of the European Social Charter and incompatible with Community law. Following this negative finding, the Greek Parliament decided to adopt an amendment abolishing the quota in question.

In Italy the national committee on equal opportunities in the workplace adopted a programme on 23 May 2002 aimed at promoting participation by women in the management of businesses.

In Sweden the Ministry for Sexual Equality presented a proposal to introduce a quota system for the election of women onto the boards of companies.

In Spain a law proposes to introduce incentives for firms who recruit victims of domestic violence and to set up a programme of active income on entering the job market for women experiencing particular difficulties.

Representation of women on decision-making bodies should be equal to that of men. Belgium has incorporated in its Constitution a guarantee of equal access for men and women to all levels of power, and to public and elected office.

In the United Kingdom the Sex Discrimination Act allegedly aims to reduce the discrepancy between the number of men and women selected as parliamentary candidates by the political parties.

In Spain, on the other hand, political parties do not see gender equality as a priority and some parties consider that the adoption of quotas to improve the representation of women might turn out to be to the detriment of women themselves.

The issue of sharing family responsibilities, and hence recognition of the value of domestic work, has inspired a number of judgments in Germany (the Federal Constitutional Court recognised the equivalence of domestic work and paid work outside the home in calculating the pensions due after a divorce procedure). In France, the Council of State decided, on the basis of the principle of equality between men and women, to grant men a year's seniority premium for each child, whether or not they bring them up alone, in calculating the retirement pensions of civil servants, a privilege which had so far been reserved for women. In the United Kingdom, cases in which widowers complained of not receiving the same pension as widows in similar situations were resolved by an amicable settlement before the European Court of Human Rights.

In Sweden, the Labour Court delivered a judgment on the prohibition of direct discrimination on grounds that a woman is pregnant. Five women had applied for a midwife's post in a hospital: contrary to the 2001 law on equal opportunities, the selection board had immediately ruled out the appointment of the pregnant woman, even though she had better qualifications than the others. The hospital was ordered to pay her damages.

The rights of the child (Article 24)

A. Legal developments

(a) International conventions

- Council of the Europe:

Protocol No 7 to the ECHR (STE 117) of 22 November 1984¹ has been signed by Germany, the Netherlands, Portugal and Spain but has yet to be signed and ratified by Belgium and the United Kingdom.

European Convention on the adoption of children² (STE 058) of 24 April 1967, has yet to be ratified by several Member States (Belgium, Spain, France, Finland, Luxembourg and the Netherlands).

European Convention on the repatriation of minors³ (STE 071) of 28 May 1970, has yet to be signed by Denmark, Finland, Ireland, Portugal, Spain, Sweden and the United Kingdom; it has been signed by the Netherlands, Luxembourg, Greece, Germany, France, Belgium and Austria. The only Member State to have signed and ratified is Italy.

European Convention on the legal status of children born out of wedlock (STE 085) of 15 October 1975⁴, has yet to be signed and ratified by Germany, Belgium, the Netherlands, Finland and Spain; France and Italy have signed but not yet ratified the Convention.

European Convention on the exercise of children's rights⁵ (STE 160) of 25 January 1996, was ratified in 2002 by Germany⁶. However, Belgium, Denmark, the Netherlands and the United Kingdom have neither signed nor ratified the Convention and signatory states such as Austria, Finland, France, Ireland, Italy, Luxembourg, Portugal, Spain and Sweden have not yet begun the ratification process.

Recommendations of the Parliamentary Assembly

- Recommendation 1286(1996) of 26 March 2002 - Building a 21st-century society for children: follow-up to the European strategy for children.

- Recommendation 1291(2002) of 26 June 2002 on the international abduction of children by one of the parents.

b) European legislation

European Parliament resolutions

EP resolution of 11 April 2002 on the evaluation report from the Commission to the Council and the European Parliament on the application of the Council Recommendation 24 September 1998

¹ Ratification: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=117>

² Ratification: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=058>

³ Ratification: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=071>

⁴ Ratification: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=085>

⁵ Ratification: <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=160>

⁶ on 1 August 2002

concerning the protection of minors and human dignity (COM(2001) 106 - C5-0191/2001 - 2001/2087(COS)).

EP resolution of 11 April 2002 on the EU position in the Special Session on Children of the UN General Assembly. This resolution calls on the EU and the Member States to work actively to ensure that the Convention on the Rights of the Child is fully implemented. It highlights in particular child-family relationships, the right to education, the need for an independent body responsible for monitoring the implementation of the Convention's aims and the adoption of detailed and measurable national plans. Finally, the EP calls on the Commission to ensure that all proposed EU directives and programmes are subjected to child-impact analyses to assess their potential implications for children.

EP resolution of 4 September 2002 on the mid-term review of the 2000-2003 Daphne programme (2001/2265(INI)), approving the implementation of the programme to date.

EP legislative resolution of 20 November 2002 on the proposal for a Council regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance (COM(2002) 222 - C5-0234/2002 - 2002/0110(CNS))

(c) Case law

- European Court of Human Rights

The applicants¹ had been subjected to various inhuman and degrading treatments (abuses) by their mother's partner. The Court held that the social services should have noticed that the children were exposed to risks since these services were informed of the existence of these abuses. The State is therefore responsible for having failed to take measures which would have had a real chance of changing the outcome of the case or limiting the damage.

(d) International conferences

Extraordinary session of the United Nations General Assembly devoted to children² (8-10 May 2002).

The General Assembly, in cooperation with the International Committee of the Red Cross, held a conference in New York on 15 October 2002, on the promotion and protection of children's rights.

B. Overview of current situation

Following the reports presented in 2002 on the following Member States, the UN Committee on the Rights of the Child recommends that:

¹ Case of E. and others v. UK, No 33218/96 of 26 November 2002

² Official website: <http://www.unicef.org/specialsession/>

- Italy improve the general situation of the children of migrants and the Rome communities,
- Spain revise Article 154 of its Civil Code with a view to removing the reference to 'reasonable punishment', and take action against the practice of genital mutilation of girls of sub-Saharan origin and against truancy among schoolchildren,
- the United Kingdom put a stop to the practice of detaining children in adult prisons, set up independent child protection bodies and no longer allow employment of children under 18 years of age in the army,
- Denmark improve data collection, enforce the principle of the higher interest of the child and respect for the opinions of children, and stop detaining children in adult prisons,
- Belgium reinforce the legislation preventing violence against children and not place children in pre-trial detention,
- Greece improve enforcement of the principle of the higher right of the child and respect for children's opinions, remedy the situation of male child prostitutes who are not protected by the law, and re-examine that of minors over 17 who can be detained in adult prisons.

The NGO Euronet is calling on the European Institutions to give children a legal status in the revised Treaty on European Union, given that at present they are only considered in an ad hoc manner in European legislation. It also calls for Article 24 of the Charter to be reinforced, including a reference to the UN Convention on the Rights of the Child in the preamble to the Charter since the CRC guarantees the principle of non-discrimination and stipulates that children may express their views freely while Article 24 of the Charter does not mention these principles.

The rights of the elderly (Article 25)

A. Legal developments

(a) International conventions

- Council of Europe

The European Convention on Social Security¹ of 14 December 1972 (STE 078).

The Additional Protocol² (STE 128) of 5 May 1988 to the European Social Charter of 18 October 1961 requires the parties, under Article 4, to guarantee the right of the elderly to social protection. It has yet to be ratified by Austria, Belgium, France, Germany, Ireland, Luxembourg, Portugal and the United Kingdom.

The revised European Social Charter³ (STE 163) of 3 May 1996 is an international treaty which brings together in one single instrument all the rights guaranteed by the 1961 Charter and its additional protocol (STE 128) of 1998. The new amendments include, in particular, the right to

¹ Ratifications: EN <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=078>

² Ratifications: EN <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=128>

³ Ratifications: EN <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=163>

more effective protection of elderly people. The revised European Social Charter was ratified in 2002 by Finland¹ and Portugal² and has been signed by Austria, Belgium, Denmark, Greece, Luxembourg, Spain and the United Kingdom. However, it has been neither signed nor ratified by the Netherlands and Germany.

(b) European legislation

European Union:

EP reports adopted in 2002:

- Resolution and report on national strategies for safe and sustainable pensions³
- Resolution on the 2nd United Nations World Assembly on Ageing⁴

(c) International conferences

2nd United Nations World Assembly on Ageing, Madrid, April 2002.

B. Overview of current situation

Europe leads the world in the ageing population figures. The proportion of people over 60 is already 20% of the inhabitants of Europe, and is due to reach 33% in 2050, and the proportion of octogenarians is due to double by 2015, giving rise to three major challenges:

- providing sufficient resources for the elderly, i.e. guaranteeing them safe and sustainable pensions;
- at the same time ensuring that the conditions are in place for active ageing of the population, which presupposes inter alia a health-care reform aimed at preventing the characteristic diseases of old age, a new enterprise culture involving life-long vocational training, and abandoning early retirement;
- safeguarding the dignity of the elderly handicapped and sick, including their living conditions in retirement homes (increase in cases of ill-treatment arising from inadequate supervision; a particular concern is respect for privacy) and doing everything possible to support the right of the elderly to lead an independent life in their own homes for as long as possible, which means enabling their relatives to provide the assistance they require;
- setting up a European Observatory for the elderly to promote the exchange of best practice.

The elderly are subject to a number of forms of discrimination⁵:

- Elderly women are most discriminated against in terms of resources; it seems that women's retirement pensions are 15% lower than those of men; female heads of single-parent families are the worst affected.

¹ On 21 June 2002.

² On 30 May 2002.

³ A5-0071/2002, rapporteur Carlo Fatuzzo.

⁴ P5_TA(2002)0184.

⁵ According to the NGO AGE.

- ‘Elderly’ people are discriminated against on the labour market, mainly between the ages of 50 and 65; they have much less access to vocational training (firms taking the mistaken view that after a certain age the investment is no longer worthwhile). They also meet with age limits for certain types of medical treatment, for taking out insurance policies (or else the premiums are prohibitive), and as regards access to education.

- Finally, the elderly sick in retirement homes are subjected to timetables which often do not suit them and cared for by inadequate or untrained staff – that is, when they are not actually ill-treated.

The governments and the EU should remedy these direct and indirect forms of discrimination, and check that all age limits are objectively justified and that the image of the elderly projected by the media is more positive.

Integration of persons with disabilities (Article 26)

A. Legal developments

(a) International conventions

- International Labour Organisation

ILO Convention on vocational rehabilitation and employment (disabled persons)¹ of 20 June 1983. C159 has yet to be ratified by Belgium and the United Kingdom.

- Council of Europe

The European Social Charter² (STE 035) of 18 October 1961 stipulates (Article 15) that ‘disabled persons have the right to vocational training, rehabilitation and resettlement’; it has been ratified by all the EU Member States.

Implementation of the European Social Charter and the revised European Social Charter is subject to a monitoring mechanism, which has already been reinforced by the 1991 Protocol³ (STE 142) and by the 1995 Protocol⁴ (STE 158) providing for a system of collective complaints. Protocol STE 142 has not yet been ratified by Denmark, Germany, Luxembourg and the United Kingdom, and Protocol STE 158 has not yet been ratified by Austria, Belgium, Denmark, Germany, Luxembourg, the Netherlands, Spain and the United Kingdom.

The European Code of Social Security lays down standards and sets minimum protection thresholds to be guaranteed by the parties in areas such as medical care, sickness benefits, old-age pensions, allowances in the event of industrial accidents and industrial diseases and disablement allowances. It has yet to be ratified by Austria.

¹ <http://ilolex.ilo.ch:1567/french/cvlist2F.htm#msp>

² Ratifications: EN <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=035>

³ Ratifications: EN <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=142>

⁴ Ratifications: EN <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=158>

The Protocol to the European Code of Social Security¹ (STE 048A) contains provisions encouraging parties to endeavour to achieve a higher level of social security than that laid down in the code. However, Austria, Denmark, Finland, France, Greece, Ireland, Italy, Spain and the United Kingdom have not yet ratified.

The European Code of Social Security² (STE 139) supplements and improves the provisions of the European Code of Social Security in areas such as invalidity and medical care. It has not yet been ratified by any of the EU Member States.

(b) European legislation

European Union

The scope of EU action is vast in this area (see texts mentioned below)³.

EP reports

Report on the Commission communication on eEurope 2002: Accessibility of public websites and their content - Committee on Industry, External Trade, Research and Energy – Information society, eEurope 2002: accessibility of public websites (Bastiaan Belder⁴).

(c) International conferences

First European Congress of Disabled Persons, held in Madrid in March 2002 by the Spanish Presidency; the Madrid Declaration⁵ defines the general approach and the conceptual framework of activities for the European Year of People With Disabilities 2003.

B. Overview of current situation

The EU has almost 37 million people with disabilities (physical impairments, learning difficulties and other multiple disabilities). Recognition of the rights of people with disabilities must be guaranteed by law.

However, several cases of inadequacy or violation of the rights of people with disabilities were exposed in 2002⁶:

- At the Council of Europe: France was the subject of collective complaint No 13/2002 lodged by Autisme-Europe⁷, which refers to Article 15 (rights of disabled persons), Article 17 (right of children and young persons to social, legal and economic protection) and Article E (non-

¹ Ratifications: EN <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=048A>

² Ratifications: EN <http://conventions.coe.int/treaty/EN/searchsig.asp?NT=139>

³ OJ L 42, 13.02.2002 - COM(2002)18 - COM(2002) 158 - COM(2002) 263 - COM (2003) 16.

⁴ A5-0147/2002.

⁵ <http://www.madriddeclaration.org/en/dec/dec.htm>

⁶ France was the subject of collective complaint No 13/2002 Autisme-Europe (Council of Europe), which holds that France is in violation of the law as a result of its lack of educational facilities for autistic people.

⁷ The European Committee of Social Rights may be referred to under the procedure for collective complaints claiming violations of the Social Charter or the revised European Social Charter.

discrimination) of the revised European Charter. It alleges that France is not in compliance with the Charter owing to its failure to provide education for autistic persons.

- A blind person¹ who used a guide dog was refused permission by Air France to keep the dog on board the aircraft during a flight to Strasbourg in October 2002. Following lengthy discussions, authorisation was granted.

- When disabled persons travel, they are sometimes required to return the aid or equipment (wheelchair, adapted computer, Braille reader) and to submit a new request. However, some important practical aids could be exported without difficulty (the list contained in Regulation 1408 was drawn up in the 1980s and is out of date; it should be updated).

The Parliamentary Assembly of the Council of Europe recommends, very opportunely²:

- including an explicit reference to discrimination on grounds of disability in the two main Council of Europe instruments: the European Convention on Human Rights and the revised European Social Charter;

- starting work on a Convention setting a minimum employment quota for people with disabilities in businesses employing more than 50 people.

It would also be good to encourage:

- the discussions begun by the Commission in the United Nations special committee 'to consider elaborating a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities'.³

Finally, European Year of People with Disabilities 2003 should provide an opportunity to make some progress.

CHAPTER IV: TOWARDS SOLIDARITY

A. General legal developments concerning Articles

27 – Workers' right to information and consultation within the undertaking

28 – Right of collective bargaining and action

29 – Right of access to placement services

30 – Protection in the event of unjustified dismissal

31 – Fair and just working conditions

32 – Prohibition of child labour and protection of young people at work

33 – Family and professional life

¹ Example quoted by the Disabled Persons Intergroup, Newsletter No 8, March-April 2002. Linked to Newsletters <http://www.edf-feph.org/apdg/fr/newsletter-fr.htm>

² Recommendation 1592(2003).

³ <http://www.un.org/esa/socdev/enable/disA56168e1.htm>

34 – Social security and social assistance, in particular the fight against social exclusion
35 – Health care

(a) International conventions

- United Nations

The International Convention on the protection of the rights of all migrant workers and members of their families¹ of 18 December 1990 has yet to be ratified by the EU Member States.

The ILO Convention concerning employment promotion and protection against unemployment² (No 168) of 21 June 1988, has only been ratified by Finland and Sweden.

The ILO Convention on the worst forms of child labour (C182) of 17 June 1999 has been ratified by all Member States. Germany, Belgium and the Netherlands ratified in 2002³.

The 1973 ILO Convention on minimum age has been ratified by all Member States.

The ILO Convention on employment promotion and protection against unemployment⁴ of 21 June 1988 has yet to be ratified by several Member States (Austria, Belgium Germany, Denmark, Greece, Spain, France, Italy, Ireland, Luxembourg, the Netherlands, Portugal and the United Kingdom).

WHO report on the health situation in Europe 2002.

- Council of Europe

The revised European Social Charter⁵ (STE 163 of 3 May 1996 has yet to be ratified by several Member States (Austria, Belgium, Denmark, Finland, Germany, Greece, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom).

The Convention on the European Code of Social Security of 1964⁶ (STE 048) has yet to be ratified by Austria and Finland.

The European Convention on Social Security⁷ of 14 December 1972 (STE 078) has yet to be ratified by several Member States (Denmark, Finland, France, Germany, Greece, Ireland, Sweden and the United Kingdom).

¹ Resolution 45/158, state of ratifications: <http://www.unhchr.ch/pdf/reportfr.pdf>

² Ratifications:

<http://ilolexhttp://conventions.coe.int/Treaty/FR/searchsig.asp?NT=048&CM=1&DF=29/05/02.ilo.ch:1567/scripts/ratifcf.pl?C168>

³ <http://webfusion.ilo.org/public/db/standards/normes/appl/applbyconv.cfm?conv=C182&lang=EN&hdroff=1>

⁴ Ratifications: <http://ilolex.ilo.ch:1567/scripts/ratifcf.pl?C168>

⁵ Ratifications: <http://conventions.coe.int/Treaty/FR/searchsig.asp?NT=163>

⁶ Ratifications: <http://conventions.coe.int/Treaty/FR/searchsig.asp?NT=048>

⁷ Ratifications: <http://conventions.coe.int/Treaty/FR/searchsig.asp?NT=078>

The Protocol to the European code of social security¹ (STE 48a) has yet to be ratified by several Member States (Austria, Denmark, Finland, France, Greece, Ireland, Italy, Sweden and the United Kingdom).

- Additional Protocol (1995) to the European Social Charter, providing for a system of collective complaints, open, in particular, to international employers' organisations and European trade unions and to NGOs with consultative status at the Council of Europe.

Only seven EU Member States have to date ratified the protocol (Finland, France, Greece, Ireland, Italy, Portugal and Sweden).

Publication in the summer of 2002 of the conclusions of cycle XV-1 (hard core)

Admissibility of collective complaints No 12 Confederation of Swedish enterprises v Sweden (negative aspect of trade union law) and No 13 Autisme–Europe v France (right of persons with disabilities to vocational training, Article 15).

Austria, Germany and the United Kingdom have not yet agreed to be bound by Article 7(1) (prohibition of work for minors under the age of 15) of the European Social Charter and the revised European Social Charter.

(b) European legislation

Directive 2002/74/EC amending Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer opportunely extended its scope to cover part-time workers on fixed duration contracts and temporary workers (Article 30).

EP resolution of 13 June 2002 condemning child labour in the production of sports equipment.

- Decision No 1786/2002/EC of the EP and of the Council of 23 September 2002 adopting a Community action programme in the field of public health (2003-2008) OJ L 271, 9.10.2002.

- Report of the Commission to the Council and to the EP for the Stockholm European Council: Towards increasing participation in the labour market and promotion of active ageing.

- 29 May 2002, inauguration of a slab on the EP esplanade, bearing the words: 'Wherever human beings are condemned to poverty, human rights are violated. Uniting to ensure that they are respected is a sacred duty'.

Reports adopted by the EP

- on the proposal for a European Parliament and Council directive on working conditions for temporary workers, Ieke van den Burg, A5-0356/2002.

European Foundation for the Improvement of Living and Working Conditions:

Reports on temporary work in Europe and on the quality of work and access to employment for women 2002.

¹ Ratifications <http://conventions.coe.int/Treaty/FR/searchsig.asp?NT=048A>

(c) Case law

- European Court of Human Rights

In two cases¹ the Court held that the ban on strikes should be considered as a restriction on freedom of association.

- Court of Justice of the European Communities

Similarly, the Luxembourg court considered that the Austrian Government's decision to authorise a political demonstration on the Brenner road was legitimate and was not contrary to Article 28 of the TEU on free movement of goods².

The Court annulled³ the Commission Directive which was intended to authorise at Community level immediate adjustments to Annex I to Directive 76/769 on the approximation of the legislative provisions of Member States on restrictions on the marketing and use of certain dangerous substances and preparations wherever new risks to human health or the environment were established as the assessment of the situation was not supported by reliable scientific data.

In 2002 the Court ruled on the social security cases mentioned below in which it affirmed the principle of non-discrimination⁴.

(d) International conferences

First European Congress of Persons with Disabilities, Madrid, March 2002; the Madrid Declaration⁵ defines the general approach and conceptual framework for activities for European Year of Persons with Disabilities 2003.

Extraordinary session of the United Nations General Assembly devoted to children (UNGRASS), 8-10 May 2002, New York (see Article 24).

4th Conference of the European Academy of Occupational Health Psychology (EA-OHP), 4-6 December 2002, Adolf-Czettel-Bildungszentrum (BIZ), Vienna, Austria.

- Conference on access to social rights, Malta, 14 and 15 November 2002 (Council of Europe).

- Forum on new social responsibilities in a global world, Strasbourg, 2 and 3 October 2002 (Council of Europe).

B. Overview of current situation

¹ Unison v UK No 53574/99, 10 January 2002; Federation of offshore workers v Norway No 38190/97, 27 June 2002.

² Schmidberger v Austria C-112/00 of 11 July 2002, opinion of advocate-general Jacobs.

³ Case C-314/99 Netherlands v Commission of 18 June 2002

⁴ Cases C-55/00 Gottardo v Istituto Nazionale Previdenza Sociale (INPS) of 15/1/2002 - Case C-277/99 Kaske v Landesgeschäftsstelle des Arbeitsmarktservice Wien of 5/2/2002 - Case C-299/01 Commission v Luxembourg of 20/6/2002 - 11 July 2002 D'Hoop v ONEM C-224/98 JTT 2002 p.433

⁵ [http : //www.madriddeclaration.org/fr/dec/dec.htm](http://www.madriddeclaration.org/fr/dec/dec.htm)

Workers' right to information and consultation in the workplace (Article 27)

The adoption of Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community¹ was the most important event² in this area in 2002.

This new directive establishes minimum requirements regarding information and consultation of employees in businesses in the Community. It stipulates that the information and consultation must relate in particular to changes in the activities of undertakings. This right to information must be established so that employees can be more closely involved than they are at present in the development and future of their enterprises, enabling them to adjust in the best way possible to the economic and structural changes which are a constant feature of the current economic scene and which have such far-reaching effects (on the physical and mental health of workers who are suddenly made redundant, with no hope of employment).

The directive also states that the information must cover 'decisions likely to lead to substantial changes in work organisation or in contractual relations'³ (such as the introduction of automatic employee data processing systems, video surveillance systems or medical, genetic or personality tests to be used at the time of recruitment or during the period of employment).

Although this directive only covers undertakings of more than 50 members or establishments of more than 20 members (so as not to stand in the way of the creation of SMEs) employers are still bound, in the case of undertakings not covered by the directive, to respect Article 1 of the revised Social charter.

Right to negotiation and collective action (Article 28)

- Right to collective negotiation

Provisions restricting the freedom to negotiate collectively to trade unions holding a licence to negotiate (Ireland) or making prior arbitration compulsory (Spain) are in violation of the revised Social Charter and the Social Charter. The same goes for Denmark's refusal to extend the benefits of collective negotiation to non-resident seamen. And, at the other end of the scale, the legislation in the United Kingdom that allows employers to offer more favourable conditions of employment to workers who agree not to engage in collective negotiation also violates the revised Social Charter.

- Right to collective action

The right to strike as set out in the revised Social Charter is not respected:

¹ OJ L 80, 23.3.2002, p. 29.

² See also, Directive 2002/74/EC of the European Parliament and the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ L 270, 8.10.2002.

³Article 4(2)(c) of Directive 2002/14/EC.

- in Belgium and the Netherlands, where in practice the national courts are the judges of the desirability and legality of the strike (disciplinary action against pickets);
- in Portugal, Sweden, Germany and Finland (in the public service), where strikes are forbidden if not called by, or placed under the auspices of, a trade union;
- in France, where the right to strike is restricted to the most representative unions;
- where strikes are forbidden if they are not the result of a collective agreement, as is the case in Finland.

It is recognised that strikes in the public sector can be banned in the case of essential public services. However, the following are in violation of the revised Social Charter:

- the blanket ban on strikes for all categories of public servants in Denmark and Germany;
- the situation in France, where this ban applies to some non-essential sectors;
- the situation in Italy, where the scope of the right to requisition public servants during strikes is too broad;
- the situation in Ireland, where employers may dismiss employees who are not members of the union that called the strike.

Right of access to placement services (Article 29)

The right of access to a free placement service must be seen as part of a policy of full employment.

The efficacy of the right of access to placement services depends on the latter effectively fulfilling their task of bringing together supply and demand on the labour market., and on their having the resources needed to carry out this task properly.

In 2002 Austria and Germany adopted measures to make the results of placement services more effective (new practices allowing a more rapid response, and increased funding for services). Equilibrium between supply and demand must be sought¹.

Protection in the event of unjustified dismissal (Article 30)

- Legal protection against dismissal

The parties to the revised Social Charter undertake to recognise the right of workers not to be dismissed without a valid reason related to their ability or to the needs of the undertaking.

The ECSR (Cycle XVI 2) notes that in the event of retaliatory dismissal an employee must be reinstated by right and not at the discretion of the employer, as is the case in Belgium and Finland; in addition, periods of notice are still too short in Greece, Spain and the United Kingdom. Finally, in Denmark an employee may be dismissed for not belonging to a trade union (contract clause).

¹ CEDS observations, report on Belgium, cycle XVI-1 2002.

Also, dismissal is inadmissible in law if the reason evinced is irrelevant to the post¹ or if the evidence brought forward violates the right to privacy.

Dismissal on grounds of the needs of the undertaking is justified provided that checks can be carried out by an independent authority, usually a judicial one, as to the genuineness of the reasons given (for example, serious difficulties insurmountable by any other means, technological change or a reorganisation that is essential to the continued existence of the undertaking²).

- Long-term protection against redundancy for economic reasons

Another very important aspect of job security for workers is the approach to the social aspects of restructuring. A European Observatory for Industrial Change was set up within the European Foundation for the Improvement of Living and Working Conditions in 2002.

The main task of this observatory will be to study factors of change in the European economy. It should be a tool for anticipation, long-term research and, hence, facilitating adjustment at all levels.

The Commission apparently does not intend to present a directive on preventing restructuring and exchanging best practice in this area. However, it has emerged that social plans are not only ineffective for employees (in France 60% of former employees are still unemployed one year after economic redundancies and 36% have not found new employment after five years), but also increasingly costly for firms because of the ever more frequent recourse by works councils to accountants and the courts. It would be useful, therefore, to plan preventive strategies in anticipation of sudden redundancies, which can have disastrous economic and psychological effects on workers.

Fair and just working conditions (Article 31)

A number of conditions must be fulfilled in order to provide fair and just working conditions, and this is not always the case.

- Quality of work and of employment

(a) An occupation fairly entered upon

Contrary to Article 1(2) of the Social Charter, criminal sanctions are still applied to seamen for failure to comply with regulations even where this does not pose a danger to the vessel or the life or health of persons on board (Belgium, Greece and Portugal).

The length of compulsory service required of professional army officers in Greece (25 years) and Ireland is contrary to the Charter. The same can be said of the fact that, in the United Kingdom,

¹ For example, evidence of an interest in child pornography would justify dismissal of a police officer, given the possible risks.

² Definition of economic redundancy included in the French 'social modernisation' law of 19 December 2001, which was partially suspended in 2002 and aims to avoid 'stock market redundancies'.

any unemployed persons who refuse a job on the grounds that it does not match their qualifications are likely to lose their unemployment benefits.

(b) Making direct and indirect discrimination in the field of employment illegal

Four categories of person encounter unfair discrimination

- foreign nationals

Legislation which restricts access by foreign nationals to public-sector employment violates the European Social Charter (Greece), not to mention the very restrictive conditions governing employment for refugees;

- temporary workers

Temporary workers (of which there are 1.8 to 2.1 million in the EU) suffer from:

- very precarious conditions of employment (contracts of less than 3 months);
- less than average safety in the workplace, because male temporary workers are usually given dangerous jobs (and agencies and employers either cut safety corners or refuse to take responsibility for the accidents that occur);
- wage discrimination (30% less in Sweden and Germany), because temporary work is often a way of circumventing collective agreements. This is why the new Commission proposal designed to remedy the failure to comply with standards in the case of temporary workers is to be welcomed.

- people with disabilities

The social legislation on access to employment for people with disabilities is still inadequate in Belgium, Greece and Denmark (no protection in the event of dismissal following an industrial accident and 5-30% lower wages).

- women

The wage gap is gradually beginning to close (about 19% in France), but is still 25% in Germany and 35% in Austria. Women also encounter discrimination as regards the positions they achieve (only 21% of women hold executive positions, as opposed to about 70% of men).

The proportion of women on the labour market rose from 50.6% in 1997 to 54.9% in 2001, and at the Lisbon European Council the EU set itself the following employment targets: 57% by 2005 and 60% by 2010.

(c) Maximum working hours

The ECSR views the hours worked per week by seasonal workers in Germany (60) and Ireland (60 for all forms of employment, and 66 for hotel staff). And daily rest periods (seven hours, or even five) are inadequate in Finland.

(d) Safety and health in the workplace

According to the ILO, industrial accidents and diseases are under-reported, and there is a lack of reliable, comparable data, which leads to less effective prevention.

In 2000 the number of fatal industrial accidents in the EU was 5 052. In Portugal and Greece the high number of industrial accidents is a result of inadequate safety standards and workplace inspections.

(e) Harassment in the workplace

In 2000 2% of workers in the EU were on the receiving end of physical violence by colleagues (2% of sexual harassment, and 9% of bullying or psychological harassment). To deal with this serious problem, legislative improvements were introduced in several Member States in 2002 (Austria, Belgium and Ireland).

(f) A fair minimum wage

The ECSR considers a fair minimum wage to be 50% of the average net wage. However, this standard is not met in Austria (certain collective agreements), Ireland (6.5% of employees earn a minimum wage equal to 5.1% of the average net wage, Spain (minimum wage equal to 45% of the average net wage) or Greece (minimum wage equivalent to 34% of the average net wage).

Overtime is not recompensed in accordance with the Social Charter in Belgium and Luxembourg (in the public sector), and young people between 15 and 18 are not paid adequate wages (50% of adult salary) in the Netherlands, Ireland, Spain or Belgium (apprentices in their first year).

(g) Job security

The ECSR has considered the first reports returned (by France, Italy and Sweden). Apart from the very significant differences in employment levels from one country, and one region, to another, the ECSR notes the considerable differences in the number and efficiency of methods used to combat unemployment. In France, the overall active measures for employment in 1999 accounted for 25.5% of the unemployed population, which is little, given that the long-term unemployment rate is still very high, 900 000 in 2000. In Italy, a little over 500 000 unemployed persons benefited from active measures, i.e. 1.74% of GDP, which is less than the European average. Lastly, in Sweden almost all the young unemployed aged between 15 and 24 had begun an individual action plan in the six months following their becoming unemployed, and the proportion of long-term unemployed had risen from 15% in 1999 to 6.7% in 2000.

(h) Right to organise

Workers' freedom of association, as laid down in Article 5 of the Social Charter, is not respected in Austria and Luxembourg: foreigners and non-nationals are not allowed to work councils. The negative right of organisation, i.e. the obligation to be a member of a trade union in order to be given priority in recruitment procedures is contrary to the Charter (de jure or de facto trade union monopoly clauses in Ireland, the Netherlands (printing sector), Sweden and France (CGT book publishing trade union)).

On the other hand, in its decision relating to collective complaint No 11/2001, delivered on 21 May 2002, the European Committee of Social Rights considered that Portugal's decision to grant police personnel the right of association but not trade union rights was not contrary to the provisions of Article 5 of the European Social Charter.

Prohibition of child labour and protection of young people at work (Article 32)

The reports on the application of the Social Charter and the Revised Social Charter drawn up by the ECSR show that:

- Italy, like Portugal, does not recognise the ban on the employment of children under 15, particularly in family businesses (in Italy, between 360 000 and 430 000 children aged between 11 and 14 work eight hours a day and, in some instances, six days a week). These figures do not tally with those of the survey commissioned by the Ministry of Labour and presented on 12 June 2002 (144 000 children working occasionally, of whom 31 000 are reported to be exploited).
- In France, the Act of 22 February 2001 prohibits the employment of children under 15 in family businesses, but the case of child models or children engaged in the performing arts who cannot properly comply with their educational obligations is not regulated. Similarly, the Act allows for derogations whereby the employment of children under 18 in dangerous or unhealthy occupations is authorised (contrary to Article 7 of the Social Charter).
- In Italy, there is no specific restriction on the number of hours which may be worked by children aged between 15 and 18. In the Netherlands, children under 15 may work a two-hour shift at 6 a.m., which adversely affects their schooling, and they do not enjoy adequate rest during school holidays. Finally, minors in the Netherlands may be dismissed without notice.

In 2000 the IPEC (International Programme on the Elimination of Child Labour) launched two campaigns: 'Red card to child labour' and 'SCREAM – Stop Child Labour'. These campaigns have raised awareness among huge sections of society and encouraged child workers to become involved in fighting this scourge.

Family and professional life (Article 33)

The Social Charter encourages the Member States to facilitate as far as possible the reunion of the family of a foreign worker legally resident on the territory of a Member State. However, Greece imposes a two-year minimum residence period, which is quite excessive, while the United Kingdom refuses such reunions if it involves an increase in the social security payments made to the migrant worker.

- optimum reconciliation between family and professional life

The search for the best strategy for reconciling family and professional life is no easy task. An extension of maternity leave (which runs for 120 days in Portugal) or parental leave may entail negative consequences in so far as such leave is usually taken by the woman, something which may adversely affect the participation of women on the labour market. In Portugal, because

wages are so low, it is quite usual for women to hold down two jobs; in Europe, Portuguese women spend the least time with their children. In Austria, a new allowance of about EUR 15 per day and per child is paid for two or even three years, whichever parent – father or mother – takes parental leave. Such legislation, together with the chronic lack of childcare centres, might force women to stay at home.

On the other hand, the ECSR notes that the level of family allowances in the Netherlands is in line with the standards laid down in the European Social Security Code and that the number of childcare centres - whether for pre-school or school-age children – is constantly increasing. That results in part from the tax incentives granted to employers who provide such facilities for their employees.

The Barcelona European Council established objectives relating to the provision of childcare facilities. By 2010, places should be available for 90% of children between the age of three and the age at which schooling is compulsory and for 33% of children under three. Currently, and despite improvements, the Commission notes that, according to childcare indicators, the provision of nursery places may vary significantly from one Member State to another (for example, for children under three, the respective figures are: 4% in Italy, 8.6% in Spain and 77% in Sweden).

- postnatal leave and breastfeeding breaks

In Ireland and Denmark, postnatal leave is less than the six weeks laid down in the Social Charter.

Paid breastfeeding breaks are still not recognised in Italy, France or Sweden. In Finland and in France, the dismissal of women during their maternity leave is not followed by automatic reinstatement nor compensated in Finland by an adequate indemnity payment.

Social security and social assistance – in particular, measures to combat social exclusion (Article 34)

In the current context of globalisation and liberalisation, emphasis must be laid on the upholding of two important aspects of the ‘European social model’:

(a) Entitlement to social security

Contrary to the provisions of the European Social Charter, a large number of Member States (Austria, Belgium, Germany, Luxembourg, Ireland, Spain and Greece) refuse to pay family allowances in instances where the dependent children of a migrant worker do not live on the territory of the Member State, something which constitutes discrimination based on nationality. Others impose a condition relating to a minimum residence period (Belgium: 5 years) or to employment (Austria), which works principally to the detriment of foreigners.

The European Social Charter guarantees the amalgamation of completed periods of insurance or employment, but that provision is not applied by several Member States (Belgium, Greece, Denmark, Ireland, the Netherlands, Germany and Finland) to foreigners not covered by Community legislation.

With regard to social assistance, in Spain it is subject to a residence requirement for foreigners. In Denmark, there is no guarantee of long-term social assistance; in Portugal, it depends on the local resources available.

(b) Combating exclusion

In late 2001, the Employment and Social Policy Council forwarded to the Laeken European Council a joint report on social inclusion. In the EU, 60 million people, i.e. 18% of the population, are poor or threatened with poverty. Children and young people, the elderly, the unemployed and single-parent families are particularly vulnerable to poverty. The relative poverty rate (60% of the average national minimum income) varies considerably from one Member State to another: 8% in Denmark compared with 23% in Portugal. Accordingly, the major challenges are:

- the development of a labour market which encourages inclusion
- combating educational handicaps (the digital divide)
- access to decent housing
- access to high-quality public services
- regeneration of regions suffering from multiple disadvantages
- encouragement of an active old age
- gender/poverty interface.

The objective of the Community campaign against exclusion (2002-2006) is to reduce to 15% in 2005 and to 10% in 2010 the proportion of people living below the poverty line in the EU. The programme was launched in January 2002 and has an endowment of EUR 75 million over the five years. Its aim is to strengthen the efficacy of national programmes by means of a better understanding of social exclusion (establishment of comparable indicators), to organise exchanges of information about the policies pursued and to develop the capacity of those involved to promote innovative measures. Poverty must be recognised as an infringement of human rights. This is what the slab in honour of victims of extreme poverty, inaugurated on 29 May 2002 at the European Parliament's instigation, is intended to symbolise. People who live in abject poverty are deprived of essential services such as housing and access to public services (water supply and health care), and their children are victims of educational segregation and must make do with mediocre teaching standards, which, as ATD-Fourth World points out, runs contrary to the provisions of Article 14. What do civil and political rights and European citizenship mean to them?

- Conclusion

As set out in the November 2002 Malta Declaration on access to social rights, we must ensure that:

- the adjustment of the economy to cope with globalisation does not take place at the expense of human dignity and that undertakings take into account the ethics of long-term profitable development
- the pursuit of growth does not become an end in itself but contributes to the welfare of the entire population
- social rights are not deemed to be costs but an investment and the sine qua non of an inclusive, stable and cohesive society;
- attention is therefore paid to the impact of any abolition or weakening of those rights;
- the Member States guarantee to the most deprived a minimum of adequate resources, on the understanding that human rights are indivisible and that, for the most deprived, lack of access to an essential economic right (for example, housing) results in a domino effect entailing the loss of other rights (to education, health care, etc.)
- the most deprived are informed more effectively of their rights and that those rights may be tested before the courts.

Health care (Article 35)

According to the ECSR 2002 reports, vaccination rates are inadequate in Belgium, and the same applies to the anti-smoking campaign in Greece.

The reports also show that hygiene at work is inadequate in Italy with regard to the self-employed, that medical checks on 15-18 year olds are inadequate in Sweden and that women are exposed to dangerous or unhealthy peat digging in Ireland.

With regard to the fundamental question of the rate of reimbursement of medical expenses, the ECSR took the view that, since 1980, the rate of reimbursement of expenditure on general medical care and on pharmaceutical products in Belgium has been one of the lowest in Europe. However, by Act of 5 July 2002, the ceiling for expenditure on health care was adjusted in accordance with the social category of the beneficiary or with family income, and that has improved access to health care for the most deprived. The Belgian Advisory Committee on Bioethics takes the view that the current RMC ('minimum clinical summary') system, which seeks to reduce the length of hospital stays, is resulting in an ethical problem for the medical profession where patients' actual needs would no longer be considered.

In France, the 2003 Finance Act has changed the conditions for free access to medical care for the most deprived (patients must pay their own contributions). Such a measure contravenes Article 12 of the International Covenant on Economic, Social and Cultural Rights (right of everyone to the enjoyment of the highest attainable standard of physical and mental health and non-discrimination against minorities, asylum-seekers, illegal immigrants and detainees): In Austria, a similar attempt to discourage patients financially from visiting health care centres is currently subject to an appeal before the Constitutional Court.

CHAPTER V: STRENGTHENING EUROPEAN CITIZENSHIP

Right to vote and to stand as a candidate in elections to the European Parliament (Article 39)

A. Legal developments

- European Union

Commission communication on an information and communication strategy for the European Union, COM(2002) 350

Report of the EP Committee on Culture, Youth, Education, the Media and Sport, A5-0053/2003

Report of the EP Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on the 3rd Commission report on citizenship of the Union, COM(2001) 506, A5-0024/2002, Coelho.

B. Overview of current situation

Since 1979, average turnout at European Parliament elections has fallen constantly from 64% to 49%. We cannot stand idly by and watch this phenomenon continue, since it deprives the European Parliament of its legitimacy. In the short term, i.e. with a view to the June 2004 elections, all the institutions and the Member States, including the applicant countries, must pursue a consistent information policy which covers 25 countries. They must:

- improve the awareness and visibility of the EU by emphasising its undeniable positive aspects and its very low per capita cost (less than 0.7% of GNP);
- target its information campaign on various social groups (women, young people, disadvantaged and vulnerable groups, e.g. the Roma, detainees, etc.);
- provide better information for the public about fundamental rights and individual rights regarding data protection, non-discrimination, transparency and the defence of human rights;
- hold an annual debate in the European Parliament on the basis of an annual Commission report and impact indicators (Eurobarometer);
- devise new information and communication programmes, exploiting all the advantages offered by the new technologies;
- implement priority campaigns coordinated by the Commission which amalgamate all European, national and regional operators.

The Commission is currently working on the implementation of an information-exchange system to prevent double voting and has also recently submitted a proposal for a regulation¹ on the status and funding of European political parties, the aim of which is to establish in a permanent and transparent manner a statute for European political parties in accordance with minimum standards of democratic conduct:

¹ COM(2003) 77.

- mechanism for verification by the EP of the democratic nature of a European political party,
- the party or alliance of parties must be present in at least three countries,
- breakdown of EU funding on the basis of a 15% flat rate, to which is added an amount based on the number of elected representatives (85%).

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

A. Legal developments

See Article 39.

B. Overview of current situation

- as regards Community nationals

According to the report drawn up by the Commission in May 2002 on the application of Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections, 4 million Community nationals are eligible to do so. However, in practice, only 26.7% of that number actually registered (in Greece and Portugal, 9%), and turnout was also very low (except in Germany and Ireland). The Commission blames this low turnout on the inadequacy of the information campaigns which the Member States directly targeted at the people concerned. In the Coelho report, the European Parliament therefore called on the Member States to improve their performance in this respect.

- the concept of European citizenship and long-term residents who are third-country nationals

The definition of European citizenship is based on nationality, and that results in instances of discrimination between residents which are difficult to comprehend. Third-country nationals, of whom there are between 12 and 15 million living in the EU, do not enjoy any political rights or the right to freedom of movement.

We must not destroy the connection between nationality and citizenship, but we must remove from it its exclusive character. What is more, given the enlargement of the EU, discrimination against third-country nationals will in practice have a racial connotation vis-à-vis nationals of Asian or African countries.

Finally, is it not shocking that foreigners who have been legally resident for a lengthy period and who are well informed politically should not have the right to vote while Community nationals, who might be totally ignorant about the political scene in their new country of residence, have the right to vote immediately upon arrival? Any concept of nationality is simultaneously legal and ethnic, which is why a broad view should be taken of European citizenship. The European Parliament expressed such a view when it adopted the Cornillet report on 5 July 2001 (see paragraph 121).

Right to good administration (Article 41)

A. Legal developments

(a) European legislation

- European Union

2002 report of the European Ombudsman

Commission communication on better monitoring of the application of Community law, COM(2002) 725

Commission communication on relations with the complainant in respect of infringements of Community law, COM(2002) 141.

- Council of Europe

Conference of European Ombudsmen in Vilnius, 5-6 April 2002 (CommDH(2002)3)

Member States which do not yet have Ombudsmen

(b) Case law

ECJ¹

However extensive its powers of discretion may be in applying Article 87 of the EC Treaty (control of public aid), the Commission must not neglect its duty to consider complaints carefully and impartially and to justify its decisions (Article 41 of the Charter).

The Court of First Instance recalls² that the European Ombudsman enjoys very wide discretion in his task of seeking a settlement in accordance with the specific interest of the citizen concerned. Consequently, the Court holds that the Ombudsman cannot incur non-contractual liability save where he has committed a flagrant and manifest breach of his obligations in that connection. He must also adopt an active role in seeking all possible amicable settlements between the complainant and the institutions concerned.

B. Overview of current situation

The number of complaints has increased significantly since 2001 (2511 complaints in 2002, of which 298 held over from the previous year, as against 1874 in 2001). 331 complaints were declared admissible, of which 222 resulted in the opening of an investigation. In 215 instances, the European Ombudsman advised the author to forward a petition to the European Parliament's Committee on Petitions. Of that number, 12 were thus converted with the author's agreement.

In addition, the European Ombudsman has conducted two investigations of his own accord, one into freedom of expression for Commission officials and the other into parental leave for European civil servants.

¹ Case T 54 of 30 January 2002.

² Case T-209/00, Lamberts v Ombudsman of 10 April 2002.

As a result of the first investigation, the Commission has undertaken to lay down more clearly in the Staff Regulations the criteria on which an official may be refused leave to publish (conflict between freedom of expression and obligation of loyalty). In the second, the Ombudsman has ruled that the Commission must adapt its rules without delay so as to guarantee the granting of parental leave.

Most complaints concern a lack of transparency (92), discrimination (26), failure to acknowledge the rights of the defence (40), misuse of power (45) and delays and negligence.

The Commission has assured the European Ombudsman that it is ready to deal with all complaints lodged by individual citizens in accordance with the Code of good administrative behaviour (some 2 000 complaints are lodged every year, of which 7% have resulted in the Member State concerned receiving a letter of formal notice).

At the end of the Conference of European Ombudsmen organised by the Council of Europe's Human Rights Commissioners in April 2002, certain conclusions were approved which concerned in particular the status of the Ombudsman (his/her independence being guaranteed by appointment on the basis of a qualified majority of the national parliament, absolute security of office and the non-renewability of his/her mandate). Apparently, the success of the measures taken by the Ombudsmen depended on several conditions: information of the citizen, the citizen's not having to fear the negative consequences of the complaint and belief in the system's capacity.

Right of access to documents (Article 42)

A. Legal developments

(a) European legislation

Recommendation R (2002)2 of 21 February 2002 of the Committee of Ministers of the Council of Europe¹ on access to official documents.

EU Council Decision 2002/682/EC, Euratom² of 22 July 2002 adopting the Council's Rules of Procedure³.

Interinstitutional Agreement⁴ of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy⁵. Henceforth, the European Parliament will be able to consult documents classified as 'confidential', 'secret' and 'top secret' (on the Council's premises

¹ http://cm.coe.int/stat/F/Public/2002/adopted_texts/recommendations/f2002r2.htm

²

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=fr&numdoc=32002D0682&model=guichett

³ Publication: OJ L 230, 28.8.2002.

⁴

[http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=fr&numdoc=32002Q1130\(01\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=fr&numdoc=32002Q1130(01)&model=guichett)

⁵ Publication: OJ C 298, 30.11.2002.

and in response to a request from the President of the European Parliament or from a special committee consisting of four members appointed by the Conference of Presidents).

Commission Decision 2002/47/EC, ECSC, Euratom¹ of 23 January 2002 amending its Rules of Procedure (access to internal documents)².

EP resolution of 14 March 2002 on the implementation of Regulation (EC) No 1049/2001 on public access to European Parliament, Council and Commission documents

Resolution of 16 May 2002 on reform of the Council and transparency (T5-0246/2002). Parliament points out that the scope of Regulation No 1049/2001 on public access to EP, Council and Commission documents covers all legislation. It considers it essential that the Council be present when texts are adopted in Parliament and that Parliament also be present when the Council takes final legislative decisions. It also calls for the Council to be represented in the Conciliation Committee. Parliament wishes to see the Council's meetings open to the public and discussions and votes to be broadcast by TV. Finally, it asks the Council and the Member States to implement an information campaign with a view to informing citizens of their right of access to EU documents.

(b) Case law

European Court of Justice

The Court of First Instance recalls³ that the legal rule is that the public is to have access to the documents of the institutions and that the power to refuse access is the exception. A decision denying access is therefore valid only if it is based on one of the exceptions provided for in Article 4 of Decision 93/73. If those exceptions are to apply, the risk of the public interest being undermined must therefore be reasonably foreseeable and not purely hypothetical. Moreover, the mere fact that certain documents contain information or negative statements about the political situation or the protection of human rights in a third country does not necessarily mean that access to them may be denied. An analysis of factors specific to the contents must also be carried out.

B. Overview of current situation

Article 42 of the Charter takes over Article 255 of the EEC Treaty. The right of access to EP, Council and Commission documents is expressly linked to European citizenship but also open to any natural or legal person having its registered office in a Member State.

¹

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=fr&numdoc=32002D0047&model=guichett

²

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=fr&numdoc=32002D0047&model=guichett

³ Case T-211/00, *Kuijter v Council* of 7 February 2002.

This right translates an obligation of transparency on the institutions; it is also an element of the right to good administration on which the protection of personal data, such as the right to rectification, is dependent.

The European institutions are currently developing a strategy to improve citizens' access to documents as well as the right to information more generally. Key aspects include a proposal to set up a European television channel, simplification of the language used on websites and more effective cooperation between Member States. The institutions are developing tools in order to educate citizens on how to use, and not only to know, their rights.

The inclusion in the future constitutional treaty of a right to information for the citizen would be welcome.

Freedom of movement and of residence (Article 45)

A. Legal developments

(a) European legislation

- European Union

Public consultation on future development of EU education, training and youth programmes after 2006.

(b) ECJ case law

In 2002, the European Court of Justice ruled against several Member States for failure to transpose provisions relating to freedom of establishment.

The Austrian law is incompatible with Community law insofar as the determination of old-age insurance does not take account of child rearing periods completed in another country, except for the period covered since the entry into force of Regulation 1408/1971. There was therefore a violation of Article 45 on freedom of establishment and Article 15 on free movement of workers¹. The court ruled against Spain² for failing to transpose properly the Community provisions aimed at facilitating free movement of doctors (by making it compulsory for certain doctors to take part in the national 'Medico Interno Residente' competition) and recognition of qualifications obtained in other Member States.

The Court also ruled against Italy³ for failing to comply with Community law and allow lawyers who are nationals of other Member States to make use of the infrastructure in Italy required for carrying out their duties, and requiring them to continue to reside in the judicial district of the court to which the Bar at which enrolment is sought is attached so as not to have to transpose fully Directive 89/48 on a general system for the recognition of diplomas.

¹ Case C-28/00 Kauer of 7 February 2002.

² Case C-232/99, Commission v Spain of 16 May 2002.

³ Case C-145/99, Commission v Italy of 7 March 2002.

In 2002 the Court clarified¹ the situation of children of an EU citizen who have settled in a Member State during the exercise by the parent of a right of residence as a migrant worker. Such children are entitled to reside there in order to attend general education courses and this right applies even where the parents have meanwhile divorced or where the parent has ceased to be a migrant worker in the host Member State. The fact that the children are not themselves citizens of the Union is irrelevant. Consequently, the parent who is the primary carer of those children, irrespective of his nationality, is entitled to reside in that Member State.

B. Overview of current situation

The European Parliament approved by a large majority the proposal for a directive dated 23 May 2001 which constitutes a long-awaited recasting of the legislation governing freedom of movement and of residence for European citizens in the EU in conditions similar to those which they enjoy in their own countries. Among the most important provisions are the following: right of permanent residence after an uninterrupted four-year period of residence for citizens and their families and a ban on any decision leading to deportation from the country, even on grounds of public order or public health.

The European Parliament also approved the proposal for a directive on the status of third-country nationals who had been resident for a lengthy period which would grant to third-country nationals a long-term Community residence permit after five years of legal residence, together with the right of freedom of movement within the EU.

However, the situation of the Roma minority, who are largely denied the right to freedom of movement and of residence (see Article 21), is quite scandalous.

CHAPTER VI: JUSTICE

European Union

Procedural safeguards in criminal proceedings in the EU: Early in 2002, the Commission published a Consultation Paper on the establishment of common minimum standards of procedural safeguards throughout the Member States in respect of persons suspected of, accused of, prosecuted for and sentenced in respect of criminal offences². At the beginning of February 2003 the Commission published a Green Paper on the same subject. The Paper seeks to put in place more equivalent judicial norms in the EU and covers issues such as letters of rights to be handed to suspects and special rights for vulnerable groups. In an area of Freedom, Security and Justice, procedural rules should respond broadly to the same guarantees so as to ensure that people will be treated equally, irrespective of the jurisdiction dealing with their case. Furthermore, Member States should have confidence in the judicial system of the other Member States (especially in the light of the adopted Framework Decision on the European arrest warrant).

¹ Case C-413/99 Baumbast and R. of 17 September 2002.

² A Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union (COM(2003) 75 final) was published on 19 February 2003.

Legal assistance

At the end of January the Council published a directive to improve access to justice in cross-border disputes¹.

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

European Court of Human Rights (Strasbourg)

Reasonable time-limit

The exceeding of a reasonable time-limit for the handing down of a judgment – in both civil and criminal cases – constitutes the major source of infringements recorded by the European Court of Human Rights. This phenomenon is common to all the Member States. For several years now, it has been particularly prevalent in *Italy*, as statistics show². In 2002, nearly 350 cases in this category which concerned Italy resulted in the European Court of Human Rights ruling that a breach had been committed. On 13 February 2003, after it had received the second annual report by the Italian authorities on the general measures taken by Italy to reduce the excessive length of judicial proceedings³, the Council of Europe's Committee of Ministers was obliged to note that the encouraging developments set out in the first annual report seemed to have slowed down and even to have gone into reverse in some areas⁴.

*Belgium*⁵: This involved a preliminary investigation against Dumoulin. The investigation began in May 1995. On the day that judgment was given, the preliminary investigation had not yet been completed. The Court concluded that the complexity of the case did not justify the length of the preliminary investigation – six years and two months.

Italy: The applicant was charged with trying to cash a banking instrument. After a delay of three years and four months, for which no good reason was given, the proceedings were closed. The ECHR ruled that this length of time was unreasonable because the delay by the authorities was a factor⁶.

Access to justice and a fair trial – Italy⁷: The applicant was sentenced by the Appeal Court for possession of drugs in his absence and without any knowledge of the judgment. He was refused leave to appeal. The ECHR ruled that the applicant's right to challenge the judgement made in his absence had been violated.

Sweden: The ECHR ruled that *de facto* the Swedish system impeded the applicants' access to

¹ OJ L 26, 31.1.2003, p. 41 (A5-0312/2002).

² In the judgments that it handed down on 28 July 1999, the European Court of Human Rights identified therein a 'practice' which enables it to presume a breach of Article 6(1) of the European Convention on Human Rights: see ECHR judgment in *Di Mauro v Italy* (34256/96) of 28 July 1999; judgment in *Bottazzi v Italy* (34884/97) of 28 July 1999 and the judgment in *Ferrari v Italy* (35256/97 and 33440/96) of 28 July 1999.

³ In accordance with the Interim Resolution ResDH(2000)135.

⁴ As established by the Network of Experts in its report dated March 2003.

⁵ *Stratégies et Communications and Dumoulin v. Belgium* (15 June 2002) 37370/97, par. 46.

⁶ *Nuvoli v. Italy* (16 May 2002), No 41424/98, par. 23 and 24.

⁷ *Osu v. Italy* (11 July 2002), No 36534/97, par. 39 and 40.

justice. There was also a breach in respect of a reasonable length of proceedings¹.

United Kingdom: In this case the ECHR found that there was no question of fair proceedings and effective access to justice. A baby had been removed from the mother only a few hours after birth because of fears for the child. The parents were then deprived of parental rights without having access to the courts².

Finland: A complaint about the illegal limitation of the applicants' rights to fish in certain waters. The applicants should have had access to a court for a review of the restrictive regulations³.

Spain: The ECHR considered the applicant's fears that the judges in the case were not impartial were justified. The Court based this on the way in which the judges had expressed themselves during the proceedings⁴.

Greece: A case about the expropriation of an island. The ECHR found there had been a violation as regards a reasonable length of time⁵. At certain times the court proceedings themselves had caused delays.

Austria: The applicant was accused of being a neo-nazi and of having sent letter bombs. His claim for compensation was dismissed without a hearing. The failure to give him a hearing was a violation of his right to fair proceedings⁶.

Greece: The applicant claimed that its right to appeal had been violated, because at the time of the judgment, against which an appeal could be made, the grounds for judgment were not known, so it was not possible to make the appeal⁷.

France: The applicant had been fined for speeding. He contested the fine in the police court. The public prosecutor refused his request. The ECHR ruled that the finding of inadmissibility, which prevented access to the court and was undoubtedly unlawful, had violated the applicant's right to access to justice⁸.

Equality of arms

Austria: In this case the ECHR found a violation of the principle of 'equality of arms'. The procurator general had submitted conclusions to the Supreme Court without bringing them to the attention of the applicant⁹.

European Court of the Justice (ECJ), Luxembourg

¹ Västberga Taxi Aktiebolag v. Sweden (23 July 2002), No 36985/97, par. 102 and 107.

² P. C. and S. v. the United Kingdom (16 July 2002), No 56547/00, par. 99 and 100.

³ Posti and Rahko v. Finland (24 September 2002), No 27824/95, par. 64 and 65.

⁴ Perote Pellon v. Spain (25 July 2002), No 45238, par. 51.

⁵ Tsirikakis v. Greece (17 January 2002), No 46355/99, par. 43 and 44.

⁶ A.T. v. Austria (21 March 2002), No 32636/96, par. 37 and 38.

⁷ AEPI v. Greece (11 April 2002), No 48679/99.

⁸ Peltier v. France (21 May 2002), No 32872/96, par. 39 and 40.

⁹ Jozef Fischer v. Austria (17 January 2002), No 33382/96, par. 21.

*Max.mobil v. Commission*¹ : In this case, the Court of First Instance (CFI) explicitly refers to the Charter of Fundamental Rights of the European Union for the first time. Reference is made to Article 41(1) of the Charter of Fundamental Rights (principle of sound administration) which confirms that ‘... 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...’. Furthermore ‘... such judicial review is also one of the general principles that are observed in a State governed by the rule of law and are common to the constitutional traditions of the Member States, as is confirmed by Article 47 of the Charter of Fundamental Rights, under which any person whose rights guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal ...’.

*Jégo-Quéré v. Commission*²: This is an important judgment handed down by the CFI which reviews the *Plaumann* case law on the *locus standi* of individuals to bring an action for annulment under Article 230 of the EC Treaty against normative Community acts. The judgment broadened considerably the rights of appeal of individuals on the basis of, e.g. the European Convention on Human Rights and the EU Charter of Fundamental Rights.

One of the requirements for individuals to bring an action for annulment under the fourth paragraph of Article 230 of the EC Treaty is that they have to be *individually concerned* by a measure not addressed to them. To this established case law is applied what is known as the *Plaumann* case law (1963) which states that the measure must affect their position by virtue of certain attributes peculiar to them or by virtue of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee. The CFI concluded that the applicant cannot be regarded as individually concerned within the meaning of the fourth paragraph of Article 230 of the EC Treaty on the basis of criteria previously established by Community case law. The CFI, however, goes further and investigates whether *a right to an effective remedy exists* for individuals. It concludes (paragraph 50):

‘... In those circumstances, and having regard to the fact that the EC Treaty established a complete system of legal remedies and procedures designed to permit the Community judicature to review the legality of measures adopted by the institutions, the strict interpretation, applied until now, of the notion of a person individually concerned according to the fourth paragraph of Article 230 of the EC Treaty must be reconsidered...’

and the new rule (paragraph 51):

‘... In the light of the foregoing, and in order to ensure effective judicial protection for individuals, a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him. The number and position of other persons who are likewise affected by the measure, or who may be so, are of no relevance in that regard...’

This case law, if upheld, extends the jurisdictional protection of private parties and may have significant repercussions on the exercise of remedies against Community acts³.

¹ T-54/99 *Max.mobil v Commission*, Judgment of 30 January 2002.

² T-177/01 *Jégo-Quéré v Commission*, Judgment of 3 May 2002.

³ In Case C-50/00, *Union de Pequenos Agricultores v. Council*, the judgment of 25 July 2002 does not, however,

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

The ECJ takes the view¹ that there is no breach of the *non bis in idem* principle if the judicial decision leads to a substantive result consisting either in a penalty or in a declaration that the undertaking is not responsible.

- *National level*

*Planespotters' case*²

In late November 2001, 14 British and Dutch planespotters on an organised tour were arrested at a Greek air show. There was a single basic charge against all defendants, that of 'Knowingly and illegally obtaining military information of value to a foreign power'. A trial was held in the lower court in late April 2002. Doubts have been expressed as to whether this was a fair trial. A storm of protest erupted throughout Europe: the case was raised in the Dutch, British and European Parliaments. The judges left it largely to the Prosecutor to question the witnesses and hardly participated in the trial process itself. The transcript of the judgment handed down in the trial at first instance made no reference whatsoever to any defence evidence and was not taken into account. All those with notebooks and scanners were given the maximum sentence (five years). Six defendants had their sentence reduced to three years in prison each but had not started serving their sentences because of their appeals. Others were convicted of aiding and abetting, and each received suspended sentences of one year.

The appeal was heard early in November 2002. The Court of Appeal was extremely actively engaged in the inquisitorial role. The defence evidence of all the witnesses was fully incorporated into the judgment. This time, all the accused present were acquitted. The basic grounds for the acquittal appear to be the acceptance by the court that 'Planespotting' was recognised as a hobby in other parts of Europe and that there was no intention to breach Greek law.

consider the Judgment of the CFI in *Jégo-Quéré*. It states (par 44): '... Finally, it should be added that, according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually...' and (par. 45) '... while it is admittedly possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 of the EU Treaty, to reform the system currently in force...'

¹ Cases C-236/99, C-244/99, C-245/99, C-247/99, C-250/99 to C-252/99, *Limburger Vinyl Maatschappij and others v Commission*, 6 October 2002.

² See also *Fair Trials Abroad*, <http://www.f-t-a.freemove.co.uk/home.htm> and 'reflections on the 'planespotter' trials in Kalamata, a study of one of Europe's dysfunctional justice systems', http://www.f-t-a.freemove.co.uk/reports/reflections_on_kalamata.htm and Reuters 6 November 2002.

Public hearing on the situation as regards fundamental rights in the EU (2002)
with representatives of NGOs on Thursday, 24 April 2003 in Brussels

The following spoke at the hearing:

- Amnesty International, Mr Dick Oosting
<http://www.amnesty.org>
- International Human Rights Federation (FIDH), Mr Pierre Barge
<http://www.fidh.org>
- Human Rights Watch, Ms Lotte Leicht
www.hrw.org
- International Prison Observatory (OIP), Mr Patrick Marest
- European Federation of Centres of Research and Information on Sectarianism (FECRIS), Mr Jean Nokin
<http://www.fecris.org>
- European Council on Refugees and Exiles (ECRE), Ms Maria Teresa Gil-Bazo
<http://www.ecre.org>
- European Women's Lobby (EWL), Ms Lydia Zijdel-Larivere
ewl@womenlobby.org
- Fédération nationale des maisons des Potes, Ms Fadela Amara
- International Lesbian and Gay Association (ILGA), Ms Alisa Spindler
<http://www.ilga-europe.org>
- European Disability Forum, Ms Konstantatou
<http://www.edf-feph.org/>
- ATD Fourth World Movement, Ms Sarah Kenningham
atd.bruxelles@skynet.be
- Fair Trials Abroad, Mr Stephen Jakobi
www.fairtrialsabroad.org

The following also took part in the hearing:

- Mouvement contre le racisme et pour l'amitié des peuples (MRAP)
<http://www.mrap.asso.fr/>
- Ligue internationale contre le racisme et l'antisémitisme (LICRA), Mr Patrick Gaubert
<http://www.licra.org/>

and Ms Nathalie Rafort, Former Secretary-General of 'Médecins du Monde' and Ms Valérie Sebag, Lecturer at the University of Paris XIII.

The rapporteur wishes to express his sincere thanks to all the above for attending the hearing and for their valuable contributions.

**Main activities of the European Parliament and Fodé Sylla
in relation to fundamental rights in 2002**

- The United Nations 2002 report mentions the 'Passport for Freedom' created by a number of MEPs, including Alain Madelin, Fodé Sylla, Michel Rocard, Jean Pierre Thierry, Mario Soares and Daniel Cohn Bendit.

This passport was conferred, in particular, on Mumia Abu Jamal, Alpha Conde and A. Zakaiev.

- Report on awareness campaigns on racial discrimination in Austria by SOS Mitmensch (member of the SOS Racism International Federation).

- Committee of Inquiry set up by members of the Antiracism and Equal Rights Intergroup. A delegation led by the chairman, Mr Hernandez Mollar, and including Fodé Sylla, Glyn Ford, Thierry Cornillet and Carmen Cerdeira, visited El Ejido, in Spain, following acts of violence against Moroccan seasonal workers. The report of the committee of inquiry was preceded by investigations by SOS Racism Spain, a member of the SRIF.

- Visit to Ireland on the situation of first-time migrants, in the presence of Mr Pat Cox, President of the European Parliament, and Fodé Sylla, MEP.

- Under the patronage of Mrs Nicole Fontaine, issuing of a stamp on the Charter of Fundamental Rights by the French Ministry of Finance on 8 May 2003.

Websites:

www.fsylla.net: MEP replies to your questions

www.mirepoix.fr: website of young people from France who took part in the hearing on European young people and the situation of fundamental rights.

LIST OF ABBREVIATIONS

AI	Amnesty International
ANC	African National Congress
CAT	Committee Against Torture
CDDH	Steering Committee for Human Rights
CDBI	Steering Committee on Bioethics
CERD	Committee on the Elimination of Racial Discrimination (UN)
CIDE	International Centre for the Dignity of the Child
CJEC	Court of Justice of the European Communities
CPT	European Committee for the Prevention of Torture (Council of Europe)
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECRI	European Committee against Racism and Intolerance (Council of Europe)
ECSR	European Committee of Social Rights
EP	European Parliament
EU	European Union
FECRIS	European Federation of Centres of Research and Information on Sectarianism
FIACAT	International Federation of Action by Christians for the Abolition of Torture
FIDH-AE	European Federation for the Defence of Human Rights
GDP	Gross Domestic Product
HCR	Office of the High Commissioner for Refugees
ICCPR	International Covenant on Civil and Political Rights
ILGA	International Lesbian and Gay Association
ILO	International Labour Organisation
IOM	International Organisation for Migration
IPEC	International Programme on the Elimination of Child Labour
IRA	Irish Republican Army
NGO	Non-Governmental Organisation
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees

21 February 2003

MOTION FOR A RESOLUTION - B5-0154/2003

pursuant to Rule 48 of the Rules of Procedure

by Mauro Nobilia, Generoso Andria, Giuseppe Di Lello, Giuseppe Pisicchio, Luciana Sbarbati, Maurizio Turco, Sylviane Ainardi, Niall Andrews, Roberta Angelilli, Mary Banotti, Paolo Bartolozzi, Sergio Berlato, Roberto Bigliardo, Guido Bodrato, Alima Boumediene-Thiery, André Brie, Renato Brunetta, Kathalijne Buitenweg, Marco Cappato, Marie-Arlette Carlotti, Paulo Casaca, Luigi Cesaro, Luigi Cocilovo, Gerard Collins, Thierry Cornillet, Thierry de La Perriere, Gianfranco Dell'Alba, Benedetto Della Vedova, Marie-Hélène Descamps, Antonio Di Pietro, Harald Ettl, Concepció Ferrer, Enrico Ferri, James Fitzsimons, Giuseppe Gargani, Jas Gawronski, Fiorella Ghilardotti, Koldo Gorostiaga, Liam Hyland, Giorgio Lisi, Raffaele Lombardo, Mario Mantovani, Pietro-Paolo Mennea, Domenico Mennitti, Cristiana Muscardini, Francesco Musotto, Antonio Mussa, Sebastiano Musumeci, Giuseppe Nisticó, Sean O'Neachtain, Pasqualina Napoletano, Marco Pannella, Paolo Pastorelli, Béatrice Patrie, Giovanni Pittella, Guido Podestà, Adriana Poli Bortone, Giovanni Procacci, Frédérique Ries, Giacomo Santini, Amalia Sartori, Mariotto Segni, Antonio Tajani, Francesco Turchi, Joaquim Vairinhos, Joan Vallve, Demetrio Volcic, Eurig Wyn

on the appointment of a European Ombudsman for the protection of minors

The European Parliament,

- having regard to its own resolution of 8 July 1992 on a European Charter on the rights of the child,
 - having regard to the European Convention on Human Rights,
 - having regard to the UN Convention on the Rights of the Child,
 - having regard to the Council of Europe Parliamentary Assembly's Recommendation No 1286 of 24 January 1996,
- A. whereas an individual's childhood and the particularities of his/her family and social environment significantly determine his/her subsequent adult life,
- B. whereas minors constitute one of the most vulnerable sectors of the population and have specific needs which must be carefully met,
- C. whereas the prevention of youth crime has become a priority in the EU Member States' intervention policies,
1. Calls upon the European Parliament to nominate a European Ombudsman for the protection of minors with responsibility for protecting their rights and interests, receiving their requests and complaints, ensuring that the laws designed to protect them are upheld, and influencing the activities of public authorities in such a way as to promote minors' rights;
 2. Calls on the members of the European Convention to effect the necessary changes in the course of simplifying and modernising the treaties.

21 February 2003

MOTION FOR A RESOLUTION - B5-0155/2003

pursuant to Rule 48 of the Rules of Procedure

by Mauro Nobilia, Generoso Andria, Giuseppe Di Lello, Giuseppe Pisicchio, Luciana Sbarbati , Maurizio Turco, Niall Andrews, Sergio Berlato, Roberto Bigliardo, Guido Bodrato, Alima Boumediene-Thiery, Hiltrud Breyer, André Brie, Giuseppe Brienza, Renato Brunetta, Marco Cappato, Marie-Arlette Carlotti, Paulo Casaca, Luigi Cesaro, Luigi Cocilovo, Gerard Collins, Thierry de La Perriere, Gianfranco Dell'Alba, Benedetto Della Vedova, Marcello Dell'Utri, Marie-Hélène Descamps, Antonio Di Pietro, Harald Ettl, Enrico Ferri, James Fitzsimons, Giuseppe Gargani, Jas Gawronski, Vitaliano Gemelli, Fiorella Ghilardotti, Marie-Thérèse Hermange, Liam Hyland, Vincenzo Lavarra, Giorgio Lisi, Raffaele Lombardo, Mario Mantovani, Paolo Mennea, Domenico Mennitti, Cristiana Muscardini, Francesco Musotto, Antonio Mussa, Sebastiano Musumeci, Giorgio Napolitano, Giuseppe Nisticó, Sean O'Neachtain, Elena Paciotti, Marco Pannella, Paolo Pastorelli, Béatrice Patrie, Giovanni Pittella, Guido Podestà, Adriana Poli Bortone, Giovanni Procacci, Giacomo Santini, Mariotto Segni, Maria Sornosa Martínéz, Antonio Tajani, Francesco Turchi, Joaquim Vairinhos, Gianni Vattimo, Valter Veltroni, Demetrio Volcic, Myrsini Zorba and Eurig Wyn

on the establishment of a European juvenile delinquency monitoring centre

The European Parliament,

- having regard to its own resolution of 8 July 1992 on a European Charter on the rights of the child,
 - having regard to the European Convention on Human Rights,
 - having regard to the UN Convention on the Rights of the Child,
 - having regard to the Council of Europe Parliamentary Assembly's Recommendation No 1286 of 24 January 1996,
- A. whereas an individual's childhood and the particularities of his/her family and social environment significantly determine his/her subsequent adult life,
- D. whereas minors constitute one of the most vulnerable sectors of the population and have specific needs which must be carefully met,
- E. whereas on 28 May 2001 the European Crime Prevention Network (EUCPN) was set up, one of whose priority action areas is juvenile delinquency,
- F. whereas the prevention of youth crime has become a priority in the EU Member States' intervention policies,
1. Calls upon the relevant Community bodies to establish a European juvenile delinquency monitoring centre for the purpose of gathering, analysing and statistically monitoring data on juvenile delinquency, judicial measures and the programmes adopted in the various EU Member States;
 2. Calls on the members of the European Convention to effect the necessary changes in the course of simplifying and modernising the treaties.

8 July 2003

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the situation as regards fundamental rights in the European Union in 2002
(2002/2013(INI))

Draftsman: Eurig Wyn

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Eurig Wyn draftsman at its meeting of 18 March 2003.

It considered the draft opinion at its meetings of 12 June and 8 July 2003.

At the latter meeting it adopted the following conclusions by 18 votes in favour, with 2 abstentions.

The following were present for the vote Michel Rocard, chairman; Vasco Graça Moura, vice-chairman; Theresa Zabell, vice-chairman; Eurig Wyn, draftsman; Konstantinos Alyssandrakis (for Alexandros Alavanos), Ole Andreasen (for Marieke Sanders-ten Holte), Pedro Aparicio Sánchez, Juan José Bayona de Perogordo (for Francis Decourrière), Christopher J.P. Beazley, Marielle de Sarnez, Michl Ebner (for Sabine Zissener), Raina A. Mercedes Echerer, Ruth Hieronymi, Lucio Manisco, Maria Martens, Pedro Marset Campos (for Geneviève Fraisse), Juan Ojeda Sanz, Roy Perry, Christa Prets and Myrsini Zorba (for Barbara O'Toole).

CONCLUSIONS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Article 11 (Freedom of expression and information)

1. Calls on Belgium, Denmark, Greece, Ireland, Luxembourg, the Netherlands, Portugal and Sweden to sign and ratify both the Council of Europe Convention on Transfrontier Television and the Protocol amending this Convention;
2. Recalls its resolution of 20 November 2002 on media concentration; expresses its concern at the threat to freedom and pluralism in the media posed by concentration of media ownership;
3. Notes that companies established in the current Member States are not subject to Community competition law in respect of their activities in non-Member States; calls on the Commission to monitor the extent of concentration of media ownership in non-Member States by such companies;

Article 14 (Education)

4. Urges Member States to do their utmost to ensure the effective integration in education systems of the children of refugees, asylum-seekers and immigrants;
5. Expresses its concern that, as a consequence of inadequate facilities and practical support, would-be students with disabilities are often unable to participate in post-compulsory and higher education; considers that this situation is contrary to the freedoms set out in Article 14(1) of the Charter; urges Member States to address this problem;

Article 22 (Respect for cultural, religious and linguistic diversity)

6. Calls on France to sign the Council of Europe Framework Convention for the Protection of National Minorities; urges Belgium, Greece, Luxembourg and the Netherlands to ratify the Convention;
7. Calls on Belgium, Greece, Ireland Portugal to sign the European Charter for Regional or Minority Languages; urges France and Italy to ratify it;
8. Urges Member States to continue their efforts to improve the situation of the Roma/Sinti minorities by acting against discrimination in employment and housing and by taking account of the particular educational requirements of Roma/Sinti children.

12 June 2003

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the annual report on the situation as regards fundamental rights in the European Union 2002 (2002/2013(INI))

Draftsperson: Anna Karamanou

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Anna Karamanou draftsperson at its meeting of 18 March 2003.

It considered the draft opinion at its meetings of 20 May and 10 June 2003.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Marianne Eriksson, acting chairperson; Jillian Evans, vice-chairperson; Anna Karamanou, draftsperson; María Antonia Avilés Perea, Regina Bastos, Johanna L.A. Boogerd-Quaak, Lissy Gröner, Mary Honeyball, María Izquierdo Rojo (for María Rodríguez Ramos), Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Thomas Mann, Maria Martens, Amalia Sartori, Miet Smet, Patsy Sørensen, Joke Swiebel, Elena Valenciano Martínez-Orozco and Sabine Zissener.

CONCLUSIONS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Right to the integrity of the person

1. Restates that action at EU level to combat violence as an infringement of human rights requires a more appropriate legal basis than Article 152 of the EC Treaty, which concerns public health. Calls therefore on the members of the European Convention to propose that a specific legal basis to combat gender-specific violence be included in the new Constitutional Treaty;

Prohibition of slavery and forced labour

2. Urges that a comprehensive European policy against human trafficking, the modern form of slavery, addresses the entire trafficking chain, comprising countries of origin, transit and destination alike, targeting recruiters, people who transport the victims, exploiters, other intermediaries, clients, and beneficiaries;

Freedom of thought, conscience and religion

3. Calls on the Member States to guarantee freedom of thought, conscience and religion as well as the right not to believe and to change one's religion, in conformity with the need for women, like men, to enjoy autonomy in deciding their individual, social, moral, economic, material and political aims, with the aim of ensuring the optimal fulfilment of women, this freedom being mutually reinforced by the Church and the State within their specific and separate role for civil society;

Equality between women and men

4. Calls on the Member States actively to improve the position of women, inter alia by taking temporary special measures with a view to accelerating de facto equality between men and women, in accordance with their obligations under the UN Convention on the Elimination of All Forms of Discrimination of Women (CEDAW), especially articles 3 and 4 thereof; recommends that European institutions, when evaluating the legality of the positive action measures on the basis of article 141(4) TEC, Declaration No 28 to the Amsterdam Treaty and the Directives on the basis of Article 13 TEC, take into account the substantive equality approach following from this Convention, which means (inter alia) that temporary special measures are regarded as suitable instruments to reach de facto equality instead of an inroad to the formal principle of equal treatment;
5. Notes with concern that despite the improvements achieved over the last five years, gender gaps (including pay gaps of 16 % on average) are still considerable and need to be tackled in order to meet the Lisbon and Stockholm employment rate targets;
6. Considers that a future Constitutional Treaty that guarantees parity and democracy cannot be conceived without giving to gender equality the same legal status as the other policies of the

European Union and without considering gender equality as one of the fundamental values of the Union, and calls on the Member States and the EU institutions to ensure that the new Constitutional Treaty and all future texts are written in gender-neutral language;

7. Calls on the governments of all the Member States where there are still prohibitions against women entering certain places or where women are excluded from certain organisations and associations to take the necessary steps to remedy this state of affairs, which is incompatible with the principle of equality of women and men and violates international agreements on non-discrimination on grounds of gender;

Right to vote and to stand as a candidate at municipal elections

8. Reiterates its calls on the governments, especially those of countries where women's participation in decision-making bodies is still lower than 30%, to review the differential impact of the electoral systems on the political representation of gender in elected bodies and consider the adjustment or reform of these systems, in order to achieve a gender balance.