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REPORT

on the situation as regards fundamental rights in the European Union (2003)
(2003/2006(INI))

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

Rapporteur: Alima Boumediene-Thiery

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PROCEDURAL PAGE

At the sitting of 16 January 2003 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 under Rule 163 on the situation as regards fundamental rights in the European Union (2003)

At the sitting of 23 October 2003 the President of Parliament announced that the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Employment and Social Affairs, the Committee on Petitions, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Women's Rights and Equal Opportunities had also been asked for their opinions.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Alima Boumediene-T hiery rapporteur at its meeting of 18 February 2003.

The committee considered the draft report at its meetings of 9 September 2003, 4 November 2003, 21 January 2004 and 18 March 2004 .

At the last meeting it adopted the draft resolution by 19 votes to 14, with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Giacomo Santini (vice-chairman), Alima Boumediene-Thiery (rapporteur), Regina Bastos (for Mary Elizabeth Banotti pursuant to Rule 153(2)), Mario Borghezio, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Giorgio Calò (for Baroness Ludford pursuant to Rule 153(2)), Charlotte Cederschiöld, Ozan Ceyhun, Gérard M.J. Deprez, Antonio Di Pietro (for Johanna L.A. Boogerd-Quaak), Enrico Ferri (for Giuseppe Brienza pursuant to Rule 153(2)), Timothy Kirkhope, Helmuth Markov (for Fodé Sylla pursuant to Rule 153(2)), Pasqualina Napoletano (for Adeline Hazan pursuant to Rule 153(2)), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Fernando Pérez Royo (for Margot Keßler pursuant to Rule 153(2)), Hubert Pirker, José Ribeiro e Castro, Martine Roure, Heide Rühle, Olle Schmidt (for Bill Newton Dunn), Ingo Schmitt (for Eva Klamt), Ole Sørensen (for Francesco Rutelli), Patsy Sörensen, María Sornosa Martínez (for Sérgio Sousa Pinto pursuant to Rule 153(2)), The Earl of Stockton (for Hartmut Nassauer), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

The opinions of the Committee on Employment and Social Affairs, the Committee on Petitions and the Committee on Women's Rights and Equal Opportunities are attached. The Committee on Culture, Youth, Education, the Media and Sport decided on 26 November 2003 not to deliver an opinion. The Committee on the Environment, Public Health and Consumer Policy decided on 27 November 2003 not to deliver an opinion.

The report was tabled on 22 March 2004.

DRAFT EUROPEAN PARLIAMENT RESOLUTION

on the situation as regards fundamental rights in the European Union (2003) 2003/2006(INI))

The European Parliament,

– having regard to the Charter of Fundamental Rights of the European Union,

– having regard to Articles 6 and 7 of the Treaty on European Union,

– 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 seminar of 21 January 2004 with representatives of the national parliaments and NGOs 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 its resolutions of 5 July 2001 on the situation as regards fundamental rights in the European Union (2000)[1], 15 January 2003 on the situation concerning basic rights in the European Union (2001)[2] and 4 September 2003 on the situation as regards fundamental rights in the European Union (2002)[3],

– having regard to its resolution on the United Nations World Day to Overcome Extreme Poverty[4],

– having regard to Rule 163 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 Petitions, the Committee on Women's Rights and Equal Opportunities and the Committee on Employment and Social Affairs (A5-0207/2004),

1. Welcomes the results of the Convention on the Future of Europe, which provide for the abolition of the pillar structure, full jurisdiction for the Court of Justice in the JHA sphere, the incorporation of the Charter of Fundamental Rights into the Treaty and more extensive use of the codecision procedure; urges the IGC not to go back on these advances;

[1] OJ C 65 E, 14.3.2002, p. 350.
[2] OJ C 38 E, 12.2.2004, p. 174.
[3] P5_TA(2003)0376.
[4] OJ C 87 E, 11.4.2002, p. 253.

2. Calls on the EU institutions to develop on the basis of the Commission communication on Article 7 of the Treaty on European Union (COM(2003) 606 final) the methodology and procedures for monitoring of fundamental rights, the identification of potential risks, the implementation of corrective and remedial measures and the imposition of penalties against a Member State in default in accordance with Article 7 (3) TEU;

3. Considers that these rights must now be given central importance in all Union policies, in particular in the context of the future EU Constitution and the incorporation of the Charter of Fundamental Rights of the EU;

4. Supports the establishment of an ongoing dialogue on fundamental rights with the national parliaments of the Member States;

5. Calls on its competent committees constantly to monitor the situation as regards the fundamental rights set out in the Charter and any violations of these rights so that due account can be taken of this situation in its legislative activities and the interinstitutional dialogue;

6. Stresses the importance of setting up an administrative unit responsible for fundamental rights in the EU to serve the relevant committee in order to monitor the human rights situation in the Member States and in Europe (laws, practices, decisions of national courts, the ECHR and the CJEC, abuses reported by human rights organisations, etc.) with a view to drawing up the annual report on the situation as regards these rights, as requested insistently over the past four years;

7. Recommends continued closer cooperation with the Commission in jointly defining the tasks of the Experts' Network, so as to take due account of Parliament's guidelines for the drafting of the annual report;

8. Calls for the appointment within the Commission of a European Commissioner for fundamental rights;

9. Calls on the Council to make EU policy on fundamental rights more consistent within and outside the Union;

10. Welcomes the announcement made at the Brussels European Summit on 12 December 2003 of the decision to set up a European Human Rights Agency within the EU; considers that the continuation of independent monitoring of the kind currently performed by the Network of Human Rights Experts should be guaranteed; calls on the Commission to draft a Green Paper on the future of human rights policy within the Union, with particular reference to the institutions and instruments which are of relevance in this connection;

11. Calls on the EU institutions to speed up the process of EU accession to the ECHR in order to ensure that human rights and fundamental freedoms are protected in a legally consistent manner, with a high level of guarantees and also in relation to EU acts;

Chapter I - RESPECT FOR HUMAN DIGNITY

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

12. Underlines the fact that many women are still denied the right to abortion in the EU and urges the Member States to guarantee the equal access of all women, including young, poor and immigrant women, to safe and legal abortion, emergency contraception, affordable reproductive and sexual health services and sex education;

13. Condemns all forms of violence against women and calls on the Member States, as a matter of urgency, to combat and eliminate violence against women and children in Europe; believes that, in order to achieve this goal, the Community should find a common definition of violence and contribute to and undertake actions towards the elimination of violence in all its various forms, including particular forms of violence suffered by immigrant women such as forced marriage and genital mutilation; reiterates 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;

14. Reiterates its express request to EU Member States that they ensure that the Optional Protocol to the United Nations Convention against Torture is signed and ratified at the earliest opportunity so that this new instrument for the prevention of torture and ill-treatment can enter into force as soon as possible;

15. Notes with concern that misconduct by the police and other law enforcement officials and abuses at police stations and prisons have been occurring for years in EU Member States, calls on the EU Member States to enforce more effectively the safeguards for prisoners laid down in various international and European conventions and, where no independent body yet exists to monitor the activities of the police and the running of prisons, to set one up, and urges the Member States to participate in the Council of Europe's 'police and human rights' programme;

16. Stresses the importance of mechanisms for the effective protection of persons deprived of their freedom against ill-treatment and, in particular, the need for efficient and effective monitoring of respect for these rights;

17. Calls for Members of the European Parliament and national parliaments to be authorised to visit any detention centre within the European Union;

18. Considers that all detainees who consider that they have been ill-treated should have the right to lodge a complaint, with all the necessary guarantees, with an independent body;

19. Recalls the need for the European Union to adopt a framework decision establishing minimum procedural guarantees for suspects and defendants in criminal proceedings throughout the Union;

20. Recommends, particularly with a view to combating prison overcrowding, that, wherever possible, persons who have committed offences which do not constitute a

danger justifying isolation be given sentences in open or semi-open institutions or involving alternative non-prison arrangements depending on the seriousness of the offence or arrangements avoiding imprisonment;

21. Notes with concern that prison overcrowding is also linked to the fact that most persons deprived of freedom have been sentenced for crimes related to the ban on drugs and that many of them are drug addicts; calls on the Member States to ensure that such addicts are given proper care and to review their drug laws and adopt alternative policies and solutions;

22. Renews its request for the competent national authorities to monitor the actual justification for the continued detention of prisoners whose behaviour in prison and civil and social activity subsequent to the offences ascribed to them show that the aim of detention as an instrument of rehabilitation and positive social reintegration has been met; recalls, in this connection, the Italian case of Adriano Sofri, as acknowledged by the highest authorities of the state, an absolute majority of parliamentarians, the most authoritative press agencies across the political spectrum and authoritative bodies and figures at European level; calls on the President of Italy to use the powers conferred on him by the Constitution in this respect, as also called for by many legal experts;

23. Considers that police forces should be encouraged to take a balanced approach to the use of force and that, in the event of such use being disproportionate or of abuses of power, those responsible should be punished;

24. Recommends that training of law enforcement officials and prison personnel, particularly in fundamental rights, be improved to enable them to respond appropriately and effectively to different situations;

25. Recommends that, when dealing with minors, non-custodial sentences be used wherever possible;

26. Shares the doubts of the CPT and the Network of Independent Experts as regards the compliance of special detention regimes, such as '41 bis' in Italy, with fundamental rights, and calls for such regimes to be reviewed as a matter of urgency, particularly in the light of the Ganci ruling of the European Court of Human Rights, which condemned Italy for violation of the right to an effective remedy;

27. Is concerned at the plight of foreigners being deprived of their freedom in holding centres despite the fact that they have been charged with no crime or offence; and calls for holding centres, in particular holding centres for asylum seekers, to meet human rights standards;

28. Considers that the prohibition of torture and inhuman and degrading treatment, as well as the protection of human dignity, include the prohibition of overtreatment, the promotion of palliative care, respect for the patient's wishes, as expressed through his or her will, for example; calls on the Member States to consider the possibility of amending laws on the end of life to this end by regulating euthanasia;

Prohibition of slavery and forced labour (Article 5)

29. Condemns in the strongest terms all forms of psychological and/or physical violence which offend against human dignity;

30. Notes with regret that some sections of society, such as migrants, refugees, Roma, elderly people, detainees and disabled persons, particularly women and children, are more affected by discrimination and violations of human dignity in the EU;

31. Welcomes the fact that all the EU Member States have ratified the United Nations Convention on the Rights of the Child, which was adopted on 20 November 1989 and entered into force in 1991;

32. Condemns trafficking in human beings, the main victims of which are women, migrants and children;

33. Stresses the need for the collection and distribution of reliable statistical data on various aspects of immigration into the EU; special attention should be given and urgent action is needed to combat trafficking in human beings, especially in the most vulnerable groups such as women and children;

34. Stresses that trafficking in women and children, and prostitution cannot be combated effectively by Member States acting on their own and urges therefore actions for a common European strategy addressing the entire trafficking chain;

35. Highlights the crucial importance of a gender perspective in immigration policy of the European Union and emphasises that there is a need to focus on immigration connected with trafficking in women that aims at prostitution. It is also a matter of great importance to elaborate a common strategy for the European Union to tackle the root causes of trafficking in the countries of origin through social- and economic co-operation and financial and technical assistance;

36. Notes that, each year, some half a million women of Central and Eastern European origin are brought into the European Union to be sold into prostitution; calls on the Member States therefore to tackle trafficking seriously by making better use of the police and of legal-protection and social authorities and by means of intensive cooperation with the applicant countries and other countries in the vicinity of the EU;

37. Calls on the Member States to ratify the United Nations Convention against transnational organised crime and its Additional Protocols to prevent, suppress and punish trafficking in persons, especially women and children, and against the smuggling of migrants by land, sea and air;

38. Welcomes the fact that the Council has adopted a framework decision on trafficking in human beings (19 July 2002), while regretting, however, the interpretation problems raised by use of the terms 'abuse' and 'vulnerability' to describe the offence;

39. Notes with concern that human organ and tissue trafficking networks which operate world-wide and obtain such organs from underdeveloped countries can use the EU as a final destination; recommends that all Member States show the utmost vigilance and rigour in combating such crimes;

40. Recommends that all Member States ratify the Council of Europe Convention on Cybercrime of 23 November 2001;

41. Calls on the Member States which have not yet done so to make trafficking in human beings a crime under their criminal law and to consider, in particular, trafficking in children and child pornography as aggravating circumstances, particularly with regard to the psychological and societal disorders which such acts generate, and calls for all the necessary protection measures to be taken against them;

42. Welcomes the adoption by the Council of the framework decision on combating the sexual exploitation of children and child pornography (December 2003);

43. Welcomes the fact that the Council and Parliament have decided (1 December 2003) to continue the Daphne II action programme (2004-2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk;

44. Condemns in the strongest terms sexual abuse of children in the context of tourist activities and calls on the Commission to investigate which EU Member States define 'sex tourism' as an offence liable to result in proceedings before the courts whenever it is committed by EU citizens or persons resident in the EU and, where appropriate, to compare the different definitions in the respective penal codes;

45. Calls on the Member States to ensure that labour legislation on the protection of workers is duly applied, in particular with a view to combating child labour, domestic slavery and the exploitation of migrant workers;

46. Calls on all Member States which have not already done so to ratify and implement the ILO Convention on the rights of migrant workers;

47. Considers that the Vienna Convention on diplomatic relations should be revised in order to prevent and combat domestic slavery;

48. Calls on the EU institutions to ensure that all their staff abide by a code of good conduct which prohibits the use of domestic slavery;

49. Welcomes the proposal for a Council directive on the short-term residence and work permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities;

50. Emphasises that victims of trafficking in human beings should be able to obtain reparation and protection throughout the European Union;

Chapter II: SAFEGUARDING FREEDOMS

Protection of personal data (Article 8)

51. Welcomes the fact that Council of Europe Convention 108 for the protection of individuals with regard to automatic processing of personal data (28 January 1981) is in force in all the EU Member States;

52. Calls on the Commission to report on the measures taken with a view to speeding up the procedure for notification of acceptance by all the States Parties of the amendments to Convention 108, adopted by the Council of Europe Committee of Ministers on 15 June 1999 and allowing the accession of the European Communities;

53. Calls on the Council to continue the negotiations on an additional protocol to Convention 108 with a view to setting up an independent European supervisory authority;

54. Reiterates its call for the European Union to adopt a legally binding instrument providing a degree of protection at least equivalent to that guaranteed in Directive 95/46/EC[1] in all the Union's legislation and activities;

55. Welcomes, in this connection, the results of the Convention on the Future of Europe, which provide for the abolition of the pillar structure, full jurisdiction for the Court of Justice in the JHA sphere, the incorporation of the Charter of Fundamental Rights into the Treaty and more extensive use of the codecision procedure; urges the IGC not to go back on these advances;

56. Is concerned at the content of Directive 2002/58/EC[2], which provides for the possibility of electronic communications data retention, and calls once again for measures to be taken to guard against extra-legal telecommunications interception systems;

57. Calls for the agreements currently being negotiated or already negotiated which entail the transmission of personal data between the EU and third countries or bodies to guarantee an adequate level of data protection and, in any case, to maintain the level guaranteed in Directive 95/46/EC; calls, to this end, for such agreements to systemically provide for the establishment of a body to monitor and supervise their implementation with a view to ensuring full respect for the above guarantees;

58. Is concerned, in particular, at the fact that the US authorities are making it compulsory for airline companies to give them access to passengers' personal data available to them with respect to transatlantic flights; considers that this obligation is incompatible with Community law and therefore calls for the immediate suspension of the effects of these measures so long as they fail to respect the level of data protection guaranteed by

[1] Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, pp. 0031-0050.
[2] Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31.7.2002, pp. 0037-0047.

Community law; under current Community law, any data transfer constitutes a violation of Directive 95/46/EC;

59. Considers that the agreement with the USA should contain a set of guarantees regarding the nature and volume of data which may be transferred and the use that may be made of such data in the United States[1];

60. Shares the view of the Working Party on Privacy regarding the inadequacy of the rules on privacy in the United States, and the view of the Belgian Commission on Privacy regarding the violation of national and Community law when the personal data of passengers on transatlantic flights are transferred to the United States; calls on the Commission and the privacy protection authorities to take all the necessary measures to put an end to the present illegal situation by enforcing Community and national privacy laws;

61. Draws attention to Regulation (EC) No 1049/2001 regarding public access to the documents of the institutions, and calls on the Commission, the Council and its own Secretariat to ensure that the Regulation and its spirit are respected and genuinely lead to greater openness and public access;

62. Welcomes the intention of the Commission to present a proposal for a directive on the protection of workers' personal data in the employment context and urges the Commission as well as the Council to give full effect to the workers' rights enshrined in Article 8 of the Charter and adopt effective legislation in this respect as soon as possible;

Freedom of expression and information (Article 11)

63. Deplores the fact that, inside the EU, the problem of the concentration of media in the hands of a few big groups has still not found a legislative solution, and reiterates that the constitution of de facto monopolies must be controlled using, inter alia, parameters relating to respect for fundamental rights and, in particular, freedom of expression, as in Article 11 of the Charter of fundamental rights of the EU; recalls its resolution of 20 November 2002 on media concentration and reiterates its concern about the Italian situation, where there is an ongoing concentration of the media in the hands of the Prime Minister in the absence of appropriate legislation to avoid a conflict of interests;

64. Calls for Directive 89/552/EEC[2] to be amended in order to make it compulsory for Member States to preserve media pluralism;

65. Protests at all acts involving the intimidation, pressurisation and threatening of journalists and other public figures, in particular those perpetrated in the Basque country

[1] European Parliament resolution of 8 October 2003 on transfer of personal data by airlines in the case of transatlantic flights (P5_TA_PROV(2003)0429).

[2] Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, Regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

by the ETA terrorist organisation, preventing them from freely carrying out their work; calls accordingly for the Member States to take all steps in their power under their national legislation to ensure respect for the right to freedom of opinion and expression;

66. Calls on the governments of the Member States to ensure that the information they provide to the press is accurate and reliable, and urges them to refrain from engaging in any conscious manipulation of information for propaganda purposes, a method which is unworthy of democratic states;

67. Notes that, in many Member States, provisions on protection of sources, which is a fundamental principle of investigative journalism, are often inadequate and that unjustified exemptions are too frequently allowed;

68. Calls, therefore, on the Member States to adopt legislation on the protection of sources to allow journalists to exercise their profession freely and without fear of seeing the findings of their investigations improperly used by the public authorities;

69. Calls also on the Member States to update their legislation on defamation and libel in order to bring it into line with current practice and thinking and prevent freedom of the press from being violated as a result of archaic legislation;

70. Stresses that freedom of expression includes the right to express one's own ideology, provided that this is done through democratic channels; reiterates, therefore, its abhorrence for terrorist organisations which threaten and murder individuals solely because they have voiced their own opinions, particularly in the discharge of their duties as holders of elected office or members of specific political groups, and its refusal to engage in any form of dialogue with such organisations, which use weapons, instead of words, to express themselves;

Right of asylum (Article 18)
Protection in the event of removal, expulsion or extradition (Article 19)

71. Notes with dismay that the Member States have been unable to adopt directives on asylum procedures and refugee status under the Italian Presidency, despite the fact that the Thessaloniki European Council recently reiterated its determination to establish a Common European Asylum System and reaffirmed that it was vital that the Council adopt the outstanding basic legislation before the end of 2003;

72. Recalls that the rules adopted in this context must comply with the Geneva Convention of 28 July 1951, the Protocol of 31 January 1967 relating to the status of refugees and other relevant international human rights instruments, and announces its intention to oppose any provision which might contravene the principles established by these international agreements;

73. Deplores the fact that many Member States are actively pursuing a strategy of tightening their national laws on asylum so as to make their territory less attractive to asylum-seekers than that of other Member States, and believes that Community

harmonisation of rules on the procedures and conditions for the granting of refugee status would be the only means of combating this development;

74. Renews its request that Member States and the EU grant refugee status to individuals persecuted by non-state agents in circumstances where the state is unable - or unwilling - to protect them, on grounds of their sexual orientation, or risking female genital mutilation;

75. Considers that this coordination should be aimed essentially at guaranteeing an adequate degree of protection for refugees by adopting at Community level the best practices in the various Member States, with special consideration for the serious humanitarian situations on which these requests for asylum are based;

76. Deplores recent developments in negotiations tending to empty the draft directives of their substance and to codify restrictive national practices without aiming at European harmonisation;

77. Suspects, however, that the Member States might have a tendency to consider as ‘best practices’ those which keep the number of applications considered and of cases granted refugee status as low as possible rather than those providing asylum-seekers with the highest level of protection;

78. Is concerned at the externalisation rationale underlying many proposals currently being considered as well as such concepts as ‘regional protection centres’, ‘internal’ asylum and safe third countries, calls for concepts such as 'neighbouring' safe country to be abolished, opposes the idea of sending asylum seekers back to third countries with which they have no significant links, calls for the concept of 'safe country' to take account of international standards and expresses its opposition to any system aimed at allowing Member States to shift their responsibilities in the field of asylum onto third countries and which might entail the risk of direct or indirect 'refoulement' and contribute to the phenomenon of 'refugees in orbit'; considers therefore that the implementation of the safe country concept must be accompanied by procedural guarantees, such as that of individual consideration and the right to suspensive appeals;

79. Calls upon Member States to adopt more effective policies to address the root causes of forced migration, including gross violations of human rights, persecution, political and ethnic conflicts, famine and economic insecurity, poverty and generalised violence;

80. Recalls that asylum is a fundamental right which must be safeguarded, while avoiding any confusion with the concept of illegal immigration; notes with concern, however, that, owing to the fact that this option is not always used properly and to frequent abuses, there is a tendency to consider the issue of asylum as a problem relating to the management of migration flows, and hopes that, through the proper application of this status, the main concern of governments will not be merely to achieve budgetary savings in this field;

81. Calls upon Member States to observe the Tampere European Council commitment to absolutely respect the right to seek asylum, and the ban on 'refoulement';

82. Urges Member States to further explore the possibility of agreeing on a legislative basis for an EU-wide resettlement programme. Such a programme should not be viewed as part of a strategy of migration controls; rather, it should seek to provide rescue and durable solutions for refugees in need of protection, preserve the possibility of first asylum and act as a means of equitable responsibility sharing;

83. Urges the Member States to put into practice Declaration No 17 annexed to the Treaty of Amsterdam, which provides for 'consultations (...) with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy', and notes with deep regret that, to date, the concerns expressed by these organisations have scarcely been taken into account;

84. Deplores the fact that the Member States have decided to introduce Community legislation on the organisation of common flights for the expulsion of third-country nationals in an irregular situation without even providing for a monitoring clause to enable NGOs to observe the conduct of operations and report on any incidents; calls for the situation in the country of destination and the risks of direct or indirect violation of the principle of 'non-refoulement' to be systematically taken into account in each individual case; calls for the provisions of Article 4 of Protocol No 4 to the ECHR, as interpreted by the case law on collective expulsions, and Article 19(1) of the Charter of Fundamental Rights to be fully respected; reminds the Member States that collective expulsions are permitted only if decisions to expel third-country nationals en masse are based on an individual, equitable and objective assessment;

85. Considers it necessary to limit internment to the absolute minimum, including within the framework of the deportation procedure, and - apart from absolutely exceptional cases - to avoid altogether taking children and minors into care;

86. Calls upon Member States to ensure that return programmes do not exacerbate instability in countries of origin by returning large numbers of people before basic infrastructure is in place to provide conditions of 'safety and dignity', uphold the rule of law and protect human rights;

87. Considers that, by adopting common expulsion procedures and not being able to agree on common procedures for granting refugee status, the Member States have left no doubt as to their main concerns;

88. Calls on the Council to review its Directive on family reunification that prevents non-EU citizens from being reunited with their families, and, therefore, supports the legal action under way against the Directive brought by the EP before the ECJ;

Chapter III: TOWARDS EQUALITY

89. Calls on all Member States to ensure that freedom of thought, conscience and religion, as well as tradition, do not infringe the autonomy of women and the principle of

equality for women and men, and that these be exercised in full accordance with the requirement of separation between Church and State;

Principle of non-discrimination (Article 21)

Combating racism and xenophobia

90. Draws attention, in relation to the Community *acquis* on social rights and the prohibition on discrimination, to the importance, not only of its prompt and complete incorporation into the legislation of acceding Member States, but also of its actual implementation;

91. Insists that gender mainstreaming be taken into consideration in all EU public policies;

92. Calls on Member States to pursue a coherent anti-discrimination policy, both nationally and at EU level, and in this connection to provide the same level of protection whatever the ground on which discrimination is based;

93. Notes the persistence of racial discrimination, which is closely linked to the absence of legislation in certain Member States[1] or difficulties in applying the law effectively;

94. Recommends, therefore, that Member States speed up the process of fully implementing Directive 2000/43[2] and Directive 2000/78[3] as the deadline for implementation of the two Directives has expired;

95. Calls on the Council to adopt the Commission's proposal for a framework decision on combating racism (28 November 2001) and to make the fight against racism and xenophobia a priority on the EU agenda;

96. Reiterates its call for full and correct implementation at national level of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;

97. Expresses concern at the increase in anti-Islamic and anti-Semitic manifestations of hatred and discrimination following the 11 September 2001 attacks and the Israeli-Palestinian conflict; welcomes, however, the awareness-raising campaigns conducted by several Member States (such as Finland, France, Germany and Sweden) to educate people in scrutinising racist propaganda; calls on Member States such as Greece and Italy to follow suit;

98. Expresses concern at the increase in manifestations of xenophobia, discrimination and racist acts against migrants, refugees and asylum seekers, which in some cases have led

[1] COM(2001) 664.
[2] Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180/22, 19 July 2000, deadline for implementation 19 July 2003.
[3] Directive establishing a general framework for equal treatment in employment and occupation, OJ L 303/16, 2 December 2000, deadline for implementation 2 December 2003.

to the adoption of restrictive legislation and policies in the field of asylum and immigration (i.e. in countries such as Spain and Portugal);

99. Deplores the fact that in some Member States the media sometimes contributes to the labelling of asylum seekers as criminals or abusers of the welfare system, which fuels racist and xenophobic sentiments and indirectly contributes to racist violence (e.g. in Finland);

100. Welcomes the initiative taken by many Member States in adopting measures to fight against racism on the Internet; welcomes the progress made by Portugal and Belgium in that both countries have signed the additional Protocol to the Council of Europe Convention on Cybercrime;

101. Welcomes the efforts of the European Monitoring Centre for Racism and Xenophobia (EUMC) to compile the necessary data on racism and xenophobia in the Member States; urges it to use the information proactively;

Discrimination based on sexual orientation

102. Calls once again on the Member States to pursue an explicit and coherent policy to combat discrimination against homosexual men and women and promote their social emancipation and integration, in particular by launching an information and solidarity campaign at European level;

103. Calls on the Member States to recognise unmarried partnerships -between both couples of different sexes and same-sex couples - and to link them to the same rights as apply to marriage, notably to adoption, residence and free movement in the EU;

104. Welcomes the judgment of the European Court of Human Rights (ECHR) in the Karner case,[1] in which the Court ruled that whenever governments grant rights or benefits to different-sex cohabiting partners, they must grant the same rights or benefits to same-sex cohabiting partners;

105. Draws attention to the fundamental importance of children's right to the protection and care necessary to their well-being; stresses that, at both Community and Member-State level, strong measures to combat trafficking in human beings, child prostitution and other forms of abuse must be significantly better coordinated and made more efficient in order swiftly to combat this inhuman activity, which is reminiscent of enslavement, and that measures by the acceding and applicant states and countries within the 'wider European neighbourhood' must also be given priority;

106. Urges Member States to act to eliminate discriminatory rules and practices, in relation in particular to the recognition of diplomas and the situation of border workers; urges the Netherlands to stop violating Regulation 1408/71, as determined by the Court of Justice judgment in Case C-311/01; notes, despite the decree law of 14 January 2004, the Italian Government’s continuing failure to comply fully with the Court of Justice’s

[1] Karner v. Austria, 40016/98 of 24 October 2003.

judgment in Case C-212/99 concerning foreign lecturers and that the Commission is now seeking financial penalties;

107. Condemns discrimination against women in all its forms; reaffirms that equality between men and women is a fundamental right; urges the practical application and implementation of this principle in all areas at national and European levels;

108. Calls on the Member States to actively improve the situation for women at the workplace concerning the right to equal pay and the right to social security, as regards retirement, unemployment, sickness, invalidity insurance and pensions schemes;

109. Underlines that many immigrant women have only derived rights through their husbands. It is therefore crucial to provide those women with thorough information and empowerment strategies on women's rights and opportunities in the country in which they reside as well as in the whole territory of EU in order to obtain the best integration in society;

110. Condemns all sexist practices and stereotypes; asks the European Union and the Member States to ensure by all appropriate means that the media, advertising and educational material promote a positive image of women based on the respect of human dignity and the principle of equality between men and women;

111. Urges the Member States in all areas of society to promote a balanced representation in decision-making bodies and to encourage political parties, on both national and EU levels, to review their party structures and procedures in order to remove all barriers that directly or indirectly discriminate against the participation of women. Furthermore calls on political parties to adopt adequate strategies to reach gender balance in political decision making;

112. Calls on Member States to take all appropriate steps necessary to remove all obstacles caused by direct or indirect discrimination that prevent women from participating in electoral processes; calls on Member States to adopt appropriate measures to encourage the participation and the election of women;

Discrimination based on disability

113. Welcomes the fact that 2003 was the European Year of People with Disabilities;

114. Recognises that the rights of disabled people are violated every day as a result of direct and indirect discrimination and lack of environmental and social adjustments to allow equality of access and free movement of disabled people to all areas of life;

115. Expresses serious concern about the evidence presented in the recent reports of Amnesty International on users of psychiatric treatment in Europe and the Report by the Mental Disability Advocacy Centre on Caged Beds which informs us of the severe human rights abuses experienced by disabled people living in institutions across Europe, abusive practices which must be ended immediately by the governments of the countries concerned;

116. Reiterates its support for a horizontal non-discrimination directive on disability to prohibit discrimination against disabled people in all areas of life;

117. Calls on the governments of Europe to promote and introduce independent living and personal assistance services for disabled people to enable them to live freely and independently in the community;

118. Calls for improved monitoring of the human rights situation of disabled people in Europe, for improved data collection and reporting on this issue and for governments to involve organisations of disabled people in such monitoring work; notes the example of the European Committee for the Prevention of Torture, which is an independent human rights body with the mandate to visit institutions without the prior authorisation of government authorities;

119. Reiterates its 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; calls on the EU Member States to positively support a UN Convention and press for clear language in the UN Convention to ensure equal and effective human rights for disabled people with reference to anti-discrimination and positive action measures; calls for the UN Convention to include effective monitoring and implementation mechanisms at both national and international level, ensuring the active participation of representative disability organisations throughout the process;

120. Calls on all Member States and electoral authorities to ensure that election campaigns, election procedures and voting procedures during elections are fully accessible to all disabled people;

121. Calls on the Member State Governments to ensure that legislative measures under Article III-8 on non-discrimination on grounds of disability (former Article 13) are decided by qualified majority voting;

122. Calls on the Member States to include representative organisations of disabled people on the Bioethics Committees which consider issues relating to matters including pre-natal diagnosis, genetic testing, genetic screening and right to life;

123. Calls on the Commission to determine the extent to which measures to promote occupational and social integration for disabled persons and social and economic integration for the elderly can be adopted using existing open-coordination procedures, in particular that of open coordination for social inclusion;

Chapter IV - SOLIDARITY

124. Regrets that European Court of Justice case law shows that different Member States are guilty of failing to transpose or of inadequately transposing directives implementing the right to a wholesome and safe working environment; urges France and Italy to act

without delay to comply with Court of Justice judgments in cases C-66/03 and C-65/01 respectively, and to ensure correct and complete transposition of Directives 2000/39/EC and 89/655/EEC;

125. Calls on the Commission stringently to monitor the correct transposition of Directive 93/104/EC[1] concerning the organisation of working time, in relation in particular to the exemptions and exceptions it provides for;

126. Notes that everywhere in Europe the use of atypical work, and in particular temporary agency work, is increasing; regrets that these workers are still often suffering from precarious working conditions and from more accidents at work than other workers; calls, in this regard, on the EU institutions to ensure as soon as possible the adoption of the Directive on working conditions for temporary agency workers ensuring high employment standards;

127. Calls on the Commission to monitor the prompt and correct transposition by Member States of Community legislation relating to employee information and consultation within the undertaking; urges, in addition, that the United Kingdom in particular does not apply any too restrictive interpretations on the basis of the confidentiality clause that has been included in Article 6, paragraph 2 of Directive 2002/14/EC; such a clause is intended to apply in a small number of ad hoc cases, and is not meant to be used to create generic exceptions enabling certain areas to be completely excluded from the worker information and consultation requirements;

128. Notes that, although those rights are recognised as fundamental social rights according to international and European standards, they are increasingly threatened with deregulation as a consequence of globalisation and narrowly economic trains of thought; warns against allowing working conditions to become dependent on court proceedings, whereby social conflicts will be settled, not by way of consultation between social partners, but by bringing cases before civil or other courts, with the result, in the long term, that efforts to maintain social peace will be subjected to intolerable pressures;

129. Regrets that in a number of Member States wide-ranging restrictions continue to be applied to the rights of organisation, collective bargaining and participation in collective action for those working in the public sector, in particular the uniformed services such as the armed forces, police or customs officials; calls strongly for the options for exemptions to those rights that are available under the European Social Charter to be applied much more restrictively and, as far as possible, abolished;

130. Stresses that discrimination in any form against the exercise of social rights intended to reconcile family and working life, in particular the right to parental leave and protection for expectant and nursing mothers) must be eliminated, not only in principle but also in practice.

[1] OJ. L 307, 13.12.1993, p. 18, as amended by Reg. 2000/34/EC, OJ L 195, 01.08.2000, p. 41.

131. Urges the development of measures to make an optimum combination between work and family possible, also taking into account both the demographic deficit and the inability of many married couples to have children of their own;

132. Highlights the recognition of the common responsibility of men and women in the upbringing and development of their children and stresses that both mothers and fathers should have the rights to parental leave without facing any discrimination imposed on them by the employer;

133. Draws attention to the fact that poverty, and more specifically extreme and persistent poverty, is contrary to human dignity and, as such, a human rights violation; that fundamental rights are interdependent and indivisible; and that people living in poverty should have access to all social, economic, political, civil and cultural rights so that their dignity is respected;

134. Welcomes the progress achieved by Member States in recognising the extent of poverty and social exclusion in the EU, its multi-dimensional nature and the need for an integrated approach to combat poverty and social exclusion, reflected in the 2003-2005 national action plans for social inclusion;

135. Notes the persistence of poverty and social exclusion in the EU and emphasises the need to make a decisive impact on the eradication of poverty;

136. Is concerned at regressive measures and budgetary cuts made in the field of social protection and social policy in some Member States, undermining the fight against poverty and social exclusion;

137. Calls for increased efforts to mobilise and encourage the effective involvement of all parties in promoting access for all to fundamental rights, and especially for people living in poverty and organisations to which they belong or which represent their interests;

138. Calls for an international instrument on poverty and human rights to be set up alongside existing instruments for the protection of civil and political rights, as well as social, economic and cultural tights, to play a role comparable to that of the Slavery Convention and the UN Convention on the elimination of racial discrimination;

139. Urges the Commission and the Council, in accordance with the Charter and the draft Constitution, to leave the responsibility for organising and financing access to services of general interest to Member States, but to work, on the basis of Community law, towards establishing a Community core of public-service obligations, in particular in network sectors;

140. Urges a more dynamic ratification policy by Member States in relation to recent ILO conventions; asks its Committee on Employment and Social Affairs to draft an own-initiative report on the above matters;

Chapter V - CITIZENS' RIGHTS

Right to vote and to stand as a candidate at municipal and European elections (Articles 39, 40 and 45)

141. Notes that appropriate information programmes should be established both at national and at European level to remedy the democratic deficit highlighted by low turnouts, in particular at European elections; it is now clear that a new transparent and effective 'governance' of European affairs is necessary;

142. Recommends that EU citizens resident in a Member State other than their own be better informed at the forthcoming European elections;

143. Calls on political parties to put forward EU citizens from various immigrant groups on their electoral list at local and European elections;

144. Calls on the Member States to ensure that political parties respect the principle of gender parity;

145. Calls on the Member States which have not yet done so to ratify the European Convention of 5 February 1992 on the participation of foreigners in public life at local level;

146. Emphasises the need to take the necessary measures to recognise citizenship based on residence and ensure participation in local political life for third-country nationals legally resident in EU Member States;

147. Calls on the Commission and Member States to eliminate immediately the remaining obstacles to the practical attainment of free movement of persons as required by judgments of the Court of Justice of the EC, and not to apply the transitional rules which will prevent free movement of citizens of the applicant countries when these countries accede to the EU;

148. Stresses the reference to the right of petition in the European Parliament, as well as the right to submit a complaint to the European Ombudsman, as a non-judicial means of recourse, which are important instruments in the promotion and protection of the fundamental rights of the citizens of the European Union;

149. Stresses that an awareness campaign to inform the citizens of the new Member States of their fundamental rights should be carried out, in order for them to utilise the judicial and non-judicial grounds for appeal at their disposal.

150. Recommends that the Council pay more attention to the protection of fundamental rights by ensuring its representation, at a senior level, at every meeting of the Committee on Petitions;

151. Reiterates that Conclusion 21 of the Tampere Summit (October 1999) should be reaffirmed;

Chapter VI - FAIR ACCESS TO JUSTICE

Right to an effective remedy and to a fair trial (Article 47)
Presumption of innocence (Article 48)
Ne bis in idem (Article 50)

152. Urges the Commission to step up the procedure on submitting a proposal for a framework decision on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union;

153. Expresses concern about the situation of a number of European citizens being detained at a prison camp in Guantánamo Bay, in breach of rules of international law;

154. Expresses concern at the United Kingdom's continued derogation from Article 5 of the ECHR, the continued application of Part 4 of the Anti-Terrorism Crime and Security Act 2001 and the announcement of government intentions to widen its application;

155. Expresses concern about the large number and seriousness of violations, confirmed by the European Court of Human Rights, of the right to have judgment given within a reasonable time (Greece, United Kingdom, the Netherlands, Ireland, Italy and Austria) and the right of access to justice, due process and a fair trial (Netherlands, Italy, France, Germany, Finland, Sweden, and the United Kingdom);

156. Draws attention to the right of citizens to submit to any authority, individually or collectively, petitions, representations, complaints or requests for their rights, the law or the public interest to be upheld and their right to be informed within a reasonable period of time of the result of the examination of their submission; recalls that under no circumstances may this right be restricted or diminished, or citizens be intimidated or persecuted for having exercised it;

157. 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;

158. Calls on Germany to pay compensation also to Italian former military internees for forced labour during the Second World War, reconsidering the negative position adopted on the matter, which led to a serious situation of unfair discrimination;

159. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States and applicant countries.

EXPLANATORY STATEMENT

The 'central role of the human person and his or her inviolable and inalienable rights' has been recognised and reaffirmed by the Convention in the preamble to the Draft Constitution for Europe.

The Charter of Fundamental Rights within the Community set-up

The Charter of Fundamental Rights is included in the draft Constitution, forming its preamble. The adoption of the Constitution would make it an element of positive law with constitutional status.

Although at present the Charter is not legally binding, this does not mean that it has no legal effect whatsoever. The solemn and joint proclamation of the Charter by the Commission, the Council and the European Parliament at the Nice Summit in December 2000 has given it the legitimacy of the EU's three main institutions.

The Charter has become an element of positive law to which national courts, the Advocates-General and the Court of First Instance refer[1].

The Charter represents the minimum standard on which any EU citizen should be able to rely. Third-country nationals are excluded from many provisions. Although the draft Constitution stipulates that 'Europe is a continent that has brought forth civilisation; that its inhabitants, arriving in successive waves from earliest times, have gradually developed the values underlying humanism: equality of persons, freedom, respect for reason', nationals of third countries are excluded from the common heritage which 'equality of persons' represents.

The Charter has also become the European Parliament's frame of reference for drafting its annual report on fundamental rights. Since the adoption of the Cornillet report (A5-0451/2002) by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs in 2000, it has provided the basic framework for such reports.

Legitimacy and monitoring mechanism

The European Parliament, representing the sovereignty of the people, has a legitimate right to speak out on matters directly affecting EU citizens, especially where their dignity is concerned since its main role is to represent them and defend their interests.

In this respect, it is regrettable that the Council takes so little account of the European Parliament's opinion on such matters.

The European Parliament's legitimacy in matters relating to fundamental rights has been strengthened by Article 7 (TEU). It may, on the basis of a reasoned proposal, formally notify the Council where there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1) of the TEU[2] or where there is a serious or persistent breach of

[1] Conclusions of Court of Justice Advocate General Tizzano in Case C-173/99, paragraph 28, and for the first time since its proclamation in the judgments of the Court of First Instance delivered on 30 January and 3 May 2002.

[2] 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental

principles mentioned in this article. This applies to violations not of provisions of the Charter, but of the principles mentioned in Article 6(1).

This report should strengthen the European Parliament's capacity to carry out its role in monitoring fundamental rights within the EU.

Parliament's report may serve as a basis for a reasoned proposal, thus making it possible to initiate the mechanism for protection of fundamental rights within the EU.

Your rapporteur welcomes the communication from the Commission (which, in its capacity as guardian of the Treaties, is responsible for ensuring respect for fundamental rights) to the Council and Parliament on Article 7 of the Treaty on European Union[1].

We ask for the exploration of the scope for corrective and remedial measures, including technical support and assistance as alternatives to penalties for Member States that are failing to meet commonly held standards of respect for fundamental rights.

A thematic approach derogating from the Cornillet approach

In this report, we shall seek to gauge the effectiveness of the rights enshrined in the Charter of Fundamental Rights of the European Union. The effectiveness of these rights will be gauged in respect of all individuals, irrespective of gender, ethnic origin, sexual orientation, religion, handicap and status.

Since the sad events of 11 September 2001, a huge number of measures have been taken both at EU and national level to combat terrorism, transnational crime and illegal immigration. In the name of EU and national security, limits are being imposed on our public freedoms and fundamental rights and these measures are directly or indirectly affecting a number of vulnerable groups and social movements.

However justified the fight against crime, insecurity and terrorism may be, it should under no circumstances be allowed to undermine fundamental rights and democratic freedoms since this would threaten the very foundations of the European Union.

Your rapporteur therefore proposes that the report's underlying theme should be an analysis of the criminalisation of social movements and vulnerable groups - a subject-based overview of the Charter rather than an article-by-article approach. Target groups which we have identified include trade unions, support and human rights groups, migrants and refugees, victims of trafficking in human beings, Roma and gypsies, journalists, women, children and people with impaired mobility.

The selected articles of the Charter are as follows:

Chapter I - Human dignity

Article 4: Prohibition of torture and inhuman or degrading treatment or punishment
Article 5: Prohibition of slavery and forced labour

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freedoms, the rule of law, principles which are common to the Member States', Article 6(1) TEU.
[1] COM(2003) 606.

Chapter II - Freedoms
Article 8: Protection of personal data
Article 11: Freedom of expression and information
Articles 18 and 19: Right of asylum and protection in the event of removal, expulsion or extradition

Chapter III - Equality
Article 21: Principle of non-discrimination

Chapter IV - Solidarity
Article 34: Social security, in particular the fight against social exclusion

Chapter V - Citizens' Rights
Articles 39 and 40: Right to vote and stand as a candidate at European and municipal elections

Chapter VI - Justice
Article 47: Right to an effective remedy and to a fair trial
Article 48: Presumption of innocence and right of defence
Article 50: ne bis in idem

This approach was accepted as a principle by members of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs at our earlier discussions. This choice is mainly based on the fact that the European Parliament's work schedule would not allow us to carry out a detailed analysis of the articles of the Charter with so few resources available and within such a short time frame. Given the very late adoption of the previous annual report (September 2003) and the forthcoming elections, we are obliged to work with maximum speed.

The main problem facing your rapporteur is the fact that there is no department within the European Parliament responsible for human rights issues within the EU. However paradoxical this may seem, Parliament has a Human Rights Unit working for the Foreign Affairs Committee as if the EU were in a position to preach to third countries on the subject. As if it was beyond reproach in relation to fundamental rights!

The Council's 2003 annual report on human rights in fact only devotes 13 of its 107 pages to human rights within the EU, and this without going into any detail. The EU should be consistent in its approach to fundamental rights inside and outside its borders. Its own credibility is at stake.

Moreover, your rapporteur has not so far been able to benefit from the specialist help of the EU Network of Independent Experts on Fundamental Rights. We received the experts' national reports in January 2004 and the summary report will probably not be available until the time of the vote on the present report in plenary.

It should be noted that the EU Network of Independent Experts on Fundamental Rights, set up by the European Commission on a proposal from the European Parliament, works on the basis

of a mandate defined by the Commission. In order to benefit as fully as possible from its members' expertise, closer cooperation will need to be established with the Commission.

During the drafting of this report, the question of whether to set up a European Parliament human rights unit was raised. Without questioning the Network's legitimate role and the Commission's competence, Parliament must have a service of its own. This is in no way prejudicial to the relations which need to be established and consolidated between the European Parliament, the Network and the Commission.

Many international bodies draw up reports on human rights (the UN and its specialised agencies, the OSCE, etc.). Unfortunately, the EU is not one of their priority areas owing to the blatant violations which take place in other parts of the world. Council of Europe reports will become more useful with the forthcoming enlargement of the EU.

This report has been drafted in the light of an exchange of views with the EU Network of Independent Experts on Fundamental Rights and the European Commission, the reports of international organisations (Council of Europe and UN), documents published by NGOs, the hearings with NGOs and the Experts' Network held at the European Parliament on 16 October 2003 and 21 January 2004, European Commission communications, reports by the European Monitoring Centre on Racism and Xenophobia, European Parliament reports, Council documents (such as the 2003 report on fundamental rights) and the specialist information provided by our staff.

CHAPTER I : RESPECT FOR HUMAN DIGNITY

Dignity is inherent to every human being.

Article 4 : Prohibition of torture and inhuman or degrading treatment or punishment
'No-one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

Article 5 : Prohibition of slavery and forced labour
'No-one shall be held in slavery or servitude. No-one shall be required to perform forced or compulsory labour. Trafficking in human beings is prohibited.'

Overview of current situation

Article 4 of the Charter of Fundamental Rights of the European Union, which echoes Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), reaffirms the prohibition of torture and inhuman or degrading treatment or punishment. This article concerns above all persons deprived of freedom. Violations of the article generally occur as much as a result of failure to respect legal guarantees as of poor material conditions of detention. In this connection, prison overcrowding represents the main problem. It should be noted that, in its judgment of 15 July 2002[1], the European Court of Human Rights (ECHR) ruled that, under certain conditions, prison overcrowding constituted degrading treatment. The most commonly used method of dealing with prison overcrowding

[1] ECHR (3rd section) judgment concerning Kalashnikov v. Russia (appl. No 47095/99) of 15 July 2002.

is to increase the number of places available. This solution is hardly convincing from the criminological as well as the practical point of view. However costly it may be, this policy is at best a provisional solution, given that overcrowding tends to go hand in hand with increasing the places available. Moreover, the case of the United States provides sufficient evidence to show that very high prison population rate in no way guarantees a drop in crime figures. Going against the current of those who seek to reaffirm the deterrent value of prisons, we believe that mixed solutions (open or semi-open prisons, or even electronic surveillance) should as far as possible be promoted, as well as alternative solutions such as community work, which produce better results in terms of resocialisation. Clearly, such options must be applied in such a way as to be compatible with the need to protect society against dangerous individuals. However, the number of offences recorded by law-enforcement personnel which involved the use of violence is estimated at 5 %. And the vast majority of the prison population is made up of convicts or persons awaiting trial who are in prison for less than a year. Very often, prisons become 'crime schools' rather than rehabilitation centres and criminological studies tend to prove that the deterrent nature of penalties lies more in the likelihood of them being applied than in their severity.

Persons requiring psychiatric care in prison do not generally receive appropriate treatment. This is due to a lack of resources, facilities and qualified personnel. However, the law may authorise the forced placement in psychiatric establishments. This can only take place on the basis of an independent and impartial medical assessment.

In general, there are still too often serious shortcomings in conditions of detention, in particular with regard to access to health facilities, space, privacy and physical activity, the right to receive visitors and the right to prison leave. Council of Europe recommendations should be meticulously observed. The regular visits by the European Committee for the Prevention of Torture (CPT), under the authority of the Council of Europe, have highlighted various instances of failure to respect these rules throughout the European Union. Other places of detention such as police stations and court cells should also meet the standards set by the Council of Europe on conditions of detention. It should be noted that a report is currently being drawn up by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on the situation in prisons, under the responsibility of Mr Turco[1].

Given the scale of trafficking in human beings in Europe and world-wide, it is essential that we give the issue due consideration.

According to the Council of Europe, there are between 500 000 and 2 million victims of trafficking of human beings in Europe every year. It is difficult to quantify an illicit underground activity.

[1] A5-0094/2004.

Overview of current situation

Trafficking in human beings comprises various modern-day forms of slavery: forced prostitution, domestic servitude, child pornography and forced labour. Such practices constitute blatant violations of human rights, as defined in international law and the Charter of Fundamental Rights.

Trafficking in human beings feeds, in particular, on poverty and destitution, exclusion of the labour market and gender inequalities in social relations. No continent is immune to this. The Union is faced with the problem as a result of demand on the sex market and demand for cheap labour (domestic servitude, exploitation of illegal workers).

According to the European Women's Lobby[1], women who are the victims of trafficking are sold, exploited, manhandled and subjected to sexual slavery. They have no rights and are treated like commodities.

The perpetrators generally work as an international network and are difficult to identify. These are genuine 'multinationals' specialised in trafficking in human beings. Many victims arrive in Europe through illegal immigration channels coordinated by unscrupulous smugglers, who are solely interested in ruthlessly exploiting potential immigrants. Thousands of unsuspecting migrants are unable to escape once they are caught up in the system.

The worst affected groups are women, asylum seekers, immigrants who are not properly registered and children. Trafficking in human beings is one of the most profitable sources of transnational organised crime.

In legislative terms, most Member States do not yet have specific charges corresponding to these forms of slavery. As for existing laws, aimed almost exclusively at repressive action, they are not in tune with the day-to-day reality experienced by exploited women.

The laxist approach of certain authorities, corruption and inadequacies in national, regional and international human rights legislation have allowed an international trafficking network to develop and the criminals to operate undisturbed.

Given the scale now reached by trafficking in human beings, any action against this problem must be seen as part of the wider campaign against organised crime.

Action against trafficking in human beings includes:

- prohibiting trafficking in human beings at national, European and international level,
- strengthening police and judicial cooperation within the EU (Europol, Eurojust),
- working within an international cooperation framework (including with transit countries and countries of origin, as well as regional and international organisations),
- fighting money-laundering and corruption,
- combatting traffickers,

[1] European Women's Lobby, 'Women's rights are human rights : contribution to the European Parliament hearing', 24 April 2003.

- protecting the victims (judicial protection, aid, assistance, not criminalising victims).

Legislative developments since 2002

Trafficking in human beings

Trafficking in human beings means 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability' (Palermo Convention definition).

Trafficking in human beings represents an obstacle to the enjoyment of human rights.

The Brussels Declaration[1]: a driving force in the fight against trafficking in human beings

On 25 March 2003 the Commission decided to set up a consultative Experts Group on Trafficking in Human Beings[2], as recommended by the Brussels Declaration. This group, comprising 20 independent experts, will be responsible, in particular, for assisting the Commission in drawing up new proposals. The group will draw up a report on the basis of the recommendations contained in the Brussels Declaration.

On 8 May 2003 the Justice and Home Affairs and Civil Protection Council[3] adopted conclusions on the Brussels Declaration. It called on the Member States to consider some points as political priorities, in particular ratification of the United Nations Convention against transnational organised crime and its Additional Protocols to prevent, suppress and punish trafficking in persons, especially women and children, and against the smuggling of migrants by land, sea and air.

It is regrettable that, as at 11 December 2003, only Denmark, Spain and France had ratified the Convention and its Additional Protocols. The Convention entered into force on 29 September 2003. It is the first global instrument on the fight against organised crime.

We welcome the fact that this Convention - the Palermo Convention - was signed on 12 December 2000 in Palermo by the European Community and on 16 January 2002 in New York. Completion of the process of ratification by the European Community sends a clear signal that the Community is committed to this instrument's aims[4].

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[1] European Conference on 'preventing and combating trafficking in human beings - global challenge for the 21st century' held at the European Parliament in Brussels from 18 to 20 September 2002 by the International Organisation for Migration in cooperation with the European Parliament and the European Commission (STOP II Programme).

[2] OJ L 79, 26.3.2003, p. 25.

[3] OJ C 137, 12.6.2003, p. 1.

[4] Proposals for Council Decisions on the conclusion, on behalf of the European Community, of the United Nations Convention against transnational organised crime, the Additional Protocol against the smuggling of migrants by land, air and sea and the Additional Protocol to prevent, suppress and punish trafficking in persons, especially women and children, COM (2003) 512, 22.8.2003.

We also note that the Council has adopted a resolution on initiatives to combat trafficking in human beings, in particular women (20 October 2003).

A framework decision on combating trafficking in human beings was adopted by the Council on 19 July 2002[1]. The necessary implementing measures must be taken before August 2004.

This decision introduces a common EU definition of trafficking in human beings. It requires Member States to punish any acts falling with the definition and to provide for effective, proportionate and dissuasive penalties. In specific circumstances, the maximum penalty may be no less than 8 years' imprisonment.

The fight against trafficking in human beings forms part of the framework programme on police and judicial cooperation in criminal matters (AGIS), which was set up for the period from 1 March 2003 to 31 December 2007. It has a budget of EUR 65 million and replaces the STOP Programme.

In view of the growing number of European instruments, your rapporteur shares the view of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs[2] that 'the high level of fragmentation and heterogeneity of the European legal framework in this area runs the risk of leading to confusion and, possibly, legal uncertainty'. The fight against trafficking in human beings should therefore be based on the principles of the Palermo Convention.

Protection of victims

The European Parliament[3] is currently considering the proposal for a Council Directive aimed at issuing a short-term residence permit (renewable every 6 months)?? to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities.

This instrument is flawed in that it only applies to the victim as a witness. The use of evidence against traffickers obtained through this connection may be prejudiced by the perceived element of unfair inducement due to the direct link between the permit and cooperation. A short term residence permit should not be connected to cooperation with the relevant authorities. In this way, the permit would serve the dual purpose of protecting victims and ensuring that evidence obtained from victims of trafficking may be effectively used in the prosecution of traffickers.

It is regrettable that aid, assistance and recognition of the status of victims is not a priority objective of the Council. The restoration of the victim's identity does not seem to be an objective! The victim's temporary protection is only one means of fighting networks engaging in trafficking in human beings. At the end of the cooperation with the competent authorities, the immigrant victim may end up being turned back. Victims are not criminals!

[1] OJ L 20, 1.8.2002, p.1.
[2] T5-0007/2004.
[3] Sörensen draft report, Short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings, A5-0397/2002, December 2003.

The victims of trafficking in human beings are mainly asylum seekers and illegal immigrants, women, many of whom find themselves on the sex market against their own will, and children. Protection of victims should be adapted to the circumstances of these different cases.

Trafficking in human organs and tissues

Trafficking in organs is one form of trafficking in human beings. This trade constitutes a serious violation of people's fundamental rights since it affects their physical integrity. It also violates the rights of citizens in terms of equal access to health services and undermines their trust in the legal system relating to transplants. This traffic is a source of huge profits for the criminals involved.

A joint action by the Member States would be justified by legislative disparities existing at national level in this area, both in terms of constituent elements of criminal acts and possible penalties.

In view of the extreme gravity of trafficking in human organs and tissues, a draft framework decision for vigorous action to fight this problem has been submitted. The need for joint action in this field was emphasised by the Tampere Council (1999) and confirmed by the Santa Maria de Feira Council of June 2000.

On 23 October 2003 the European Parliament[1] approved this proposal for a framework decision, subject to a number of amendments which we supported in order to strengthen the objectives of the Greek initiative. Parliament did not wish to penalise donors, especially where they are coerced into selling their organs. We also specified the illegal nature of trafficking in organs in order to distinguish it from the legitimate trade in organ donations for medical purposes. Moreover, our proposal extends beyond the Greek initiative to 'illegal' trafficking in human organs, 'parts of organs' and tissues, which includes reproductive and embryonic organs and tissues, as well as blood and blood derivatives.

Greece

According to the joint report by the Greek-Helsinki Monitor and the World Organisation Against Torture[2], Greece is a transit and destination country for the sexual exploitation of women and children. Government sources indicate that, in 2002, 18 000 persons were affected by trafficking in Greece. The main countries of origin are Albania, Bulgaria, Moldova, Romania, Russia and Ukraine. There are also women from Asia and Africa. Children, mainly from Albania, are used for the purposes of forced labour, begging and theft. The report accuses the Greek authorities of taking a laxist attitude in the fight against trafficking in human beings. No significant efforts have been made!

[1] Evans report, Trafficking in human beings: prevention and control in trafficking in human organs and tissues. Initiative of the Hellenic Republic, T5-0457/2003.
[2] Torture and other forms of ill treatment in Greece in 2003, The situation of women, Roma and aliens, October 2003, http://www.omct.org.

Greece adopted a law on the fight against trafficking in human beings (October 2002) aimed at criminalising and punishing traffickers. It is nevertheless regrettable that there is no legal provision criminalising forced labour.

In August 2003 a decree was adopted to protect and assist victims. The relevant implementing laws have not yet been adopted by the government.

The OMCT report also accuses the Greek judicial system of failing to protect victims. It refers to the case of the acquittal of a policeman charged with raping a young Ukrainian girl who was a trafficking victim[1]. Victims, whether or not they are aliens, are all human beings whose dignity should not be violated without reparation being provided for and the perpetrators being punished.

In any state governed by the rule of law, exemplary disciplinary action should be take against judicial and police representatives who fail to carry out their public service duties with due impartiality and respect for human rights.

Positive law is a fundamental means of guaranteeing the promotion and protection of human rights, as are monitoring mechanisms. Independent national human rights monitoring centres should be set up to this end in all the EU Member States.

Belgium

The law of 13 April 1995 contains provisions to punish trafficking in human beings, but does not define the term 'trafficking in human beings'. The law merely refers back to a previous definition. The legislator has sought to combat both trafficking (Article 77 bis of the law of 15 December 1980) and a number of situations relating to prostitution (Articles 379 et seq. of the Penal Code). In practice, these two types of criminal offence may occur simultaneously.

Children's rights

In the draft constitution, the protection of children's rights appears for the first time as a specific objective of the European Union.

National legislative provisions

The United Nations Convention on the Rights of the Child was signed on 20 November 1989 and entered into force in 2001. All EU Member States have ratified the Convention.

The ILO Convention on the worst forms of child labour was signed in June 1999. All EU Member States have signed, but only Austria, France, Greece, Luxembourg, Spain and Sweden ratified in 2001.

The Additional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography entered into force in 2002 and has only been ratified by Italy!

[1] Law 2605/98.

Child pornography

Parliament delivered an opinion in June 2001 on a Commission proposal (2000) for a framework decision on combating the sexual exploitation of children and child pornography. A political agreement was reached in the Council in June 2002. Despite the difficulties which arose in negotiations in relation to the age limit for children and the punishable nature of possession of child pornography documents by individuals who do not intend to disseminate them, the decision was finally adopted.

This framework decision provides a common definition of the offences concerned in the case of aggravating circumstances.

The use of new information technologies for criminal purposes has enabled child pornography to develop. The Internet provides the following advantages:

- increasingly wide access to the Internet,
- the number of users is rising each year,
- services are less costly,
- users remain anonymous,
- sales of pornography and other derived 'materials' via the Internet are a lucrative business requiring little investment,
- the absence of suitable legislation or state policy on combating child pornography.

It is difficult to take legal action against access providers and site operators who are not based in an EU Member State. This is even more difficult when the country's legislation does not condemn Internet child pornography. This is why most child pornography on the Internet comes from the United States[1].

There is an instrument available in the form of the Council of Europe Convention on Cybercrime of 23 November 2001. However it has not yet entered into force. It has been signed by all EU Member States but, as at 5 March 2004, none had ratified.

Save the Children[2] points out that, two years after the World Conference on the sexual exploitation of children, held in December 2001 in Yokohama, the situation of such children has scarcely changed and the Conference's recommendations still apply.

Child labour

According to Euronet (European Children's Network)[3], too many children are still victims of forced labour in the European Union (employment of illegally resident children, prostitution and begging). This problem is likely to worsen with the enlargement of the Union. Special

[1] Council of Europe report, Group of specialists on the impact of the use of new information technologies on trafficking in human beings for sexual exploitation purposes, 2002.

[2] Save the Children contribution to the European Parliament's hearing on fundamental rights, 16 October 2003, p. 6.

[3] Euronet contribution to the European Parliament's hearing on fundamental rights, 16 October 2003, p. 4.

attention should be devoted to Roma children who are the victims of social exclusion and discrimination. The Union has a duty to ensure that children's rights are respected and to remind the new Member Sates of the Copenhagen criteria.

Domestic slavery

Domestic slavery exists in all the Member States of the European Union to varying degrees. There is a deafening silence around this practice which, moreover, often occurs in and around international organisations and the diplomatic corps.

Domestic slavery means subjecting a person employed to carry out domestic work to conditions of treatment equivalent to slavery. Migrant women and young girls are the main victims of these unscrupulous employers. The (few) testimonies available show that employees often confiscate the identity papers or passports of such people who have thus been abducted and subject them to sexual abuse and physical and psychological violence, and provide them with no wages or social protection.

It might seem paradoxical that such situations should exist in the EU, given that the Member States and the Union itself have adopted particularly detailed legislation on the protection of workers.

We are faced with the thorny problem of the Vienna Convention (Article 31) on diplomatic relations, which guarantees diplomatic staff immunity from jurisdiction (criminal, civil and administrative).

Unfortunately, although the authorities are well aware of the problem, especially in a capital city such as Brussels, nothing is done to protect victims of domestic slavery. In the event of separation of the diplomat from his domestic worker the person finds himself in an irregular situation, being left without a residence permit since this document was linked to the person of the employer. The person is therefore liable to be expelled. Despite the fact that the law is supposed to protect weaker members of society, in this case, the victim whose dignity has been violated is condemned and there is no means of punishing the perpetrator of the violation.

Member States and the EU should, as a matter of urgency, take appropriate measures to remedy this injustice. Human rights are universal. There can be no special exceptions!

CHAPTER II: SAFEGUARDING FREEDOMS

Article 8: Protection of personal data
'Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis lay down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.'

A. Overview of current situation

The protection of personal data, which is covered by Article 8 of the Charter of Fundamental Rights of the European Union, is also guaranteed by the ECHR (Article 8) and, more specifically, by the 1981 Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data. Provisions regarding its implementation are contained in the well-know Directive 95/46/EC[1] on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It should be noted that, more than five years after the deadline (October 1998) for its transposition, the directive has yet to be transposed in all the Member States. It stipulates that personal data may be collected only for specified, explicit and legitimate purposes and may not be further processed in a way incompatible with those purposes. The directive was subsequently supplemented by a 1997 directive (1997/66/EC)[2] concerning the protection of privacy in the telecommunications sector, which as since been replaced by Directive 2002/58/EC[3] on privacy and electronic communications. Despite this relatively detailed and binding legal framework, the general trend (regression) in the protection of personal data is a major source of concern in Europe, especially since the attacks which took place on 11 September 2001.

'Black lists' have been established in Europe which, according to the Article 29 Working Party, consist of 'the collection and dissemination of specific information relating to a specific group of persons, which is compiled to specific criteria …, which generally implies adverse and prejudicial effects for the individuals included thereon and which may discriminate against a group of people'[4]. Such black lists may, for example, relate to people with debts. They may also concern people who have been sentenced or charged with criminal offences.

The growing number of **video-surveillance** systems is also considered to come under the jurisdiction of Directive 95/46/EC. The European Court of Human Rights has ruled that surveillance-using recording equipment may be considered as interference in people's private lives and must, in any case, respect the criteria of legality, legitimacy and proportionality.

SIS I and II: although it should be stressed that the SIS database was originally set up as a surveillance measure to offset the freedom to cross the Union's internal borders and not for the purpose of investigation and prosecution, the situation has changed significantly since then. In its conclusions of 5 and 6 June 2003 the Council accepted the idea that SIS II should allow the addition of new categories of alerts (persons and objects) and new fields, the interlinking of alerts, the modification of the duration of the alerts and the storage and transfer of biometric data, especially photographs and fingerprints, as well as giving new authorities, such as Europol, Eurojust and national judicial authorities, access, including where necessary with a purpose different from the original one. Europol is also authorised to conclude agreements with third countries and bodies involving the transfer of personal data provided that, in accordance with the Europol Convention, a number of conditions are met, in particular the existence of an adequate level of data protection in the country of destination. The absence of any independent supervisory authority with jurisdiction to monitor the transmission and

[1] OJ L 281, 23.11.1995, p. 0031-0050.
[2] OJ L 24, 30.1.1998, p. 0001-0008.
[3] OJ L 201, 31.7.2002, p. 0037-0047.
[4] Article 29 WP, WD on black lists, WP 65, 11118/02/EN/final, 3 October 2002.

processing of data and the fact that *the EC Court of Justice has no power to rule on the validity or interpretation of such treaties* are a source of concern. We are clearly faced with a risk of violation of European data-protection standards. It should also be noted that the framework decision on the European arrest warrant[1] provides (Article 9) for the use of the SIS to forward an arrest warrant.

Biometry
Since the entry into force of the Eurodac system(relating to asylum requests), which began to operate on 15 January 2003, biometric data have become a part of the European Union's system of control of individuals. At its meeting of 27 and 28 November 2003 the JHA Council adopted a general approach on two proposals to incorporate biometric data (digital photographs and fingerprints) into visas and residence permits by means of an electronic chip with a very high level of security. Documents will thus become virtually unfalsifiable. However, the data can easily be copied into centralised databanks during controls. The Commission is about to submit a proposal to introduce biometric data in the passports of EU citizens. At the same time, work is continuing on the establishment of a Visa Information System (VIS), in which biometric data are to be stored in a centralised databank.

Transfer of personal data by airline companies in respect of transatlantic flights
Since 5 March 2003 airline companies operating transatlantic flights have been required by the United States to authorise US customs and border protection services to gain unlimited access to the personal data of passengers travelling to or through the United States. This is a blatant violation of Directive 95/46/EC. The Commission has been negotiating with the US authorities since November 2002.

In a resolution of 9 October 2003[2], Parliament called on the Commission: 'forthwith to determine, within the limits outlined by the working party set up under Directive 95/46/EC, what data may legitimately be transferred by airlines and/or computerised information systems to third parties, and under what conditions, provided that:

- there is no discrimination against non-US passengers and no retention of data beyond the length of a passenger's stay on US territory,
- passengers are provided with full and accurate information before purchasing their ticket and give their informed consent regarding the transfer of such data to the USA,
- passengers have access to a swift and efficient appeals procedure, should any problem arise'.

Given the current state of negotiations, the least one can say is that Parliament's requests and the need to comply with EU legislation in this area are far from having been met.

Communications surveillance
Since the adoption of Directive 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector, Member States are now

[1] Framework Decision 2002/584/JHA, OJ L 190, 18.7.2002, pp. 0001-0020.
[2] European Parliament resolution of 9 October 3 2003 on transfer of personal data by airlines in the case of transatlantic flights: state of negotiations with the USA.

authorised to 'adopt legislative measures providing for the retention of data for a limited period justified' on grounds of security and crime prevention.

Extension of powers of intelligence services
As part of the action to combat terrorism, the surveillance powers of Member States' intelligence services were increased n 2003. This has not been without direct implications for the right to respect for privacy and confidentiality of communications. In this connection, at its meeting of 8 May 2003, the Council adopted conclusions on the tracing of the use of prepaid mobile telephone cards, in order to facilitate criminal investigations, in which it considers that 'the introduction, in accordance with the principles of a democratic society, of means of tracing the use of prepaid mobile telephone cards would provide Member States' competent authorities with better means for investigations into serious offences'.

More recently, on 6 November, the Council approved an operational project entitled 'multinational ad hoc teams for exchanging information on terrorists - start of activities'. These teams will, according to the Council, 'consist of specialists from the authorities responsible for fighting terrorism and be entrusted with the specific task of carrying out investigations into *alleged* members of terrorist groups and support networks'. They will also be able to make use of the whole range of inquiry methods, with due respect for national law, for preventive and pre-judicial purposes, with a view to gathering and exchanging information.

In the United Kingdom, the Youth Justice Board's Intensive Supervision and Surveillance Programme (ISSP) which has been in force since the summer of 2001, providing for close surveillance of young people, including electronic surveillance, is to be extended nationally. Moreover, in a media release published on 25 June 2003 and entitled 'High-tech tools to fight crimes of tomorrow', the British Home Secretary announced that a fingerprint and DNA database was being developed for use on all persons arrested.

Article 11: Freedom of expression and information
'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected.'

A. Overview of current situation

In October 2003, *Reporters without borders* (RWB) published its second world freedom of the press scoreboard, which is informative in several respects.

From the survey's findings, based on the information provided by journalists, researchers, lawyers and human rights' activists, RWB notes that a country's degree of freedom of the press is not necessarily related to its level of economic development. For instance, some of the poorest countries in the world, such as Benin and Madagascar, are among the top 50 in this list of 166 countries, whereas Italy is 53rd, the worst-placed European country.

RWB has looked more specifically at the case of Italy in a survey entitled 'A media conflict of interest: anomaly in Italy'[1]. RWB points out, in this context, that Italy's current prime minister is not only the head of a media empire made up of one of the biggest press groups in the country (Mondadori) and three commercial television stations (Mediaset) but also has considerable power, as prime minister, to influence Italian state-owned television (RAI).

This hegemony is strengthened by the system of distribution of analogue terrestrial broadcasting frequencies, which was deemed incompatible with the Constitution by the Italian Constitutional Court[2]. In a previous judgment, the Constitutional Court reaffirmed the need to respect the principle of pluralism and to ensure that the broadcasting system should give 'the largest possible number of different voices' a chance to be heard (judgment no. 112/93).

As indicated by RWB, RAI and Mediaset account for around 93% of TV advertising income - of which 63% is taken by Mediaset - so that 'the difficulty of breaking into this market is likely to continue to be the main obstacle to the emergence of new broadcasters'. As the Parliamentary Assembly of the Council of Europe stated in January 2003, there is thus in Italy 'a threat to media pluralism unless clear safeguards are in place', and this 'sets a poor example for young democracies'[3]. In this connection, it should be noted that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs has been authorised to draw up an *own-initiative report on the risks of violation of fundamental freedoms in the European Union, in particular in Italy, with regard to freedom of expression and information, as referred to in Article 11(2) of the Charter of Fundamental Rights of the EU*. A more detailed analysis of the media situation in Italy can therefore be found in this report.

RWB has also highlighted Spain's relatively poor ranking (42nd). RWB explains this situation by referring to the frequent threats against journalists in the Basque country, who are subjected to pressure from the ETA terrorist organisation, preventing them from freely carrying out their work. RWB strongly condemns the murderous violence inflicted on journalists who do not share ETA's pro-independence stance and recalls, in this context, that around 100 Spanish journalists are currently threatened by ETA and, as a result, are given official and private protection. RWB nevertheless points out that the fight against terrorism must be conducted with due respect for the right to inform and to be informed.

As regards the preventive measures taken as part of action against terrorism, RWB highlights those taken against the Basque newspaper Egunkaria, which was closed down in February 2003 as a precaution. According to AI, this measure was accompanied by the arrest of ten directors, journalists and other staff members of the publication under the anti-terrorist legislation owing to their alleged links with ETA. All those arrested were held in solitary confinement under this anti-terrorist legislation. On this occasion AI reiterated its opposition to this form of detention, which facilitates the use of ill-treatment.

This right to be informed would seem to have been violated during the general strike in June 2002 in Spain. The Audiencia Nacional court was thus asked to examine a complaint lodged against TV1, the main Spanish state-owned channel by the CCOO trade union. This trade

[1] Survey published in April 2003.
[2] Judgment No 466 of 20 November 2002, quoted in the 2002 network report.
[3] Recommendation 1589 (2003), paragraph 12.

union had decided to protest at the way in which TV news programmes had presented events, in particular by rejecting the general strike and virtually confining interviews to opponents to the strike. It is significant that, for the first time in the history of Spanish television, the courts condemned RTVE to make amendments by issuing a news release 'for violation of the fundamental rights to industrial action and trade union freedom, following the treatment of information during the general strike'[1]. The impartiality of Spanish state-owned channels has been challenged on several occasions since the general strike, in particular at the time of the *Prestige* oil spill and the Iraqi conflict.

The war in Iraq also gave rise to a shameless deception of public opinion, which can hardly be ignored when discussing the issue of fundamental rights. The way in which manipulated information was passed on to the media by the British Government in order to justify the start of the war constitutes a denial of citizens' rights to be informed of the reasons and implications for major decisions taken by their government in order to form their own opinion. Depriving the electorate of this possibility is surely tantamount to undermining one of the very foundations of democracy.

The same question may be asked about the protection of sources. The European Federation of Journalists has noted that a whole raft of legislation has been passed and enacted in response to the 'war against terrorism' that directly undermines the rights of journalists. In the EFJ's view, 'this pressure threatens a fundamental shift in the traditional rights of journalists vis-à-vis the authorities and their ability to perform their watchdog role'[2]. In its aforementioned recommendation[3], the Parliamentary Assembly of the Council of Europe deplored the fact that 'in certain West European countries, courts continue to violate the right of journalists to protect their sources of information, and this despite the case law of the European Court of Human Rights'. In 2003, the ECHR gave a further ruling condemning a violation of the confidentiality of a journalist's sources and unequivocally reaffirming the validity of this principle[4].

The ECHR was asked for a ruling on an application from four Belgian journalists whose offices and homes had been searched in 1995 and who had complained that they had not been given relevant information concerning the reasons for, and aims and scope of, the measures ordered by the investigating judge. They argued that the massive searches carried out on 23 June 1995 had violated the confidentiality of journalists' sources of information, in breach of Article 10 of the Convention, and their right to respect for their home and private life. In its judgment of 15 July 2003, the ECHR ruled that the searches constituted an interference with the applicant's right to freedom of expression and reiterated that limitations on the confidentiality of journalist sources called for the most careful scrutiny. When the interest of democratic societies in ensuring and maintaining freedom of the press were taken into account, the means employed had not been reasonably proportionate to the legitimate aims pursued. Consequently, the court held that there had been a violation of Article 10 of the Convention.

[1] *Le Monde*, issue of 29 October 2003.
[2] www.ifg-europe.org: 'Protection of sources'.
[3] Recommendation 1589 (2003), paragraph 10.
[4] Case of *Ernst and others v. Belgium* (33400/96) of 15 July 2003.

The International Federation of Journalists (IFJ) welcomed this ruling in favour of the protection of sources, considering that this decision would have repercussions on the work of all journalists in Europe. However, the Belgian General Association of Professional Journalists felt that specific legislation to protect the confidentiality of sources would be necessary. This is in fact what the Council of Europe's Committee of Ministers advocated in its Recommendation No R (2000) 7: reaffirming the need for democratic societies to secure adequate means of promoting the development of free, independent and pluralist media, and convinced that the protection of journalists' sources of information constituted a basic condition for journalistic work and freedom as well as for the freedom of the media, it recommended that the governments of Member States implement these principles in their domestic law and practice.

The German Constitutional Court, on the other hand, delivered a judgment in March 2003 allowing the confidentiality of sources to be waived in cases deemed to be 'serious'. Having received two complaints from German journalists who had been placed under surveillance by the police, it considered that, in such cases, the investigating judge could authorise the police to trace journalists' phone calls. As RWB rightly points out, 'the lack of a precise definition of what constitutes a "serious" case leaves open the possibility of a dangerous interpretation of the law and a real threat to the profession of investigative journalist'. This highlights a problem which would need to be remedied.

Another situation which needs remedying is that resulting from the continued existence of archaic legislation on the media. In this context, a round-table discussion was held in Paris on 24 and 25 November 2003 by RWB and the OSCE Representative for Media Freedom, at which recommendations were adopted to decriminalise defamation and abolish libel laws which are responsible for many violations of freedom of the press in Europe. In a letter written in June 2003 to the French minister of Justice, RWB called for the repeal of some of this legislation in France: the 1881 law on the press, which allows the Minister of the Interior to ban the circulation, distribution and sale in France of foreign language publications or French language publications from abroad, and the 1881 law on offending a foreign Head of State. Article 36 of this law was in fact the subject of a judgment delivered by the ECHR, which came out against the national courts which had condemned the *Le Monde* newspaper for insulting the entourage of the king of Morocco. The Court considered that the application of Article 36 was liable to confer on Heads of State a special status that derogated from the general law and could not be reconciled with modern practice and political conceptions. The Paris Court of Appeal, however, reversed this judgement by proclaiming the legitimacy of the conviction under paragraph 36. Given the legal uncertainty resulting from this situation, it would be highly desirable for the law to be repealed. As the Parliamentary Assembly of the Council of Europe has pointed out, failure to do so will 'provide a suitable excuse for new democracies not willing to democratise their own media legislation'[1].

This should be carefully considered in the light of the forthcoming enlargement.

Article 18: 'The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community'.

[1] Recommendation 1589 (2003), paragraph 11.

Article 19: 'Collective expulsions are prohibited. No-one may be removed, expelled or extradited to a state where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'.

Overview of current situation

In its report entitled 'World Migration 2003' published in June 2003, the IOM (International Organisation for Migration) points out that 175 million people - i.e. one person in 35 - are migrants. The total number of international migrants has more than doubled over the last 35 years, which means that governments are faced with an unprecedented challenged posed by the management of migration flows'.

However, it is worth emphasising that asylum seekers and refugees represent a separate issue. And yet, in actual practice, there is generally real confusion between asylum and immigration and asylum seekers are wrongly considered in the same way as illegal immigrants. This confusion is all the more regrettable since the concept of illegal immigration is itself inextricably linked to that of trafficking and organised crime. As a result, the political and humanitarian dimension of asylum is increasingly being obscured by what are essentially security aspects. In many Member States (see below), asylum legislation is becoming more stringent and this is reflected in the ***Community*** legislation being drafted, which is also increasingly restrictive.

It is worth noting, in this context, that, while the approach taken by the Treaty of Amsterdam was to establish minimum standards in the field in asylum, the draft Constitution has instead chosen to elaborate a common policy in this area. This has been pointed out by a number of NGOs which, without directly opposing the change, have warned against the danger of this trend leading to a lower level of protection in a number of Member States for asylum seekers and refugees. In a document dated 1 October 2003, 13 NGOs called for a 'standstill' clause to be incorporated into the new constitution prohibiting Member States, in the context of implementation of Community legislation, from abolishing any provision of their domestic law providing for more favourable treatment of refugees/asylum seekers[1].

On the whole, the current method of establishing a common European asylum system has come up against a number of criticisms, mainly about its tendency to focus on minimum harmonisation, leaving Member States as much margin for manoeuvre as possible and the growing tendency of Member States to abandon the very objective of common minimum standards and to opt instead for a reference to existing domestic law[2]. In this connection, AI recently compared the Community asylum instruments to 'empty boxes', with vital elements of legislation being left to the discretion of Member States[3], and the UNHCR noted, for its part, that, in negotiations, the level of protection was falling, standards were dropping and the harmonisation goal was being abandoned, with texts leaving a multitude of options for

[1] 'Towards a Constitution for Europe', joint comments from non-governmental organisations for the IGC, document published on 1 October 2003.
[2] See, in particular, the article by Daphné Bouteillet-Paquet, 'Un droit d'asile qui s'effrite', published in the *Plein Droit* review, number 57, June 2003.
[3] 'Losing Direction: the EU's Common Asylum Policy', open letter from Amnesty International to Heads of State and Government on the occasion of the Thessaloniki European Council, Brussels, 18 June 2003.

Member States, to such an extent that it asked whether it was advisable to continue supporting the current process or to look for a different approach[1].

This reference to domestic law is to be found in the '**Dublin II**' Regulation on determining the Member State responsible for examining an asylum application[2], on which a political agreement had been reached within the JHA Council on 19 December 2002 and which was adopted on 18 February 2003. In its 2002 report, the Network of Independent Experts noted, with regard to the organisation of appeal procedures, quite unacceptable disparities between Member States relating to the judicial and suspensive nature of appeals. However, it is true that, as the Network's 2002 report points out, these rules are aimed more at fighting illegal immigration than guaranteeing the exercise of the right of asylum. This tendency to refer to domestic law also underlies a number of key provisions in the directive laying down **minimum standards for the reception of asylum seekers** in Member States[3] which, following a political agreement reached in the Council in December 2002, was adopted in January 2003. Thus, for instance, while calling on Member States to 'take appropriate measures to maintain as far as possible family unity as present within their territory'[4], the directive refers back to domestic law and practice for the purposes of defining 'family members'[5]. In this connection, it should be noted that a **directive on family reunification**[6] was adopted on 22 September 2003, whose many inadequacies have been criticised by GISTI (Groupe d'information et de soutien des travailleurs immigrés). This organisation also pointed out that it will be possible, on the basis of the directive: to require foreigners to wait for up to three years before being able to apply for family reunification; to limit the possibility of children over the age of 12 joining their parents; to issue reunified family members with precarious residence permits; to prohibit immediate access to employment; to call into question their right of residence in the event of family break-up. GISTI also drew attention to the fact that nothing in the directive obliges Member States to make provision in their legislation for effective and fair appeal procedures for the benefit of foreigners whose application for family reunification is rejected[7]. The UNHCR has expressed serious reservations, in particular with regard to the fact that the directive deprives persons granted subsidiary protection of the right to family reunification, thereby creating, in practice, situations of blatant injustice, if not discrimination[8].

During the procedure for adoption of this directive, the definition of a family gave rise to heated debates. The definition which came out of these discussions is undoubtedly restrictive: 'Family reunification' is taken to refer to the 'nuclear' family, i.e. the spouse and minor children, although Member States are entitled to extend the concept by maintaining or

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[1] Agence Europe, 1 October 2003.
[2] Commission Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 222, 5.9. 2003.
[3] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003.
[4] Article 8 of Directive 2003/9/EC.
[5] Article 2(d).
[6] Directive 2003/86/EC, published in OJ L 251, 3.10.2003.
[7] GISTI press release of 21 November 2003: 'Family reunification of foreigners. Will the European Parliament call for annulment of the directive recently adopted by the EU Council?'
[8] 'UNHCR dissatisfied with new EU rules on family reunification', 23 September 2003.

introducing more favourable national provisions. This margin of interpretation given to Member States is not in itself surprising, given that the Community has no specific competence to lay down a standard definition of the 'family'. What is far more surprising, however, is that, as GISTI points out, the directive contains a provision which allows Member States to oppose the family reunification of children above the age of 12, on the basis of an integration criterion which is, to say the least, obscure. The last sentence of Article 4(1) stipulates that '*where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive*'[1]. The question thus arose as to whether such a derogation was not contrary to fundamental rights, and in particular Article 7 and 24 of the Charter. On 21 October the Committee on Citizens' Freedoms and Rights called for annulment proceedings to be instituted with the CJEC pursuant to Article 230 of the EC Treaty (violation of fundamental rights). After consultation of the Committee on Legal Affairs and the Internal Market, the President of the European Parliament decided, on the basis of Rule 91 of the Rules of Procedure, to agree to this request[2].

The directive on minimum standards for the reception of asylum seekers is peppered with other examples of controversial references to domestic law. For instance, it is left to the Member States to decide whether or not to apply the directive to applications from individuals not covered by the definition of 'refugee' contained in the Geneva Convention but entitled to subsidiary protection[3], and this is specifically criticised by ECRE[4]. Moreover, far from granting asylum seekers a right to employment, the directive leaves it to the Member States to determine the length of time during which an asylum seeker may not engage in gainful employment. In view of this minimalist approach, ECRE fears that Member States will be tempted to lower their reception standards. In addition, it fears that, in view of the disparities which will automatically result from such provisions, the harmonisation objective set at Tampere may be seriously jeopardised.

Member States also enjoy a wide margin of manoeuvre under Article 7 of the directive. This provision authorises them to restrict freedom of movement for asylum seekers to a specific area or alternatively to place them under a form of house arrest, to which the enjoyment of certain material benefits may be made conditional. The Experts' Network considers that the significance of this clause should not be underestimated. In this context, the Network refers to the example of the United Kingdom, where the Nationality, Immigration and Asylum Act 2002 provides for the establishment of accommodation centres for asylum seekers and stipulates that such persons shall be subjected to stringent control measures and that failure to comply with these measures may lead to withdrawal of all forms of aid.

This emphasis on control and repression is strongly denounced by AI, which unreservedly condemns the absence of any strategic prospective and long-term vision in the European

[1] In its report A5-0086/2003, Parliament called for the deletion of this provision.
[2] C-0540/2003.
[3] Article 3(4).
[4] ECRE Information Note on the Council Directive 2003/9/EC of 27 January 2003. Laying down minimum standards for the reception of asylum seekers.

asylum system which, in its view, is based not so much on the desire to manage the influx of asylum seekers as to prevent access to the EU[1].

The same logic underlies the British proposal **to externalise the processing of asylum applications** by setting up 'transit centres' and 'regional protection areas', which has given rise to many reactions in 2003. After being published in February 2003, the proposal was submitted to the European Council on 21 March, following which the Commission was asked to assess it. This it did in its Communication of 3 June 2003, entitled 'Towards more accessible, equitable and managed asylum systems'[2].

According to the British proposal, which claims to follow the same rationale as the UNHCR's projects to modernise the international protection system ('Convention plus')[3], the establishment of protection areas in the regions of origin would make it possible to process more asylum applications in the regions concerned[4]. As for the transit centres, they would be established in third countries located on transit routes to the EU[5], and asylum seekers arriving in the EU could be transferred to these centres during consideration of their application.

This approach is apparently aimed first and foremost at deterring those who wish to misuse the asylum system[6].

The British proposal raised a wide range of questions, in particular in relation to the fact that transit centres - and, a fortiori, regional protection areas - would be located outside the EU[7]. This raises the question as to which legal system would apply, national law or EU law and whether this system of delocating the processing of asylum applications would ultimately supplement or replace the existing asylum system.

It is worth noting that, if the latter were true, the Dublin II Regulation, which recently entered into force, would become virtually pointless since this cooperation between Member States would be replaced by a system of deportation to centres located in third countries, reminiscent of the unhappy events of Sangatte. In its assessment of the British proposal, AI warns of the danger of the 'Sangatte syndrome' reappearing on a large scale as processing centres will attract smugglers and traffickers and contribute to widespread organised crime[8]. Given the extraterritorial factor, there is an obvious parallel with the infamous Guantánamo events, where human rights violations have clearly been committed with total impunity.

The danger of such violations and breaches of legal standards governing the right of asylum has been highlighted by many NGOs, warning against the violent incidents which would be sure to take place during the forced transfer[9], the adverse effect on the right of appeal which

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[1] AI, aforementioned open letter of 18 June 2003.
[2] COM(2003) 315.
[3] Letter of 10 March 2003 from Tony Blair to Costas Simitis.
[4] The examples quoted of countries forming part of such areas include Turkey, Iran and Morocco.
[5] E.g. Romania, Croatia, Albania and Ukraine.
[6] ECRE comments on the aforementioned Commission Communication.
[7] Letter of 10 March 2003 from Tony Blair to Costas Simitis.
[8] AI: Comments on the British proposal on external processing.
[9] UK/EU/UNHCR unlawful and unworkable - Amnesty International's views on proposals for extraterritorial processing of asylum claims.

would be far more difficult to exercise from a transit centre and a prolonged stay in a holding centre, which would be equivalent to deprivation of freedom in the case of refugees awaiting a 'place of resettlement' and applicants whose claim was rejected and who could not return to their country of origin.

Another danger which is frequently referred to is that of transferring the burden onto poor and vulnerable countries, in violation of the principle of solidarity advocated by the UNHCR, since rich and powerful countries may choose who they wish to accept as refugees while the others are required to accommodate large populations, including those turned back by the rich countries[1] .

In any case, if the aim in setting up processing centres outside the EU territory is to prevent abuses of asylum laws and at the same time reduce illegal immigration, the actual impact might well, according to the NGOs concerned[2], be the exact opposite, which would be to discourage not so much abuses as asylum seekers who, faced with the risk of being sent to a remote centre, would prefer to face the danger of illegality. The transfer of applicants to centres outside the EU would thus seriously undermine the protection which Member States are expected to afford applicants who travelled for this purpose to their territory. This would, in the final analysis, empty the right of asylum of its substance. Although most Member States have distanced themselves from the proposal, this idea is still present in various forms and the European Parliament should remain extremely cautious.

Parliament would have liked to show similar caution on another proposal, relating to joint expulsion flights. However, there was no opportunity to do so. It is in fact a sign of the times that the EU Ministers were able to act with remarkable solidarity and determination and to reach a political agreement in November 2003 on the issue of **joint flights** for the repatriation of asylum seekers whose applications have been rejected, before Parliament could even express its point of view on the matter. It is therefore all the more regrettable that the Ministers have not yet found agreement on the conditions to be met by asylum seekers and the procedures to be followed for their applications *not* to be rejected. The two relevant directives, which should have been adopted under the Italian presidency, are still the subject of fierce bargaining[3].

The NGO Statewatch has condemned these charter expulsions, which it refers to as mass deportations[4], during which all forms of coercion are used, including straitjackets, handcuffs and sedatives. In this context, Statewatch has reported several deaths which occurred over the last two years in Belgium, the United Kingdom, Austria, Germany and France. Statewatch reports that the deaths are generally due to suffocation caused by the position in which those

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[1] Patrick Delouvin, 'Vers une externalisation des procédures d'asile?', article published in *Hommes et migrations*, April 2003. See also Human Rights Watch, 'An Unjust Vision for Europe's Refugees'.

[2] See, in particular, UK/EU/UNHCR: 'Unlawful and Unworkable - Amnesty International's views on proposals for extraterritorial processing of asylum claims', and Human Rights Watch, 'AN Unjust Vision for Europe's Refugees'.

[3] These are the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status and the proposal for a Council directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection.

[4] EU: Mass deportations by charter flight - enforcement and resistance, Statewatch, March-April 2003, (Vo1.13, no. 2).

expelled are held down by their escort. In a letter sent to the French President on 5 March, the FIDH (International Federation for Human Rights) and the French Human Rights League denounced the inhuman methods of expulsion used by the French authorities, pointing out that these expulsions were being carried out 'manifestly in violation of international and regional human rights instruments. According to the two organisations, these 'expulsions' aimed at saving money and acting discreetly' are simply a further illustration of the inhuman treatment by national authorities of foreigners arriving on French soil and an obstacle to the enjoyment of the right of asylum.

In the same context, Amnesty expressed concern at the fact that countries such as Denmark, Germany and the United Kingdom were planning to force Iraqi asylum seekers and refugees to return to their country where the security situation has deteriorated considerably in recent months[1]. Contrary to the statement made by the British Home Secretary about the Iraqis' moral obligation to return to their country in order to return to its reconstruction, the UNHCR has urged countries which have taken in Iraqi asylum seekers to maintain the ban on forcible returns to Iraq until further notice.

The UNHCR recently expressed its fear that the situation of asylum seekers may further worsen in Europe, in particular as a result of amendments to ***national laws***[2]. Several Member States did in fact revise their asylum laws in 2003, generally to introduce more stringent conditions for the granting of refugee status.

This was the case in **Finland**, which adopted a new law on the subject ('new Aliens Act') on 13 June 2003. The Commissioner for Human Rights, Mr Alvaro Gil-Robles, made a statement on a number of aspects of this law, expressing concern at the extremely small number of cases in which refugee status had been granted in Finland (between 0.2 and 1%), and called for the extremely stringent criteria applied to asylum seekers to be reviewed[3]. Furthermore, accelerated procedures without a suspensive right of appeal remain in place.

In October 2003, the **Austrian** parliament passed a new law on asylum which is considered by several NGOs, including the humanitarian organisation 'Caritas', as the most restrictive in Europe[4], especially as a result of two major new provisions in the law: the possibility of expelling the asylum seeker during the appeal procedure and the ban on submitting new evidence during the appeal procedure, owing to the fact that the appeal does not have suspensive effect and the difficulty of accepting new evidence after rejection of an application. This has been severely criticised by the UNHCR. AI, for its part, criticised the manner in which asylum seekers are considered as a security risk and the confusion between asylum and expulsion procedures[5]. The UNHCR expressed similar views, fearing that the amendments made to the Austrian law might lead to various forms of expulsion, the refusal to

[1] AI:'Forceable return of refugees and asylum seekers is contrary to international law', news release of 27 November 2003.
[2] UNHCR Paper for the EU Network of Independent Experts in Fundamental Rights, Hearing of 16 October 2003.
[3] Opinion of the Commissioner for human rights, Mr Alvaro Gil-Robles, on certain aspects of the proposal by the Government of Finland for a new Aliens Act (CommDH (2003), 13-17 October 2003).
[4] Quoted by the AFP, press release of 23 October 2003.
[5] AI Austria: 'Austria ceases to be safe third country. New Asylum Act: Alarming aggravations', October 2003.

consider an asylum application at the border being only one of them[1]. Furthermore, NGOs criticised the number of grounds on which the state can reduce or even refuse to give any material support to asylum seekers.

In *Italy*, AI, with other NGOs, approached the government and parliament in 2003 to persuade them to introduce a specific and comprehensive law on the right of asylum so as to take due account of the fundamental rights of asylum seekers, as guaranteed by the Italian Constitution and the Geneva Convention. At present, provisions of the 'Bossi-Fini law' on asylum are, according to AI, hampering the effective exercise of the right of asylum and increasing the risk of expulsion of persons liable to be subjected to serious human rights violations[2].

The asylum policy applied in the *Netherlands* has been severely criticised by Human Rights Watch, which devoted a report to the subject in April 2003. The report points out that the Dutch Government has, over the last few years, succeeded in considerably reducing the number of asylum applications by applying a policy of dissuasion, but that this has been at the expense of fundamental refugee rights, owing, in particular, to accelerated procedures, limited to 48 working hours, inadequate treatment of unaccompanied children of refugees and restrictions imposed on the material conditions for asylum seekers. HRW has concluded that the current approach has breached the Netherlands refugee and human rights obligations, and formulates recommendations to remedy this situation[3]. In terms of family reunification it should be mentioned that the administrative fees for regular residence permits of non-EU citizens have been drastically increased (from EUR 56 to EUR 430). This makes family reunification for family members of refugees significantly more difficult.

In *Greece* also, various NGOs, including AI, have denounced the extremely restrictive policy applied to asylum seekers which, in their view, deliberately seeks to complicate procedures with a view to reducing the number of refugees. As a result, the number of successful applications has fallen from 22% in 2001 to 0.3% in 2002, while the number of applications actually submitted during the same period remained stable[4].

In *Denmark*, new legislation regarding measures vis-à-vis rejected asylum seekers came into effect in May 2003. The new law introduced a number of measures to put pressure on rejected asylum seekers who obstruct deportation to co-operate. Asylum seekers do not receive money for food but instead are provided with a box containing food for two weeks; they can be transferred to the central accommodation center and they have to report to the police personally on a daily or weekly basis. Rejected asylum seekers can also be detained if they do not co-operate. Detention, in particular is criticised by NGOs since there are no guidelines or limitations as to how long the detention can last. In principle, detention could go on indefinitely.

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[1] 'UNHCR says Austrian legislation May Lead to Breaches of UN Convention', UNHCR press release of 8 October 2003.
[2] AI, Concerns in Europe and Central Asia, January-June 2003, Italy.
[3] See www.hrw.org/reports/2003/netherlands0403/nether0403.
[4] Information gathered by the ECRI Documentation Centre, Vol. 3, July 2003.

France, for its part, approved an extensive revision of its asylum law in November 2003, giving rise to many reactions. The 'Coordination française pour le droit d'asile' (CFDA)[1] pointed out that the reform had focused on a restrictive management of migration flows to the detriment of the protection of people[2]. However, as the French National Consultative Committee on Human Rights (CNCDH) recalled in an opinion published in April 2003[3], asylum is a fundamental right and, as such, should not be confused with immigration[4]. In this connection, it protests at the fact that asylum has been considered merely as a problem of management of migration flows or saving money and that the Government seems to have forgotten that it entails a fundamental right[5]. The CFDA also notes, that although the new law takes its inspiration from the directives currently being negotiated at EU level, it tends to align itself with the minimum standards envisaged in this context and in some cases below these standards. Similarly, the CNCDH is surprised at the work being done to transpose restrictive concepts contained in directives, which have not even been adopted by the EU Council. It questions the conformity of certain provisions with the Geneva Convention, in particular that on 'internal asylum' which allows a request for asylum for a person who would have access to protection in a part of his or her region of origin to be rejected thus externalising the processing of asylum applications (see above). The CFDA considers, in this connection, that the adoption of the concept of internal asylum might annihilate the practical possibility of obtaining protection under the Geneva Convention for many applicants. Lastly the CFDA condemns the application of the extremely controversial concept of 'safe country of origin' which it considers to be 'contrary to the general scheme of the Geneva Convention [...], which under no circumstances authorises consideration to be given to the nature of the country of origin, whether it is safe or unsafe'. The CFDA considers the introduction of this concept in national law to be a serious infringement of the principal of non-discrimination set out in Article 3 of the Geneva Convention[6], since applications from nationals of such countries are only considered rapidly and cannot form the subject of an suspensive appeal.

On the basis of her analysis, your rapporteur wishes to know the reasons why Member States, after proclaiming their desire to set up a common asylum policy, are failing to transpose the directives they adopt in this field and are continuing to take action on an individual basis. This has led the Commission to send several Member States a reasoned opinion on the failure to transpose the directive on temporary protection[7]. Similarly, Member States are continuing to adopt increasingly restrictive national asylum policies aimed at combating unjustified applications, but which risk trampling underfoot the legitimate rights of those who generally need international protection.

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[1] The CFDA comprises a large number of organisations, including ACAT, AI, Forum Réfugiés, France Terre d'Asile et the French Red Cross.

[2] CFDA: projet de réforme de l'asile: commentaires et recommandations, 30 September 2003.

[3] The Consultative Committee is an independent committee responsible for giving advisory opinions to the French Government. It may act at the request of the Prime Ministers and members of the Government or on its own initiative and publishes its opinions and studies.

[4] French Consultative Committee on Human Rights, opinion on the Bill amended Law No 52-893 on the Right of Asylum, adopted on 24 April 2003.

[5] CFDA, op. cit. p.3.

[6] CFDA, op. cit. p. 10.

[7] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequence thereof (OJ C L 212, 7.8.2001, p. 12). The deadline for transposition had been set at 1 January 2003.

It would seem that, realising the virtual impossibility of achieving harmonisation of asylum policies which would be the only means of reducing 'secondary movements' (sometimes referred to as asylum shopping), Member States are gradually hardening their positions on asylum with a view to making their country less attractive than other Member States.

Your rapporteur considers this to be a dangerous process which can only be stopped by harmonisation of European asylum policy based on full compliance with the Geneva Convention. Communitisation of asylum policy should make it possible - or, should we say, should have made it possible? - to adopt the best practices of Member States, i.e. those which allow asylum applications to be dealt with effectively, while complying with the international obligations of Member States, in particular under the 1951 Geneva Convention and Europe's humanitarian traditions.

Instead, what is actually taking place is that security concerns are increasingly being given precedence over all other considerations in the field of asylum. As the FIDH points out, 'officially for reasons of dissuasion, rights-free zones are being set up, in various forms: closed or open, private or public centres accommodating asylum centres, persons in an irregular situation, awaiting their regularisation or awaiting expulsion. [...] These centres tend to add to the existing confusion between illegal immigrants, asylum seekers and migrants awaiting regularisation while accentuating the **criminalisation of foreigners**'[1]. Your rapporteur is sorry to say that she shares this view.

CHAPTER III: IN SUPPORT OF EQUALITY

Article 21: Non-discrimination

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

The principle of non-discrimination is increasingly being used and exploited as a means of discriminating against and excluding certain sections of society. On example is the 'headscarf' affair in France, which is stigmatising an entire community (Muslims) and, on the basis of the principles of secularism and gender equality, excluding from the school system any girls who wish to wear the headscarf. The United Kingdom and some German Länder have taken the exact opposite approach by integrating populations from a variety of cultures and religions into their society on the basis of the very same principle!

Discrimination on grounds of sex

The Vienna Declaration and Programme of Action of the 1994 World Conference on Human Rights clearly established and recognised the '**rights of women and of the girl-child are an**

[1] FIDA, contribution to the hearing organised by the Network of Independent Experts on 16 October 2003.

inalienable, integral and indivisible part of universal human rights'.

Affirming that ***women's rights are human rights*** does not mean that women have fundamental rights which are different from those of men or that, because both are human beings, their rights must also be considered as human rights. It simply means that women are faced with different situations, especially with regard to socio-economic and cultural conditions, causing specific obstacles to stand in the way of their enjoyment of the same rights as men, on an equal footing.

Society has been marked by the power of men over the centuries. By continuing to adopt a 'neutral' stance, it generally ignores the specific circumstances in which women find themselves. We now need to recognise and highlight the particular human rights violations suffered by women, linked to specific situations[1].

Each article of the Charter of Fundamental Rights of the EU should be looked at from this critical angle to highlight the forms of discrimination affecting women (de facto, but also de jure) which are violations of fundamental rights. This exercise, referred to as gender mainstreaming is provided for in Article 3(2) of the Treaty on European Union and is aimed at the incorporation of gender equality in all EU policies and policies of the Member States at all levels.

Although the Charter includes a special chapter on equality (Chapter III) and an article on equality between men and women (Article 23), respect for fundamental rights in the EU must be examined from a perspective which encompasses the rights of both these components of human society.

Racism and xenophobia

The main source of information, other than the NGOs concerned and the European Commission against Racism and Intolerance (ECRI) reports,[2] is the RAXEN network of the European Monitoring Centre on Racism and Xenophobia in Vienna.[3]

(a) Racially motivated violence

Overall, the persistence of racial discrimination, which is closely linked to the lack of effective anti-discrimination legislative provisions in most Member States, is a fundamental problem in Europe. Generally speaking there is a lacunae in the system of data recording concerning racist crimes in a lot of Member States. This problem is compounded by the

[1] Even the few specific rights deriving from purely biological considerations (e.g. the right to maternity leave and the protection of pregnant women at work) protect **the right to health** of the mother and child, which is a general right of men and women, but this particular protection takes a special form for women in specific circumstances. The right to freedom also takes a particular form for women with regard to reproductive freedom, the right to use one's body as one wishes, which enables women to decide about having children.
[2] ECRI adopted on 13 December 2002 a general policy recommendation No 7 on national legislation to combat racism and racial discrimination. In this text ECRI calls for legal protection to be provided against racist acts and discrimination on the grounds of 'race, colour, language, religion, nationality, or national or ethnic origin.
[3] This Chapter informs about incidents on which information became available in 2003, in some cases however, the information relates to incidents which occurred in 2002. If this latter situation applies it will be clearly indicated.

unsatisfactory implementation of existing anti-racist provisions[1]. Most Member States have not yet implemented Directive 2000/43 (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin)[2] and Directive 2000/78 (Directive establishing a general framework for equal treatment in employment and occupation)[3], although the deadline for the transposition of both Directives has expired. Only Italy and Belgium implemented the two Directives in 2003. Furthermore Portugal implemented Directive 2000/78 and the United Kingdom Implemented Directive 2000/43 into national law.

Also on the Framework Decision on combating racism and xenophobia, the Council could not reach an agreement. This clearly demonstrates a disappointing lack of political will to treat this issue with sufficient seriousness. We hope that agreement will be reached on this proposal in 2004[4].

In the light of the attacks of 11 September 2001 and in view of the Israeli-Palestinian conflict, physical violence, and expression of hatred and discrimination have been for the most part anti-Semitic and anti-Islamic in Nature. In a lot of Member States 2003 (as 2002) saw an increase in the dissemination of anti-Semitic ideas and of acts of violence perpetrated against members of the Jewish communities and their institutions. There is also a growing spreading of anti-Semitic material, both via the Internet and other channels of communication. This trend could be seen in the Netherlands,[5] Germany, Denmark, France[6], United Kingdom, Belgium and Austria.[7] Portugal fears similar trends as the ones that were visible in France or the United Kingdom, however not many cases were reported.

Islamophobia became also more serious in several countries. There is an increase in prejudice against Muslim communities, both within society in general and within certain public institutions. Such prejudices find their expression in acts of violence, harassment, discrimination, negative attitudes and stereotypes. This trend is visible in Sweden, the Netherlands[8], Germany, Denmark, France and Austria. In Italy occurred an outburst of xenophobic and anti-Muslim reaction in the media and in politic and academic discourses because of a Court order. According to this order a Catholic crucifix had to be removed from the walls of a classroom with Muslim people following a request by a Muslim parent.

(b) Position of asylum seekers and refugees

Manifestations of xenophobia, discrimination and racist acts against migrants, refugees and asylum seekers are also most alarming. The anti-migrant ant anti-refugee climate is in some cases reinforced by the adoption of restrictive legislation and policies in the field of asylum and immigration. This was visible in Spain and Portugal. In the United Kingdom there is regular speculation that asylum seekers are experiencing high levels of racist violence but police data is unable to verify this because such data is not collected. In Finland, although

[1] ECRI Annual report (covering the period from 1 January to 31 December 2002, Strasbourg, 20 March 2003, p.7,-12.
[2] OJ L 180/22 of 19 July 2000, deadline for implementation 19 July 2003.
[3] OJ L 303/16 of 2 December 2000, deadline for implementation 2 December 2003.
[4] Amnesty International general comments on the draft report on the situation of fundamental rights in the European Union, 29 January 2003.
[5] However the information on the Netherlands concerns the situation in 2002, but has become available in 2003.
[6] Information concerns 2002, information on 2003 was not yet available.
[7] Information concerns 2002, information on 2003 was not yet available.
[8] Information concerns 2002, information on 2003 was not yet available.

only 2 per cent of the population are immigrants and the level of people seeking asylum in Finland is one of the lowest in the EU, a common feeling is visible that immigrants create further competition for the already scarce jobs. The discourse on immigration and asylum seeking in the media also influences the nature and the frequency of racist violence in Finland. The popular media has contributed to the **labelling of certain minority groups**, such as asylum seekers or Somalis, as criminals or abusers of the Finnish welfare system. This fuels racist and xenophobic sentiments and indirectly contributes to racist violence.

(c) Combating racism on the Internet

A majority of Member States have begun to take measures to fight racism on the Internet, although not all Member States do have data on this issue. Taking measures is urgent because the spreading of discriminatory material on the Internet continues to grow, i.e. in the Netherlands, Spain and Italy. A stimulating development however is the initiative taken by the Finnish Government, that considers spreading of racism by the Internet as a major issue; The Finnish Government passed an Act (13 June 2003) on freedom of speech which will enter into force on 1 January 2004. This Act places special requirements on periodically published material, including Internet publications. Portugal and Belgium have also made progress, both countries signed in 2003 the additional Protocol to the Convention on Cyber crime of the Council of Europe.

(d) Roma and Gypsies

Roma and Gypsies are particularly the target of racism in many countries. They suffer from prejudices and discrimination in many fields of social and economic life and are also often the object of violent acts of racism and intolerance[1].

(e) Good practices, increase of awareness campaigns

There are also positive trends at the European and national level, which show a strong willingness of Member States and civil society to combat racism and intolerance. Governments (sometimes on a local level) have launched awareness initiatives of various kinds, i.e. in Sweden, Germany, Finland and France. In i.e. Austria the Ministry of Economic Affairs and Labour launched an activity to address pupils and their teachers. This project consist in a competition between schools developing projects on discrimination and a Conference scheduled for June 2004; in Ireland an Anti-Racism Workplace week was organised (3-7 November); Also in Spain there has been an increase of awareness campaigns by NGOs and educative institutions. In Sweden a project called 'Racists' took place in 2003. The aim of the project is to educate young people in scrutinising racist propaganda and learning how to handle the local media.

In Portugal the Football against Racism in Europe promoted a European Action Week Against Racism (16-28 October 2003). In Ireland the three-year 'Know Racism' campaign took place next to an Anti-Racism Workplace Week (3-7 November 2003) Besides a Charter against Racism and Sport was launched. In Denmark the Minister for Refugees, Immigrants and Integration issued on 20 November 2003 an Action Plan 'to promote equal treatment and

[1] zie /infra/

diversity and to combat racism'. This initiative is however restricted on combating racist violence or hate speech in the field of the labour market. In the United Kingdom the Crown Prosecution Service published a Public policy Statement on prosecuting racist and religious crime. This sets out new standards for the prosecution of racist and religious crimes, extending to the treatment and care of victims and witnesses.

Awareness raising on issues of racism and xenophobia is relatively low on the Agenda of Greek and Italian public authorities.

Discrimination on grounds of sexual orientation

A. Legal developments

(a) European Legislation 2003

Freedom of movement directive
Amended proposal for a Directive of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States[1],

Framework Directive for equal treatment in employment and occupation[2](deadline for implementation expired 2 December 2003).

(b) Case law

- European Court of Human Rights (Strasbourg)

Austria[3] Mr Karner was born in 1955 and lived in Vienna. He lived with Mr W. with whom he had a homosexual relationship. In 1994 W. died after designating Mr Karner as heir. In 1995 the landlord brought proceedings against applicant for the termination of the tenancy. The Supreme Court granted the landlord's appeal. Mr Karner claimed to have been victim of discrimination on the ground of his sexual orientation in that the Supreme Court had denied him the status of life companion of the late Mr. W., thereby preventing him from succeeding W.'s tenancy. He invoked Article 14 of the Convention together with Article 8.

The Government accepted that in respect of succession to the tenancy the applicant had been treated differently on the ground of his sexual orientation. They maintained that that difference in treatment had an objective and reasonable justification, as the aim of the relevant provision of the Rent Act had been the protection of the traditional family. The Act would apply only to unmarried different sex partners.

The Court found the ruling of the Austrian Supreme Court amounted to sexual orientation discrimination violating Articles 14 (non-discrimination) and Article 8 (respect for home).

[1] COM(2003) 199.
[2] OJ L 303/16 of 2..12.2000.
[3] Karner v. Austria, 40016/98 of 24 July 2003.

'... (40) The Court can accept that protection of the family in the traditional sense is, in principle, a weighty and legitimate reason which may justify a difference in treatment. But it remains to be ascertained whether the principle of proportionality has been respected....'

'... (41) Proportionality does not merely require that the measure chosen is in principle suited for realising the aim sought. It must also be shown that it was necessary to exclude persons living in a homosexual relationship from the scope of the Rent Act in order to achieve that aim. The Court cannot see that the Government has advanced any arguments that would allow such a conclusion...'

'... (42) The Court finds the Government have not offered convincing and weighty reasons justifying the narrow interpretation of the Rent Act that prevented a surviving partner of a couple of the same sex from relying on that provision....'

This is an important judgement and is the first victory under international human rights treaties by same-sex partners. Whenever Governments grant rights or benefits to different-sex cohabiting partners, they must grant the same rights or benefits to same-sex cohabiting partners.[1]

B. Overview of current situation

Millions of people in Europe are still the object of discrimination on grounds of their sexual orientation or gender. Though the European Parliament has recently urged all member States to open marriage and adoption to gay and lesbian couples, there has been no consistent recognition of same-sex relationships in recent legislative developments on asylum and immigration or on the rights of free movement.

On Framework Directive 2000/78,[2] Italy issued a decree to fully implement this Directive into national legislation in order to provide protection from discrimination in the workplace, but, included provisions which could permit the police, armed forces, and prison and rescue services to discriminate against lesbians, gays and bisexuals. The United Kingdom has introduced legislation with exemptions for religious organisations which may allow them to discriminate on the basis of sexual orientation, in contravention of the Directive.[3]

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

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.

Discrimination of Roma/Gypsies

Overview of current situation

[1] See the European Region of the International Lesbian and Gay Association (ILGA) Europe Activity Report 2002/2003, p.10.
[2] Which has only been implemented by three Member States, OJ L 303/16 of 2 December 2000.
[3] See ILGA Europe activity report 2002/2003, p.3.

The Roma/Gypsies have long been one of the weakest groups in society and the hardest hit in times of economic transition. In addition to this, they are now falling victim to nationalism and racism in all parts of Europe; any policy for improving their living conditions is, at the same time, a policy for actively overcoming nationalism and racism in Europe. The consolidation of democracy in eastern and central Europe and its preservation in all parts of the continent require that the problems faced every day by Roma/Gypsy people are the concern of governments and European institutions alike.

In this respect, the European Commission should closely monitor the implementation of the Race Equality Directive 2000/43, a useful tool for protection of race and ethnic minorities in a wide range of areas.

The Roma/Gypsies have been one of the major victims of the war in former Yugoslavia, and refugees resulting from this crisis have dramatically exacerbated their social situation. Additionally, many refugees from this region will want to return to their homes, which will cause further hardships. Furthermore, Roma/Gypsy people from eastern and central Europe in general, who have confirmed refugee status in western Europe, are in a similar difficult economic and social situation until their safe return can be guaranteed.

(a) Civic status

The Roma/Gypsies are one of Europe's oldest ethnic groups. They have lived in practically every European state for centuries. They are unique in that they transcend national frontiers. This makes freedom of movement within the European Union vitally important to their way of life.

They are in grave danger of being the victims rather than the beneficiaries of reform and, particularly, of losing their civic rights. Not only in the newly established states of the region, but also in other countries, civic rights are being withheld. The narrow identification of citizenship with nationality in many states has caused large numbers of Roma/Gypsy people to be classified as stateless. This is a European issue which needs to be addressed at the level of the European institutions. Accordingly, the European Union, the Council of Europe and the OSCE are urged to monitor the legal position of Roma/Gypsies and, where necessary, work to improve their status within their different areas of responsibility. Only then can the systematic exclusion of Roma/Gypsies be overcome in the long term and their social integration within the states of Europe ultimately succeed.

Particular attention needs to be given to what is often seen as the selective and discriminatory administration of justice in cases of ethnically motivated violence against Roma/Gypsies.

(b) Housing

Housing shortages and poor conditions in urban areas have caused the living conditions of Roma/Gypsies to deteriorate relentlessly. The huge numbers of refugees in European states have further aggravated these shortages. There is, thus, a need actively to promote housing construction and make available settlement sites which are vital for travelling Roma/Gypsies and which must link up to municipal infrastructure.

(c) Education

Integration of the Roma/Gypsies cannot be achieved without successfully educating their children and providing vocational training for their young people. The purpose of such integration must not, however, be assimilation or alienation from Roma/Gypsy culture. Priority should be given to teaching and training which takes into account the distinctive way of life of Roma/Gypsies and the Romanes language. The language, culture and social characteristics of the Roma/Gypsies must be an integral part of efforts by national governments and the European institutions to promote cultural diversity at all educational levels. Promoting appropriate mechanisms in higher education, and arranging for them to be networked, could be an important step.

(d) Information

Information and research today represent a fundamental prerequisite for any form of social or cultural interaction. There is a need, at European level, for special media for the Roma/Gypsy people that are attuned to their distinctive requirements.

(e) Social services

Unemployment has hit Roma/Gypsy people in all parts of Europe especially hard. Social change is destroying their traditional opportunities for work and their integration into new areas of employment has barely begun. The social consequences of this process are beyond what most families can cope with unless they receive assistance from the state. Special attention must consequently be given to making basic social provisions for the Roma/Gypsy people in a manner suitable to their situation. Special attention should be given to making flexible arrangements for travelling Roma/Gypsies.

Provision of health care services requires particular attention, including mobile arrangements to ensure that facilities can be provided in an appropriate form.

In addition to stimulating employment for Roma/Gypsies, consideration should also be given to strengthening entrepreneurial opportunities, including loan facilities for small enterprise.

Special challenge to European policy

The European institutions are in a position to make a vital contribution to improve the situation of the Roma/Gypsies. The European Union bears a special responsibility in this connection. Urgent consideration should be given to using the Stability Pact and Phare mechanisms, with the possibility of multi-annual programmes, to assist the Roma/Gypsies. In addition, key lines in the European Community's budget should mention the need to support programmes for this important minority. Consideration should be given to joint programmes between the European Union, the Council of Europe and the OSCE.

The European Commission and the Member States of the Union are urged to make the Roma/Gypsy community and its particular needs an issue of policy. The Union can improve on a lasting basis their legal status by fully utilising the concept of Union citizenship.

Association agreements and accession negotiations with central and eastern Europe, as well as cooperation agreements with those states, should be used to improve the situation of the Roma/Gypsy people. The special needs of Roma/Gypsies should be integrated into all appropriate EU programmes.

It is essential to secure political representation for the Roma/Gypsies at European level, and assistance must be provided for networking their organisations. There is an urgent need to put the Standing Roma Conference, so that this body can adequately represent Roma/Gypsy issues to the European Institutions. Consideration should be given to the setting up of a mediation mechanism in a manner to be decided at European level to deal with Roma/Gypsy problems.

In sum, the requirement is for measures that fundamentally address the political, social and economic problems faced by the Roma/Gypsy people. In particular, the European Commission is urged to research and rapidly complete a communication to the Council and the Parliament on policy towards the Roma/Gypsies.

The language, culture and social characteristics of the Roma/Gypsies must be an integral part of efforts by national governments and the European institutions to promote cultural diversity at all educational levels.

Discrimination on grounds of disability

A. Legal developments

Despite being covered by the human rights instruments, the reality is that the committees overseeing member states' activities with regard to the UN human rights instruments do not monitor the situation of disabled people and human rights violations experience by them. Except for the Committee on the Rights of the Child, none of the other committees have guidance on how to monitor the situation in relation to disabled people. Member States do not adequately gather data in relation to the situation of disabled people.
Whilst some important judgements have been made on cases of violations regarding disabled people under the European Convention on Human Rights which have resulted in some protection for all disabled people in the countries concerned, all European countries continue to systematically violate the rights of disabled individuals through individual discrimination and institutional discrimination, through prejudicial assessments of quality of life of disabled people and through degrading and inhuman treatment of disabled people. The only specific protections afforded to disabled people through EU law is through Article 13 of the Treaty establishing the European Community, EC directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. There are a few very limited examples of binding EU initiatives in other areas such as in the field of transport to require accessibility for disabled people to transport. However, these initiatives are not subject to direct effect and do not sufficiently address, by any means, the reality for disabled people in Europe in relation to fundamental rights and protection.

Evidence of violations of fundamental freedoms

There has been little coordinated evidence of violations in respect to all the areas covered by the UN human rights instruments. Since 2000, Disability Awareness in Action (DAA) has been collecting evidence of violations against disabled individuals worldwide. Today, DAA's database contains 2,077 reports of abuse affecting 2.5 million disabled people - clear evidence of systematic contravention of the Universal Declaration of Human Rights and all the subsequent UN human right's instruments.

The cases recorded are only a small sample of what is actually the reality of the situation. There are many barriers to collecting evidence :

- Disabled people often do not report human rights abuses because they are afraid of the outcome or are so used to the abuse that they do not identify it as such.
- Many disabled people have no access to the systems of justice.
- Many countries do not recognise that certain treatment of disabled people is an abuse of their rights, sometimes because they do not consider disabled people as fully human or because the treatment is such common practice that it has never been recognised as a violation.
- It is difficult to get information out of those countries with poor human rights records.

All the statistics below reflect violations against disabled people gathered in Europe and again we reiterate, are only an indication of the reality.

10% of the cases contravene the right to life
Disabled people die :
- through lack of care or deliberate maltreatment from those providing personal assistance.
- as the result of superstition – a woman with epilepsy was beaten to death during an exorcism.
- through so-called 'mercy killings' by disabled people's families. Stigma has also driven many disabled people to suicide or parents to killing their children.
- medical negligence or negative judgements on our quality of life have led to large numbers of disabled people dying without treatment.
- many legal judgements support the death of disabled people, either through euthanasia laws or through regulations and judgements of quality of life leading to suspension of treatment.

34% of the cases are of degrading and inhuman treatment
Below are just a few of the things that have happened in Europe:
- children left sitting on the floor, tied to beds, so that they will not run away
- sexual abuse by staff in institutions, teachers and family members
- punishments for incontinency or vomiting
- people spat at, shouted at and ridiculed in the street
- forced feeding or stuffing people's mouths with cotton wool or other objects
- use of boiling or freezing water for baths
- confinement to garden sheds, coffins or cages
- people are left half-starved
- people are beaten, punched, whipped and thrown to the ground.

18% are of disabled people deprived of an adequate standard of living.

9% are of disabled people denied freedom of movement – either in their own homes, countries or between states.
In Europe this denial of freedom of movement is institutionalised through the inaccessibility of transport, housing and the inability to move disability benefits and services across boundaries. Disabled Europeans have no protection in these regards within European laws.
7% are of disabled children and adults deprived of education – by being contained in special schools who only provide a safe environment without giving an educational curriculum, are in mainstream schools without appropriate support or because the schools or universities are inaccessible.
As well as these documented violations against individuals there are the violations of rights within some civil laws and services within member states of Europe – laws which deny justice to people who cannot communicate verbally or use alternative methods of communication, disabled people who are incarcerated in institutions, often against their will and without a franchise; services which deny people the freedom of choice and control over their own lives and which add to their discrimination and isolation.

concerns that constitute a threat to disabled people's fundamental rights

- The **Amnesty International Report on** the inattention paid by the government of **the Republic of Ireland** (Ireland) to a series of national and international reports demonstrates Ireland's failure to fully respect the human rights of people with mental illness.
- The Autisme-Europe collective complaint v. France No. 13/2002: The complaint, lodged on 27 July 2002, relates to Article 15 (the right of persons with disabilities), Article 17 (the right of children and young persons to social, legal and economic protection), and to Article E (non-discrimination) of the Revised European Social Charter. It alleges insufficient educational provision for autistic persons constituting a violation of the above provisions.
- In the field of Bioethics, the risk of eugenics and discriminatory pre-natal diagnosis (genetic based discrimination – genetic predispositions – DNA banks – implications for insurance and employment) is growing. Art. 6 of the UNESCO 1997 Universal Declaration on the Human Genome and Human Rights reads: *"No one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect on infringing human rights, fundamental freedoms and human dignity."*
  Disabled people's organisations demand that there are put in place greater regulatory safeguards in respect of bioethics practices and that disabled people's organisations are represented on existing Ethics Bodies and Committees at both national and EU level.

Proposals for initiatives to improve the protection of fundamental rights within the European Union

The non-discrimination clause, Article 13, of the EC-Treaty has had an important impact on policy approaches by the EU Member States in relation to discrimination faced by disabled persons, notably in the field of employment. However, more measures are required.

The annual Report on the situation of fundamental rights in the European Union and its

Member States in 2002[1] clearly stated the that policies aiming at *"combating discrimination suffered by people with disabilities, call for the equal treatment requirement to be extended beyond the fields currently covered by this Framework Directive"* (EU Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation).

According to this Report "*it is hoped that the discussions surrounding the implementation of the directive 2000/78/EC with respect to persons with disabilities will envisage the need to address equal treatment in the areas of public transport, sports and accessibility of public buildings – and go beyond the scope of the directive, which is limited to employment*". It is indeed true that "*the implementation of equal treatment in work and employment cannot be separated from other spheres, which are connected to the effective possibility of professional integration*".
It is therefore imperative that there is a vertical, comprehensive Directive which covers all areas of disability discrimination and which includes a duty of implementation on all employers and providers of services in all member states.

A disability specific Directive will bring about a fundamental change to the lives of disabled people and the discrimination they experience.

At the same time EU Member States must be encouraged to affirm their commitment to the fundamental rights of disabled people through:
- Creating effective, high profile, government legislation and enforcement mechanisms and commitment of resources.
- Including the situation regarding disabled people in their reports to the various UN Human Rights Committees, monitor the situation of disabled people with a compilation of relevant data.
- Strengthening the role of representative organisations of disabled people to ensure the voice of disabled people themselves is recognised and reflected in policies, programmes and laws that directly affect disabled people and their families.

In parallel to starting the process towards a more comprehensive anti-discrimination legislation on the ground of disability, the EU should accede to the Revised European Social Charter. So far, of the EU Member States, only Finland, France, Italy and Sweden have ratified the Revised European Social Charter.

All provisions of the Charter are applicable to persons with disabilities. Article E of the (Revised) Charter contains a non-discrimination clause: "*the enjoyment of the rights set forth shall be secured without discrimination on any ground."* This prohibits discrimination, inter alia, on the ground of disability and requires that persons with disabilities have equal access to the rights guaranteed by the Charter. In addition the Charter (both the 1961 text and the Revised Charter) guarantee in Article 15 specific rights relating to persons with disabilities. Article 15 applies in respect of all disabilities; physical, mental and intellectual. Its overall aim is to ensure the effective exercise of the rights to independence and social integration[2].

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[1] T5-0376/2003.

[2] Article 15 of the Revised European Social Charter - The right of persons with disabilities to independence, social integration and participation in the life of the community.
With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation

Moreover, the proposed new draft Constitution must recognise disabled people as a substantial minority with full rights to equal citizenship and participation, following Article 13 EC-Treaty. The draft Constitution also brings economic and social rights in under the ECHR and will extend the right of disabled Europeans to justice. However, if progress is stalled by disagreement over the need to decide by qualified majority voting on these issues, human rights issues will be hard to process.

Furthermore, the EU and the Member States must work separately and in partnership to promote the UN Convention to protect and promote the rights and dignity of people with disabilities – a draft of which will start being prepared early next year, in January 2004.

It is no longer acceptable that over 12-15% of European citizens should live in an environment in which they are denied their fundamental freedoms and rights. It is a disgrace that they are ignored and left off so many human rights' agendas. As well as fighting for our own rights, we need our rights to be included in all rights' initiatives and have full recognition of our humanity and access to justice and freedom.

CHAPITRE IV: SOLIDARITY

Chapter 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who

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in the life of the community, the Parties undertake, in particular:

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

lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

A. Overview of current situation

Social rights represent one of the main foundations of Europe, acting as an anchorage for European values. The important advances made in this area in recent decades should not be allowed to conceal the fact that the social rights mentioned in Article 34 are still far from being fully guaranteed. Much still remains to be done with regard to access to the right to social protection, health, employment, housing and education. Social exclusion is a major problem affecting a large section of the population in Europe, against which European societies must take effective action.

In the EU Member States, the establishment of economic and social rights has generally been the outcome of a series of measures taken at the end of a gradual process specific to each country. Although there are significant differences between countries, there are generally three categories of social policy measures in the Member States. The first category concerns the programme of social security and tax measures guaranteeing security and income redistribution. This is a decisive instrument in combating poverty. It generally consists of social benefits granted to those who need them, e.g. family allowances, unemployment benefit, housing benefit, minimum incomes and pensions. These benefits are financed partly by the state or employers and workers' contributions. The second category concerns educational, health and housing measures. Here again, public authorities still finance such services to a large degree, making them available, in principle, to all social categories, albeit with significant differences between categories, in particular with regard to access to health and educational services. The third category concerns social rights relating to employment, guaranteeing working conditions, pay and access to work. Here again, there are major disparities, including even total exclusion from this right in the case of illegal workers.

In each Member State, EU citizens are guaranteed the application of the relevant legislation and exercise of these rights. Social rights are also guaranteed by declarations and undertakings made by international organisations such as the Council of Europe, the United Nations and the European Union in support of their implementation. These organisations work towards the establishment of international standards relating to social rights, whose main aim is to improve social cohesion.

Exclusion figures

Figures relating to poverty and social exclusion show that there are people who are unable to claim their social rights. The most recent data concerning EU Member States show that, in 1997, 18% of the EU population were living in households in situations of poverty and that a similar proportion (17%) were at a clear disadvantage in terms of their financial situation, meeting their basic needs and housing conditions[1]. The figures indicate that in the EU 18% of the population, or approximately 65 million people[2], live in low-income households[3].

[1] Council of the European Union (2001b), draft joint report on social inclusion, Brussels: Council of the European Union, p. 16.

An OECD survey[1] on low-income dynamics in four OECD countries, including Germany and the United Kingdom, concluded that between 20 and just under 40% of the population is touched by poverty over a six-year period, a much larger portion than would be suggested by the 'static' poverty rates. Within this group, however, the majority has short spells in poverty. As spells lengthen, the probability of exit falls such that a small group of the population remains in poverty for long periods of time with little chance of exit'. The survey also notes that people with low incomes for six or more years typically make up 2 to 6% of the population[2].

A study recently conducted in France and Germany[3], which examined long-term recipiency of social assistance as an indirect indicator of the duration of poverty confirmed the existence of long-term poverty. Although one-quarter to one-third of beneficiaries are generally able to exist the social assistance programme after 12 months, around one out of five beneficiaries in France and 6% in Germany are still dependent on the programme after five years[4].

In the EU as a whole, older people faced a slightly greater risk of poverty than people below the age of 65, which is mainly due to the fact that women have lower incomes. In the case of men, the poverty risk is not higher among those over 65 than those below that age. On the other hand, the 1998 data show a poverty risk facing some 17% of those over 65, taking 60% of average income as the threshold, and half this figure when taking 50% of average income as the threshold[5]. Older people therefore face the same impoverishment risk as the population as a whole[6].

At 52.7%, the employment rate of non-EU nationals in EU-15 is significantly lower than the 64.4% rate for EU nationals. The difference is particularly strong for women. At the same time immigrants are over-represented in risky sectors of employment, in undeclared work of low quality, and in population segments particularly exposed to health risks and social exclusion. In addition, well-educated and skilled immigrants are often unable to find work which matches their qualifications and have to accept lower qualified and lower paid work[7].

All the surveys also point to differences between countries as well as between the various social rights. Housing and employment measures - such as training, skill improvement and life-long learning - are far less developed in the form of social rights than those relating, for

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[2] The figure of 65 million is an extrapolation and rough indication of the low-income population for the EU-15 based on the 18% low-income population in the EU-13 (370 million x 0.18 = 66.6 million).
[3] COM(2000) 79.
[1] Low-income dynamics in four OECD countries, OECD, Paris (1998), REF. ECO/CPE/WP1(98)13
[2] COM(2000)79, p. 18.
[3] Sources: France: CNAF (Caisse nationale des allocations familiales), Paris, 1999; Germany: "*Long-term recipiency of social assistance in Germany: the eighties versus the nineties*", in the work by H-J Andres, *Empirical Poverty research in a Comparative Perspective*, Ashgate, 1998.
[4] COM(2000) 79
[5] 65 may be considered as the legal retirement age in most Member States. However, in a number of countries, the normal retirement age is earlier in the case of women and sometimes for both sexes (France: 60). In practice, most people retire from the labour market before the age of 65. If 60 is taken as the threshold, the risk of impoverishment is lower and life expectancy higher among older people.
[6] COM(2002) 737, p. 29.
[7] COM(2003) 336, p. 20.

example, to access to a guaranteed minimum wage and basic medical care. Data on access to one's rights might justify stepping up the campaign in favour of social rights in Europe and the political will and capacity to mobilise resources with a view to solving social problems on the basis of a rights-based approach.

Information on social rights

Citizens are not necessarily aware of their rights. Information and education should form the starting point for any support measure or benefits. It is therefore essential that information on social rights be made readily available to users and potential users and that their opinion be taken into account. Various statistical reports show that a significant proportion of people are ill-informed of their rights and that this lack of information may lead to a loss of benefits or delays in their payment. Three main communication and information problems have been noted:

- failure to disseminate high-quality information;
- the formal and material inadequacy of the information supplied;
- insufficient use of 'new' means of information and insufficient consideration for users' and potential users' viewpoints.

A multi-dimensional communication strategy should therefore be drawn up, based on the recognition of the fundamental importance of the dissemination of information in the planning and provision of effective public services.

Vulnerable groups

Studies on the various aspects of social rights all acknowledge the existence of vulnerable groups. Although the identity of such groups may vary from one member State to another, some may be found in all countries: refugees, older people, ethnic minorities, physically and mentally handicapped persons, persons coming out of psychiatric establishments or prisons, persons who are sick or in ill health, people who are homeless or in poor housing conditions, asylum seekers, women with a dependent family or other care responsibilities, the long-term unemployed, older workers, women on low incomes, young people and children.

Many of these groups are not vulnerable per se: their vulnerability has been created or reinforced by social provisions as well as by practices and values adopted by society as a whole.

While the identity of the most vulnerable groups may vary from one country to another, indigenous minorities (in particular Roma/gypsies and travelling people) may be defined as vulnerable throughout the EU and are subjected to unequal treatment.

In many cases, there is a tendency to use immigration laws and social laws to prevent migrants and asylum-seekers from receiving benefits or social services or to justify treating them differently. This generally results in a two-tier system of rights, with lesser benefits for these two groups, who may find themselves deprived totally or partially of access to job-seeker assistance, training and education. In these circumstances, such persons and their families find themselves in need and are prevented from playing an active part in their

community of adoption. It should be pointed out that depriving a person resident on the national territory of the excise of a social right in this way is totally contrary to the spirit of human rights.

People's participation is a decisive condition in the fight against exclusion.

It would be preferable for individuals and communities to be encouraged to take charge of their own destinies. Autonomy is conducive to direct participation and presupposes a strengthening of capacities, the aim being to increase the capacity of each individual (or region/community/municipality) to act, in particular in order to claim their social rights. This encouragement to take an active part in society and to become independent necessitates work with groups or regions deemed to be disadvantaged and the elaboration of general programmes to combat poverty and social exclusion.

Social exclusion is multidimensional in nature. As a result, measures to combat social exclusion have to be developed in a wide range of policy areas such as employment, social protection, education and training, health and housing. The experiences of Member States have demonstrated the importance of an integrated approach which succeeds in linking and 'proofing' different policies to combat social exclusion. They have also shown the importance of partnerships bringing together all those involved in these policies to ensure this integrated approach. Experience has shown the need to ensure an active participation of all stakeholders, especially those excluded or exposed to social exclusion as well as the organisations working for their interests, including social partners and other civil society actors such as non-governmental and voluntary organisations. Member States are pursuing this in a variety of ways, by means of national programmes, special coordination mechanisms, framework legislation, activation and the promotion of individual pathways to integration[1].

In this connection, it is worth mentioning the recent change in the EU's approach to poverty and social exclusion. The 'social inclusion process' was launched in December 2000 at the Nice European Council[2]. The process is based on four ambitious objectives. The first is to facilitate the participation of all in the employment market and access to resources, rights, goods and services which this necessitates. The second declared objective is to prevent the risk of social exclusion. The third objective is to help the most vulnerable. In this connection, the strategy specifically mentions the obligation to guarantee that every individual is given the necessary resources to live in accordance with human dignity. The final objective is to mobilise 'all actors concerned', namely bodies, groups and individuals actively involved in elaborating relevant policies or in community or other work aimed at resolving the various problems identified.

During its presentation of the 2004 finance bill, the French Government reiterated its intention of keeping access to state medical insurance (Assurance Médicale d'Etat - EMA) under strict control by introducing draconian conditions. This bill may represent a final blow for the EMA and access to health care. The new measures include abolishing arrangements for immediate admission to the AME, the requirement that anybody wishing to applying for AME must have

[1] COM(2000) 368.
[2] See COM(2000) 79.

been present for an uninterrupted period of three months and restrictions on medical care which could be covered as a matter of urgency.

This bill contravenes a number of France's obligations, in particular the revised European Social Charter, which France ratified on 7 May 1999. The reform undermines access to care for the poorest sections of society. 150 000 people living precariously currently receive this assistance. In a press release of 1 December 2003 the FIDH called for greater vigilance on the part of members of parliament to block this reform which is contrary to the fundamental human rights of people living in precarious circumstances.

CHAPTER V: STRENGTHENING OF EUROPEAN CITIZENSHIP

Article 39: Right to vote and to stand as a candidate at elections to the European Parliament
'Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.'
Article 40: Right to vote and to stand as a candidate at municipal elections
'Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State.'
Article 45: Freedom of movement and of residence
'Every citizen of the Union has the right to move and reside freely within the territory of the Member States. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State."

A. European Court of Justice (ECJ), Luxembourg

Carlos Garcia Avello[1] Mr Garcia Avello (a Spanish national) got married in Belgium to Ms Weber (a Belgian national). They have two children and they have dual Spanish and Belgian nationality. In accordance with Belgian law the children entered the Belgian register as *'Garcia Avello* (name of the father). The couple applied for a change in surname of their two children. In accordance with a well-established usage in Spanish law, the surname of children of a married couple consist of the first surname of the father followed by that of the mother (*Garcia-Weber)*. The Belgian authorities rejected this application. The Belgian State referred questions to the ECJ for preliminary ruling. In analysing the Belgian refusal and the relevant EC-law the ECJ concludes that Articles 12 (non-discrimination on the basis of nationality) and 17 EC (citizenship) preclude the Belgian authorities to refuse the application made by Mr Garcia Avello. The refusal of the Belgian authorities is disproportionate because the (Belgian) practice in issue already allows derogation's from application of the Belgian system of handing down surnames in situations similar to that of the children of the applicant in the main proceedings. The children therefore had the right on the basis of EC-law to be called *Garcia-Weber.*

The concept of EU citizenship is still unclear to many of our fellow citizens.

[1] C-148/02, of 2 October 2003, not yet published.

Union citizenship was established by the Maastricht Treaty. EU citizenship is defined in Article 17 of the EC Treaty in the following terms: 'Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship'.

The draft EU Constitution has not altered the basis for EU citizenship. This citizenship confers on its holders a number of rights. These include the right to vote and to stand in municipal and European elections. We have chosen these two articles because the right to vote and to stand in elections are pillars of democracy.

The rights attaching to the freedom of movement and establishment (Article 45 above) include the right to vote and to stand as a candidate in local and European elections.

B. Overview of current situation

Right to vote and to stand as a candidate in European elections
The right to vote and to stand in European elections is enshrined in Article 19 of the EC Treaty and took effect on publication of Directive 93/109/EC laying down the relevant procedures.

Citizenship has the specific function of creating a direct link between citizens and their representatives in the European Parliament.

Elections to the European Parliament have aroused little interest. The turnout at European elections from 1979 to 1999 has fallen from an average of 65.9% in 1979 to 52.84% in 1999. This downward trend is true of all Member States with the exception of Belgium (where it is compulsory to report to the polling station), Greece, Luxembourg and to a lesser extent Italy.

The rate of participation among EU citizens resident in a Member State other than that of their nationality is still relatively low. The reasons for this democratic deficit are as follows: lack of information as to the procedure to be followed, compulsory registration on an electoral list, lack of interest in European issues and the possibility for certain nationals of voting at the consulate or directly in their country of origin.

Moreover, political parties are still reluctant to open their electoral lists to non-nationals owing to the reticence to which the candidate's origin might give rise. At the 1999 elections, only 4 out of 626 Members of the European Parliament were elected in a Member State other than that of their nationality.

A dozen Members of the European Parliament are EU citizens belonging to an immigrant group from a third country. Parliament is far from reflecting the multicultural and multiethnic diversity of Member states.

Your rapporteur welcomes the Commission's communication to the European Parliament and the Council[1] on measures to be taken by Member States to ensure participation of all citizens

[1] COM(2003) 174.

of the Union in the 2004 elections to the European Parliament in an enlarged Europe. The communication recalls the requirements contained in the directive: Member States must ensure that steps are taken to identify the EU citizens concerned, to inform them of their rights, to receive expressions of their wish to vote, to enter voters on the electoral rolls and receive applications to stand as a candidate, to inform those concerned about the action taken on such applications and to exchange information with other States to prevent double voting.

Through its support for the Community programme to promote active European citizenship (2004-2008), the Commission is undoubtedly contributing to bringing the Union closer to its citizens. Such initiatives deserve our support.

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

Directive 94/80/EC of 19 December 1994 lays down the procedures for the exercise of the right to vote and to stand in municipal elections for EU citizens resident in a Member State other than that of their nationality. In practice, EU citizens show little interest in exercising this right.

We call for this right to be extended to nationals of third countries.

Challenge to EU citizenship

The Council of Europe's Convention on the participation of foreigners in public life at local level[1], which entered into force on 1 May 1997, stipulates (Article 6) that every foreigner who has been a lawful and habitual resident in the State concerned for the five years preceding elections should be granted the right to vote and to stand for election in local authority elections. This Convention is in force in Denmark, Finland, the Netherlands and Sweden. It is also in force in Italy, subject to the exclusion from its scope of foreigners' rights as laid down in Chapter C.

The United Kingdom signed the Convention on 5 February 1992. Among the new Member States, only Cyprus has signed the Convention (15 November 1996).

In so far as nationals of third countries contribute to the Community's prosperity, they have a legitimate right to participate in local public affairs as part of their integration into the local community.

This idea is far from being universally accepted. The bill passed by the Belgian Senate on 12 December 2003 on granting the right to vote but not to stand in local elections to non-EU nationals has shown how impassioned the debate can be even though it only concerns a small minority of foreigners (110 000 people at the most). Those who oppose this proposal consider that nationality and citizenship are indissociable.

[1] Situation as at 6 November 2003, http://conventions.coe.int.

Your rapporteur shares the view of the European Economic and Social Committee[1], that EU citizenship should be granted on the basis of the principle of legal and stable residence.

It is essential that EU citizenship should be dissociated from nationality of Member States. The principle of nationality is discriminatory since the rules on granting the nationality of Member States vary from one country to another so that people in an identical situation are treated differently according to the Member State concerned.

In its opinion of 5 February 2002 on the proposal for a directive on the status of third-country nationals who are long-term residents, the European Parliament upheld the view that those enjoying the status should be granted the right to vote in local and European elections.

The achievement of democracy and recognition of political rights is an ongoing struggle. It was only late in the 20th century that women were able to obtain the right to vote and citizens' rights equal to those of men in Europe.

As the European Union prepares for its enlargement, it cannot continue to exclude millions of people. 'The outward opening-up of European citizenship must go hand in hand with inward inclusion. If not, millions of people who are actively in the process of integration will undoubtedly feel very excluded'.[2]

Other challenges to EU citizenship are expected with the arrival of 10 new states in May 2004. During the transition period, access to the Member States' employment market is left to the discretion of each Member State.

Democracy within the EU will also depend on the manner in which the principle of participatory democracy is applied to EU citizens in the draft Constitution for Europe.

CHAPTER VI: JUSTICE

Article 47: Right to an effective remedy and to a fair trial
'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.'

Article 50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence
'No-one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.'

[1] opinion on access to EU citizenship, 14-15 May 2003, EESC 593/2003
[2] opinion on access to EU citizenship, 14-15 May 2003, EESC 593/2003

A. European legislation

Procedural safeguards in criminal proceedings in the EU. In February 2003 the Commission published a Green Paper on Procedural Safeguards for suspects and Defendants in criminal proceedings throughout the European Union.[1] On this Green Paper the Parliament issued a report. In this report it supports the commitment of the Commission to table a proposal for a Framework Decision on this issue, being the next step. Parliament believes this is essential to increase the confidence and faith which members of the public, the judicial authorities and defendants in other Member States have in the legal system of all other Member States.[2]

B. Overview of current situation

Access to justice (Guantánamo) A number of European citizens are being detained at a prison camp in Guantánamo Bay, in breach of rules of International law. They are being held on suspicion of having links with the Al-Quaida or with the Taliban regime. They have not been charged or allowed access to lawyers. The European Parliament is deeply concerned about this situation and presented a resolution on this issue in the end of November 2002[3]. Currently the committee on Civil Rights and Liberties, Justice and Home Affairs and the committee on Foreign Affairs, Human rights, Common Security and Defence Policy are working on a recommendation on the situation in Guantánamo Bay[4]. The recommendation is expected at the beginning of 2004.

C. Right to an effective remedy and to a fair trial (Article 47)

European Court of Human Rights (ECHR), Strasbourg

The Netherlands[5] This case deals with the treatment of Mr Lorsé while being detained in an extra-security institution (EBI) in the Netherlands. The ECHR concluded that Article 3 of the European Convention for the protection of Fundamental Rights and Freedoms had been violated. Mr Lorsé claimed not to have related an effective remedy within the meaning of Article 13 of the Convention. On this point the ECHR concluded there had been no violation. The decision to detain Mr Lorsé in the EBI was reviewed every six months. Advice was sought from the Penitentiary Selection Centre. Mr. Lorsé was able to appeal against the decision to prolong his detention. "Remedy" within the meaning of Article 13 does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of the complaint. The Court considered that the proceedings before the Appeals Board and the possibility of interim injunction proceedings taken together provided the applicants with an effective remedy.

Reasonable time-limit

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[1] COM (2003) 75.
[2] P5_PROV(2003)0484.
[3] OJ C 284 E/353 of 21.11.2002.
[4] B5-0426/2003 and T5-0168/2004. For information, see also Fair Trials Abroad, http://www.f-t-a.freeserve.co.uk/home.htm
[5] L*orsé and others v. The Netherlands* (52750/99) of 4 February 2003.

Greece[1] Ms Dactylidi complained of the length of proceedings before the Legal Council of State in Greece. She also complained that she had not had a remedy by which to assert her rights and secure demolition of the buildings (Art. 13). The ECHR noted that the first set of proceedings had lasted seven years, two months and two days and the second four years, six months and 12 days, in each case for a single level of jurisdiction. The applicant had conducted the proceedings diligently and the delays had occurred essentially as a result of the conduct of the court concerned. The ECHR held, unanimously, that there had been a violation of Article 6, par.1

United Kingdom[2] Mr Mellors alleged his criminal proceedings exceeded a reasonable time. He was arrested on 30 October 1995 and his appeal was finally rejected on 22 July 1999 (after 3 years, eight months and 23 days). The Court considered the appeal did not proceed with the necessary expedition and failed to satisfy the reasonable time requirement.

The Netherlands[3] Mr Beumer alleged that the proceedings on his request for labour incapacity benefits (*AAW*-benefits) exceeded a reasonable time. The proceedings lasted from 16 August 1994 until 21 July 1999 (4 years, eleven months and five days). ECHR concluded that there had been a violation of the reasonable time requirement.

Ireland[4]Terence and Maureen Doran complained about the length of civil proceedings. The proceedings began on 17 July 1991 and ended on 15 December 1999 (8 years and 5 months). The Court concluded that applicants' proceedings were not determined within a reasonable period of time.

Austria[5] Mr Hennig alleged that the criminal proceedings against him lasted unreasonably long. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of particular circumstances of the case. The reasonable time begins to run as soon as a person is charged with an offence. The Court was not persuaded by the Government's argument the case was particularly complex. There were excessive delays, which were mainly attributable to the national authorities.

Access to justice and a fair trial

Italy[6]Mr Cordova had lodged a complaint, alleging defamation against two members of parliament and had applied to join the subsequent criminal proceedings as a civil party (civil right to enjoy a good reputation). The impugned statements had been found to be covered by parliamentary immunity. The ECHR stated that, in principle, the recognition of parliamentary immunity did not in itself place a disproportionate restriction on the right of access to a court. The statements that had given rise to proceedings had not related to the performance of parliamentary duties in the strict sense. In the Court's opinion it meant that the notion of proportionality between the aim pursued and the means employed had to be interpreted narrowly. This is particularly true were restrictions on the right of access had resulted from a

[1] *Dactylidi v. Greece* (52903/99) of 27 March 2003
[2] *Mellors v. United Kingdom* (57836/00) of 17 July 2003.
[3] *Beumer v. The Netherlands* (48086/99) of 29 July 2003.
[4] *Doran v. Ireland* (50389/99) of 31 July 2003.
[5] *Hennig v. Austria* (41444/98) of 2 October 2003.
[6] *Cordova v. Italy* (40877/98) of 30 January 2003.

resolution passed by a political body. To conclude otherwise would amount to restricting, in a manner incompatible with Article 6 par. 1 of the Convention, the right of the individual to apply to a Court in any case where the comments had been made by a member of parliament.

France[1] Ms Chevrol qualified as a doctor in Algeria and applied to be registered as a doctor in France. Her application was unsuccessful although she relied upon the Government Declarations on Algeria which provides, among other things, for mutual recognition of qualifications awarded in Algeria and in France (Evian-agreement). The applicant appealed to the Conseil d'Etat, which referred a preliminary question to the Ministry of Foreign Affairs. The Ministry expressed the view that the provisions of the Evian Agreement could not be regarded as having legal force because the condition of reciprocity has not been satisfied. Applicant's appeal was dismissed by the Conseil d'Etat. Ms Chevrol complained of interference by the executive with the Conseil d'Etat's judicial powers. The Ministry's intervention had been crucial to the outcome of her case, but she had no means challenging it. The Conseil d'Etat referred preliminary questions to the Ministry of Foreign Affairs and abided to this opinion without subjecting it to any criticism or cross-examination. The ECHR observed that the Ministry's intervention, which had been decisive for the outcome of the court proceedings had not been open to challenge by the applicant. In those circumstances the applicant could not be considered to have had access to a tribunal which had, or had accepted, sufficient jurisdiction to examine all the factual and legal issues relevant to the determination of the dispute.

Germany[2] Applicant complained about alleged unfairness of German court proceedings concerning her claims for reimbursement of medical expenses against a private health insurance company. The Court considers that the burden placed on a transsexual to prove the medical necessity of the treatment appears disproportionate. Furthermore the interpretation of the term of "medical necessity" and evaluation of evidence in regard to gender re-assignment measures was not reasonable and the proceedings in question did not satisfy the requirements of a fair hearing.

Finland[3] Ms Suominen complained that she did not receive a fair hearing as she was prevented from presenting all the evidence she wanted to present. The District Court refused to admit the evidence at the main hearing, without giving a reasoned written decision. According to the Court an authority is obliged to justify its activities by giving reasons for its decisions. Applicant did not have the benefit of fair proceedings in so far as the court's refusal to admit the evidence proposed by her was concerned. It also hindered applicant from appealing in an effective way against that refusal.

Finland[4] Memoranda were not formally communicated to Neste. The Court underlines that whatever the actual effect of those memoranda on the Supreme Administrative Court's Decision, it was for Neste to access whether they required its comments. The company should have had an opportunity to comment on the memoranda prior to deciding the case. Applicant

[1] *Chevrol v. France* (49636/99) of 22 October 2002.
[2] *Van Kuck v. Germany* (35968/97) of 12 June 2003:
[3] *Suominen v. Finland* (37801/97) of 1 July 2003.
[4] *Fortum corporation v. Finland* (32559/96) of 15 July 2003.

was unable to participate properly in the proceedings before the Supreme Administrative Court.

Sweden[1] Mr Lagerblom, a Finnish national, who settled in Sweden in the 1980s was charged with a criminal offence for which he was convicted in May 1994. He got assistance of a public defence council. Mr Lagerblom requested that a lawyer who knew Finnish would replace this lawyer. During the hearing applicant defended himself in Finnish. He was convicted and sentenced to one year and two month's imprisonment and was ordered to pay an amount of costs including his lawyers' fee. He appealed and again asked to be represented by a Finnish speaking lawyer. He claimed that his right to a fair trial had been violated, as his public defence council was not Finnish speaking. The ECHR observed that replacement of counsel would have caused certain inconvenience and entailed additional costs. The ECHR did not find it unreasonable, in view of general desirability of limiting the total costs of legal aid, for national authorities to take a restrictive approach to requests to replace public defence counsel once they had been assigned to a case and had undertaken certain activities. Furthermore the ECHR concluded that applicant had a certain command of the Swedish language and that he was so handicapped that he could not al all communicate with his lawyer. No violation of article 6, par. 1 and 3.

United Kingdom[2] Mr Dowsett alleged that he had been deprived of a fair trial by virtue of the prosecution's failure to disclose all material evidence in their possession. The Court re-iterates the importance that material relevant to the defence be placed before the trial judge for his or her ruling on disclosure, namely, at the time when it can serve most effectively to protect the rights of the defence.

In the UK, following derogation from Article 5 of the ECHR, detention of terrorist suspects continues under Part 4 of the Anti-Terrorism Crime and Security Act 2001. This is detention ordered by the executive, without charge or trial, for an unspecified and potentially unlimited period of time, principally on the basis of secret evidence which the people concerned have never heard or seen, and which they were therefore unable to effective challenge. Amnesty International has repeatedly expressed concern that Part 4 of the ATCSA has created a shadow criminal justice system devoid of a number of crucial components and safeguards present in both the ordinary criminal justice system and national procedures for the determination of refugee status. The human rights violations that have taken place in the course of the ATCSA’s enforcement over two years have deepened concern in this respect.

Equality of arms

France[3] A French national wanted to sue a lawyer who, he alleged, had given him bad advice. He applied for legal aid which was granted to him on 1 June 1995. Three lawyers in succession withdrew from the case on account of personal links with the defendant lawyer. The legal aid office decided not to assign a fourth lawyer to the case therefore the applicant had to conduct his own case. In the Court's view, the relevant authorities, when notified of the withdrawal of the various lawyers, should have provided a replacement so that the applicant

[1] *Lagerblom v. Sweden* (26891/95) of 14 January 2003.
[2] *Dowsett v. United Kingdom* (39482/98) of 24 June 2003.
[3] *Bertuzzi v. France* (36378/97) of 13 February 2003.

could benefit from effective legal assistance. Especially because applicant had been granted legal assistance for a type of a case in which legal representation was not compulsory. The legal aid office had therefore considered that professional assistance would be of crucial importance in the proceedings. The ECHR held unanimously that the applicant had not received effective access to a tribunal. The possibility of conducting his own case in a proceedings against a legal practitioner had not afforded the applicant the right of access to a court in conditions allowing him the effective enjoyment of equality of arms.

France[1] Mr Richen and Mr Gaucher were both sentenced to a fine and temporarily disqualified from driving after being convicted of contravening the Road traffic Code. They lodged an appeal on points of law and their lawyers sought to consult the advocate-general submissions. They were told only members of the Conseil d'Etat and Court of Cassation Bar were empowered to represent and assist parties before the Court of Cassation. Applicants submit that they had been denied an adversarial hearing. They claimed their lawyers had been placed in a unfavourable position compared to appellants represented by a member of the Conseil d'Etat and Court of Cassation Bar. ECHR concluded applicants had not been denied a reasonable opportunity to present their cases and their right to a fair trial was not infringed. They, however, should have received a copy of the Advocate general's submissions. The ECHR found that the applicants' appeal had not been examined fairly after adversarial process.

United Kingdom[2] Mr Edward and Mr Lewis alleged that they had been denied fair trials, as a result of the incitement of offences by *agents provocateurs* and of the procedure concerning the non-disclosure of evidence followed by the domestic courts. The ECHR recalls this may only happen when strictly necessary. Applicants were not able to argue the case on entrapment in full before the judge. The Court concludes that the procedure employed to determine issues of disclosure of evidence and entrapment does not comply with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused.

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

European Court of Justice (ECJ) Luxembourg

In a judgement of 11 February 2003[3] the ECJ gave judgement in a preliminary ruling based on article 35 TEU on the interpretation of Article 54 of the Convention implementing the Schengen Agreement (CISA).

Gözütok and Brügge National courts had asked whether the *Ne bis in idem principle* also applies to procedures whereby further prosecution is barred. In the cases at issue the prosecuting authority, decided to discontinue criminal proceedings against an accused once he had fulfilled certain obligations, in particular in this case when he had paid a sum of money. The ECJ stated that in those circumstances the person must be regarded as someone whose

[1] *Richen and Gaucher v. France* (31520/96 and 34359/97) of 23 January 2003.
[2] *Edwards and Lewis v. United Kingdom* (39647/98 and 40461/98) of 22 July 2003.
[3] C-187/01 and C-385/01 Hüseyin Gözutök and Klaus Brügge.

case has been 'finally disposed of' for the purposes of Article 54 of the CISA. The fact that no court is involved or that the decision does not take the form of a judicial decision does not cast doubt on this interpretation.

LIST OF ABBREVIATIONS

EU	European Union
TEU	Treaty on European Union
EC Treaty	Treaty establishing the European Community
UN	United Nations
OSCE	Organisation for Security and Cooperation in Europe
NGO	Non-Governmental Organisation
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Court of Human Rights
CPT	European Committee for the Prevention of Torture
OMCT	World Organisation against Torture
ILO	International Labour Organisation
EP	European Parliament
ECJ	European Court of Justice
SIS	Schengen Information System
RWB	Reporters Without Borders
IFJ	International Federation of Journalists
IOM	International Organisation for Migration
AI	Amnesty International
UNHCR	Office of the United Nations High Commissioner for Refugees
ECRE	European Council on Refugees and Exiles
FIDH	International Human Rights Federation
CFDA	Coordination française pour le droit d'asile
CNCDH	Commission nationale consultative des droits de l'homme
F	France
UK	United Kingdom
NL	Netherlands
L	Luxembourg
EL	Greece
B	Belgium
ES	Spain
CISA	Convention implementing the Schengen Agreement

19 February 2004

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

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

on the situation as regards fundamental rights in the European Union (2003)
(2003/2006(INI))

Draftsman: Johanna L.A. Boogerd-Quaak

PROCEDURE

The Committee on Employment and Social Affairs appointed Johanna L.A. Boogerd-Quaak draftsman at its meeting of 17 December 2003.

It considered the draft opinion at its meetings of 21 January 2004, 16 February 2004 and 17 February 2004.

At the latter it adopted the following suggestions by 24 votes to 1, with 0 abstention.

The following were present for the vote: Marie-Hélène Gillig(acting chairwoman),Winfried Menrad (vice-chairman), Marie-Thérèse Hermange (vice-chairwoman), Johanna L.A. Boogerd-Quaak (draftsman), Jan Andersson, Elspeth Attwooll, Regina Bastos, Alejandro Cercas, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Roger Helmer, Stephen Hughes, Karin Jöns, Jean Lambert, Elizabeth Lynne, Toine Manders (for Marco Formentini), Thomas Mann, Mario Mantovani, Manuel Pérez Álvarez, Lennart Sacrédeus, Herman Schmid, Miet Smet, Helle Thorning-Schmidt, Anne E.M. Van Lancker, Barbara Weiler.

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

Protection of personal data (Article 8)

1. Welcomes the intention of the Commission to present a proposal for a directive on the protection of workers' personal data in the employment context and urges the Commission as well as the Council to give full effect to the workers' rights enshrined in Article 8 of the Charter and adopt effective legislation in this respect as soon as possible;

The rights of the child (Article II-24)

2. Draws attention to the fundamental importance of children's right to the protection and care necessary to their well-being; stresses that, at both Community and Member-State level, strong measures to combat trafficking in human beings, child prostitution and other forms of abuse must be significantly better coordinated and made more efficient in order swiftly to combat this inhuman activity, which is reminiscent of enslavement, and that measures by the acceding and applicant states and countries within the 'wider European neighbourhood' must also be given priority;

Fair and just working conditions (Article 31)

3. Regrets that European Court of Justice case law shows that different Member States are guilty of failing to transpose or of inadequately transposing directives implementing the right to a wholesome and safe working environment; urges France and Italy to act without delay to comply with Court of Justice judgments in cases C-66/03 and C-65/01 respectively, and to ensure correct and complete transposition of Directives 2000/39/EC and 89/655/EEC;

4. Calls on the Commission stringently to monitor the correct transposition of Directive 93/104/EC[1] concerning the organisation of working time, in relation in particular to the exemptions and exceptions it provides for;

5. Notes that everywhere in Europe the use of atypical work, and in particular temporary agency work, is increasing; regrets that these workers are still often suffering from precarious working conditions and from more accidents at work than other workers; calls, in this regard, on the EU institutions to ensure as soon as possible the adoption of the Directive on working conditions for temporary agency workers ensuring high employment standards;

Non-discrimination (Article II-21)

[1] OJ. L 307, 13.12.1993, p. 18, as amended by Reg. 2000/34/EC, OJ L 195, 01.08.2000, p. 41.

6. Draws attention, in relation to the Community *acquis* on social rights and the prohibition on discrimination, to the importance, not only of its prompt and complete incorporation into the legislation of acceding Member States, but also of its actual implementation;

7. Urges Member States to act to eliminate discriminatory rules and practices, in relation in particular to the recognition of diplomas and the situation of border workers; urges the Netherlands to stop violating Regulation 1408/71, as determined by the Court of Justice judgment in Case C-311/01; notes, despite the decree law of 14 January 2004, the Italian Government's continuing failure to comply fully with the Court of Justice's judgment in Case C-212/99 concerning foreign lecturers and that the Commission is now seeking financial penalties;

Workers' right to information and consultation within the undertaking (Article II-27)

8. Calls on the Commission to monitor the prompt and correct transposition by Member States of Community legislation relating to employee information and consultation within the undertaking; urges, in addition, that the United Kingdom in particular does not apply any too restrictive interpretations on the basis of the confidentiality clause that has been included in Article 6, paragraph 2 of Directive 2002/14/EC; such a clause is intended to apply in a small number of ad hoc cases, and is not meant to be used to create generic exceptions enabling certain areas to be completely excluded from the worker information and consultation requirements;

The rights of the elderly (Article II-5) and the integration of persons with disabilities (Article II-26)

9. Calls on the Commission to determine the extent to which measures to promote occupational and social integration for disabled persons and social and economic integration for the elderly can be adopted using existing open-coordination procedures, in particular that of open coordination for social inclusion;

Right of collective bargaining and action (Article 28)

10. Notes that, although those rights are recognised as fundamental social rights according to international and European standards, they are increasingly threatened with deregulation as a consequence of globalisation and narrowly economic trains of thought; warns against allowing working conditions to become dependent on court proceedings, whereby social conflicts will be settled, not by way of consultation between social partners, but by bringing cases before civil or other courts, with the result, in the long term, that efforts to maintain social peace will be subjected to intolerable pressures;

11. Regrets that in a number of Member States wide-ranging restrictions continue to be applied to the rights of organisation, collective bargaining and participation in collective action for those working in the public sector, in particular the uniformed services such as the armed forces, police or customs officials; calls strongly for the options for exemptions to those rights that are available under the European Social Charter to be applied much more restrictively and, as far as possible, abolished;

Family and professional life (Article 33)

12. Stresses that discrimination in any form against the exercise of social rights intended to reconcile family and working life, in particular the right to parental leave and protection for expectant and nursing mothers) must be eliminated, not only in principle but also in practice.

13. Urges the development of measures to make an optimum combination between work and family possible, also taking into account both the demographic deficit and the inability of many married couples to have children of their own;

Access to services of general economic interest (Article 36)

14. Urges the Commission and the Council, in accordance with the Charter and the draft Constitution, to leave the responsibility for organising and financing access to services of general interest to Member States, but to work, on the basis of Community law, towards establishing a Community core of public-service obligations, in particular in network sectors;

15. Urges a more dynamic ratification policy by Member States in relation to recent ILO conventions; asks its Committee on Employment and Social Affairs to draft an own-initiative report on the above matters;

26 January 2004

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 situation as regards fundamental rights in the European Union (2003)
(2003/2006(INI))

Draftsman: Olle Schmidt

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Olle Schmidt draftsman at its meeting of 27 November 2003.

It considered the draft opinion at its meeting of 20 January 2004.

At this meeting it adopted the following suggestions by 11votes to 8, with no abstention.

The following were present for the vote: Anna Karamanou (chairwoman), Marianne Eriksson and Jillian Evans (vice-chairwomen), Olle Schmidt (draftsman), Uma Aaltonen, Regina Bastos, Lone Dybkjær, Lissy Gröner, Mary Honeyball, Christa Klaß, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Thomas Mann, Maria Martens, Elizabeth Montfort (for Robert Goodwill, pursuant to Rule 153(2)), Christa Prets, Amalia Sartori, Patsy Sörensen, Joke Swiebel and Elena Valenciano Martínez-Orozco.

SUGGESTIONS

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 suggestions in its motion for a resolution:

1. Condemns discrimination against women in all its forms; reaffirms that equality between men and women is a fundamental right; urges the practical application and implementation of this principle in all areas at national and European levels;

2. Calls on the Member States to actively improve the situation for women at the workplace concerning the right to equal pay and the right to social security, as regards retirement, unemployment, sickness, invalidity insurance and pensions schemes;

3. Highlights the recognition of the common responsibility of men and women in the upbringing and development of their children and stresses that both mothers and fathers should have the rights to parental leave without facing any discrimination imposed on them by the employer;

4. Underlines the fact that many women are still denied the right to abortion in the EU and urges the Member States to guarantee the equal access of all women, including young, poor and immigrant women, to safe and legal abortion, emergency contraception, affordable reproductive and sexual health services and sex education;

5. Calls on all Member States to ensure that freedom of thought, conscience and religion, as well as tradition, do not infringe the autonomy of women and the principle of equality for women and men, and that these be exercised in full accordance with the requirement of separation between Church and State;

6. Condemns all forms of violence against women and calls on the Member States, as a matter of urgency, to combat and eliminate violence against women and children in Europe; believes that, in order to achieve this goal, the Community should find a common definition of violence and contribute to and undertake actions towards the elimination of violence in all its various forms, including particular forms of violence suffered by immigrant women such as forced marriage and genital mutilation; reiterates 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;

7. Stresses the need for the collection and distribution of reliable statistical data on various aspects of immigration into the EU; special attention should be given and urgent action is needed to combat trafficking in human beings, especially in the most vulnerable groups such as women and children;

8. Stresses that trafficking in women and children, and prostitution cannot be combated effectively by Member States acting on their own and urges therefore actions for a common European strategy addressing the entire trafficking chain;

9 Highlights the crucial importance of a gender perspective in immigration policy of the European Union and emphasises that there is a need to focus on immigration connected with trafficking in women that aims at prostitution. It is also a matter of great importance to elaborate a common strategy for the European Union to tackle the root causes of trafficking in the countries of origin through social- and economic co-operation and financial and technical assistance;

10. Underlines that many immigrant women have only derived rights through their husbands. It is therefore crucial to provide those women with thorough information and empowerment strategies on women's rights and opportunities in the country in which they reside as well as in the whole territory of EU in order to obtain the best integration in society;

11. Condemns all sexist practices and stereotypes; asks the European Union and the Member States to ensure by all appropriate means that the media, advertising and educational material promote a positive image of women based on the respect of human dignity and the principle of equality between men and women;

12. Calls on the Council to review its Directive on family reunification that prevents non-EU citizens from being reunited with their families, and, therefore, supports the legal action under way against the Directive brought by the EP before the ECJ;

13. Urges the Member States in all areas of society to promote a balanced representation in decision-making bodies and to encourage political parties, on both national and EU levels, to review their party structures and procedures in order to remove all barriers that directly or indirectly discriminate against the participation of women. Furthermore calls on political parties to adopt adequate strategies to reach gender balance in political decision making;

14. Calls on Member States to take all appropriate steps necessary to remove all obstacles caused by direct or indirect discrimination that prevent women from participating in electoral processes; calls on Member States to adopt appropriate measures to encourage the participation and the election of women.

17 February 2004

OPINION OF THE COMMITTEE ON PETITIONS

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

on the situation as regards fundamental rights in the European Union (2003)
(2003/2006 (INI))

Draftsman: The Earl of Stockton

PROCEDURE

The Committee on Petitions appointed The Earl of Stockton draftsman at its meeting of 15 December 2003.

It considered the draft opinion at its meetings of 21 January 2004 and 17 February 2004.

At the last meeting it adopted the following suggestions unanimously.

The following were present for the vote: Roy Perry (acting chairman), The Earl of Stockton (draftsman); Uma Aaltonen (for Jean Lambert), Felipe Camisón Asensio, Marie-Hélène Descamps, Janelly Fourtou, Margot Keßler and Stavros Xarchakos.

SHORT JUSTIFICATION

This opinion relates to the report on the situation as regards fundamental rights in the European Union (EU) in 2003. It is based in particular on the petitions received during the period of reference.

The rights to petition before the European Parliament, as well as the right to address the European Ombudsman, form a significant part of the extra-judicial methods of protecting civil rights in the EU. These two procedures are included in the list of rights that accompany European citizenship as defined in Article 8 of the Maastricht Treaty, and aim to reinforce the protection of the rights and the interests of Member State nationals. These two rights are reproduced in the Charter of Fundamental Rights, proclaimed on 7 December 2000 in Nice, by the European Parliament, the Council and the European Commission, and it forms an integral part of the draft Treaty establishing a Constitution for Europe.

Petitions to the European Parliament constitute a basic right as provided for in Articles 21 and 194 of the Treaty establishing the European Community (ex Articles 8d and 138d), and provide an appropriate means of acquiring direct information as to the general public's opinions concerning issues of Community policy, of detecting shortcomings in Community legislation, and monitoring the failure to apply and transpose Community law. Submitted on an individual basis or as a *class action*, a petition can be only declared admissible if it falls within the sphere of activities of the EU. Subjects raised in the Petitions committee in 2003 can be delineated into the following broad categories: freedom of movement, freedom of expression, voting rights in local elections, the failure of national and local governments to consult appropriately with their citizens, the protection of data in personal matters, recognition of diplomas, migrant workers, social affairs, environment, taxation, agriculture and customs. The role of the right of petition will be further enhanced when the 10 new Member States join the EU in May. An awareness campaign targeting the new citizens must be an absolute priority in order to familiarise them with Community legislation and their grounds for appeal.

The Petitions committee however, is astonished to find that this draft fails to mention the right, bestowed upon Europe’s citizens, to address the European Parliament by way of petition, nor for that matter, the right to submit a complaint to the European Ombudsman. This failure to assert the accountability of a public institution or body is symptomatic of the bad administration that has plagued Europe’s single institutional framework.

The Petitions committee commends the rapporteur for drawing attention to the increase in the number of petitions received by third country nationals residing legally within the EU. Many argue that their fundamental rights are compromised through social exclusion and discrimination. The respect of human rights cannot be based on nationality.

Regarding this issue, the Petitions committee reaffirms Conclusion 21**,** of the Tampere Summit, of October 1999:

> *The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a*

long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

The committee on Petitions has enjoyed a number of notable successes. Such results would have been unobtainable without the invaluable assistance of the European Commission and the committee on Citizens' Freedoms and Rights, Justice and Home Affairs. Although the Petitions committee regrets the Council's apparent lack of interest, indicated by their repeated failure to send a representative to our meetings.

The Petitions committee agrees with the creation of a special administrative unit linked to the committee on Citizens' Freedoms and Rights, Justice and Home Affairs in order to assist in compiling the annual report on the situation of fundamental rights.

SUGGESTIONS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. A reference to the right of petition in the European Parliament, as well as the right to submit a complaint to the European Ombudsman, as a non-judicial means of recourse, are important instruments in the promotion and protection of the fundamental rights of the citizens of the European Union.

2. An awareness campaign to inform the citizens of the new Member States of their fundamental rights must be carried out, in order for them to utilise the judicial and non-judicial grounds for appeal at their disposal.

3. The Council must pay more attention to the protection of fundamental rights by ensuring its representation, at a senior level, at every meeting of the committee on Petitions.

4. A reaffirmation of Conclusion 21 of the Tampere Summit, October 1999.