EUROPEAN PARLIAMENT

COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

in cooperation with the

COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS
COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY
COMMITTEE ON CONSTITUTIONAL AFFAIRS
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON HUMAN RIGHTS

and with the participation of Members of National Parliaments

Monday, 25 April 2005, from 3 p.m. to 6.30 p.m.
Tuesday, 26 April 2005, from 9 a.m. to 12.30 p.m.
Rue Wiertz, 60 – Brussels
Paul-Henri Spaak Building (PHS), Room 3C50

Draft programme

Public seminar

Promoting EU Fundamental Rights Policy: from words to deeds or how can rights be made a reality?

I. Objective

The objective of this seminar is, within the context of two reports currently under consideration by LIBE - the report of Mrs Kinga Gál on the 'promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency' and the report of Mr Claude Moraes on the 'protection of minorities and anti-discrimination policy in an Enlarged Europe' - to get an overview about the current European and national policies and practices with regard to the fundamental rights, anti-discrimination and minorities issues and to discuss further developments in this area. The seminar is meant to be only a starting point for further discussions in the above-mentioned fields[1].

[1] As speaking time will be limited to 10 minutes per contribution, speakers wishing to supplement their speeches may do so in writing by submitting a document (preferably in English or French) in advance to the secretariat. This document will then be circulated during the seminar.

II. Introduction

The Union has a longstanding commitment in protecting human rights and fundamental freedoms as shown i.a. since the seventies in the case-law of the European Court of Justice. Moreover, since the 1st of May 1999 the protection of fundamental rights has been declared by the Amsterdam Treaty as a founding principle of the European Union, a pre-condition for states wishing to enter the European Union as well as a permanent condition for maintaining full decisional powers in the Council (articles 6 and 7 of the TEU)[1].

The EU also has an important role to play in tackling discrimination and promoting equal opportunities. Over the last 30 years, the development of EC legislation, policy and case law has helped to challenge sex discrimination and to promote gender equality. More recently, since the introduction of Article 13 in the EC Treaty, this legal framework has been extended to prohibit discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. Enlargement of the EU, particularly taking into account the new policy context with regard to minorities, reinforces the need for decisive action to tackle discrimination. Once ratified, the Constitutional Treaty will reinforce the EU's capacity to act in this area.

The Amsterdam Treaty not only outlined the new European dimension of fundamental rights but also provided the European Institutions with a sound legal basis to legislate for a stronger European citizenship and for developing the Union as an area of freedom, security and justice. From a political and legislative point of view, it was a Copernican revolution impacting directly on fundamental rights, as is the case when the European legislator has to adopt mandatory acts dealing with the right to asylum, to data protection, to fair trial, to social integration, to access to institutional texts [2].

Such an objective could not be reached without a more clear definition of the fundamental rights to be protected. It was therefore necessary to make these rights more visible and to simplify the institutional and legal framework of the European Union itself. This was achieved with the adoption of the European Charter and its incorporation in the Constitutional Treaty now under ratification in the Member states. Such evolution will be an essential step forward in the relationship between:

- *the Union and its citizens (as they can now more easily invoke these rights before judges and verify that the EU institutions respect and promote these rights);*
- *the EU judiciary and the legislature (as the latter now sees the aims and limits of its obligations and powers more clearly);*
- *the EU and its Member States (as the way in which every fundamental right can be protected and promoted at national and European level is more transparent);*
- *the EU and the Council of Europe (particularly in the perspective of EU adhesion to the ECHR) and the UN.*

[1] As modified by the Amsterdam Treaty which codified the ECJ jurisprudence since the C-29/69 « Stauder » of 12th November 1969; rec.419 in C-11/70 'Internationale Handelsgesellshaft', Rec. 1125, C-4/73 'Nold' of 14th May 1974, rec. 491, C-44/79 'Hauer' rec. p.3727 and C-5/88 'Wachhauf' of 13th July 1989

[2] Simply put, it can be said that for decades the problem for the European legislator was to avoid adopting acts which could incidentally violate fundamental rights and in this way, the attention was more focused on avoiding 'negative effects', than choosing a specific destination; now that the promotion of fundamental rights has become the main objective (or at least a mainstreaming concept for all the legislative works), the way to legislate has substantially changed.

According to the European Council 'the incorporation of the Charter on Fundamental Rights into the Constitutional Treaty and the EU's future accession to the European Charter on Human Rights and Fundamental Freedoms (ECHR) will in fact create a legal obligation for the Union to ensure that fundamental rights are actively promoted across all policy areas'.

In fact for the European Parliament such an obligation already exists for the domains where present treaties already provide a legal basis[1].

III. Questions

Taken due account of this institutional and legal background as well as the international context post-September 11 and March 11 the seminar could help the LIBE Committee answer the following four questions:

1/ How to better ***protect*** *fundamental rights which will cover:*

- *the control of the respect of EU common principles and fundamental rights by the Member States (Art. 6 p.1 and Art. 7 of the TEU and future Art. I-2 of the Constitutional Treaty)?*

- *the strengthening of the interaction between the European (also extended to the Council of Europe) and national levels in a way that could outline a new European legal order?*

- *the need to give citizens a broader way to protect themselves (national and European Ombudspersons, right of access to EC Judges, non-discrimination, ...)?*

2/ How to better ***promote*** *fundamental rights by a more oriented use of the legislative powers of the Union and the Community?*

3/ How to best ***raise awareness*** *and create a culture of fundamental rights inside and outside the European Union?*

4/ Having examined the implications of these three challenges for the European Union could not a ***European Agency*** *for Fundamental Rights and against Discrimination play a useful role? What are the basic requirements for such an agency and the criteria it should meet to properly fulfil its mission?*

Speakers are kindly requested to structure their presentation along (at least one of) these lines and also answer the specific questions put to each of the panels as shown below.

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[1] Even though it has to be recalled that according to the Court of Justice Opinion 2/94 ([1]) (adopted before the entry into force of the Amsterdam Treaty) '*...no Treaty provision confers on the Community institutions any general power to enact rules on human rights*'.
a) Such a statement has to be understood in the sense that such a power can exist when a specific legal base exists (e.g. asylum policy, transparency, discrimination, data protection ...) and that in these cases the Union / Community can define its own standards
b) Furthermore such an opinion does not prevent the Union from adopting 'human rights' oriented legislation.

Monday, 25 April 2005, from 3 p.m. to 6.30 p.m.

15.00 - 15.05 Opening of the seminar by **Mr Jean-Marie CAVADA**, Chairman of the Committee on Civil Liberties, Justice and Home Affairs

15.05 - 15.10 Introductory remarks by **Mr Ottaviano DEL TURCO,** Chairman of the Committee on Employment and Social Affairs

Session I
Protection of human rights at national and European level: the case of minorities and anti-discrimination

The EU has one of the most advanced legal frameworks in the world when it comes to tackling discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. However, these rules have not yet been fully transposed into national law. Further action is also required in order to ensure that people are aware of and able to enforce their rights to protection against discrimination.

There is still no Community definition of who can be considered a member of a minority and this concept is far from being harmonised, even at United Nations or Council of Europe level[1]*. In general, minority issues in the Union have not been high on the agenda of the Union but they now need to be given greater attention, in order to strengthen the effectiveness of the measures taken by the public authorities in this domain.*

There is a need for an integrated approach to equality and non-discrimination and the mainstreaming of these concepts in relevant EU policies The objective is to ensure that Member States deal effectively and appropriately with the increasing diversity of their societies in terms of ethnic origin, religion, age, disability or sexual orientation. The European Commission has a key role to play in terms of driving forward the overall policy agenda, as well as monitoring and supporting the transposition of EC anti-discrimination legislation. The future Agency for Fundamental Rights can also contribute to this process, particularly by facilitating data collection, exchanges of good practice and links with civil society.

The panels could address the following issues:

1. European anti-discrimination policies

How to fight against discrimination including race, ethnic origin, sexual orientation, religion, disability, and age? What is the situation of the Roma community, new and settled immigrants, settled ethnic-minority communities of immigrant origin, different ethnic or national minorities

[1] Under the Council of Europe Framework Convention for the protection of national minorities (FCNM), it is for the States Parties to define what is meant by minorities (a prerogative recognised in the FCNM as a result of which Roma communities are recognised as a national minority in certain countries but not in others).

living on the territory of a Member State? What steps are necessary in order to ensure full implementation and enforcement of EC anti-discrimination legislation? Is further action required to complement the current legal framework? How can non-discrimination and equality considerations be 'mainstreamed' across all relevant EU policies? Which legislative measures should be taken before the entry into force of the Constitutional Treaty? Which financial measures could be proposed? Can the role of the Structural Funds, the Cohesion fund, the European Social Fund and the Equal Community Initiative be better coordinated in order to reach those groups that are in need?

15.10 - 15.55 Presentations by:

- **Mr Vladimír ŠPIDLA,** Commissioner for Employment, Social Affairs and Equal Opportunities

- **Mr Asbjorn EIDE**, President of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, former Chairman of the UN Working Group on Minorities

- **Mrs Beate WINKLER**, Director, European Monitoring Centre on Racism and Xenophobia (EUMC)

15.55 - 16.10 *Exchange of views*

2. National experiences in some Member States: awareness-raising, data collection, monitoring, exchanges of experience and best practices

How to find a balance between integration and promoting diversity? What are the shortcomings in the Member States' responses to the measures based on Article 13 TEC? What more can national authorities, equality bodies, civil society organisations and the social partners do in order to promote non-discrimination and diversity? What implementing measures and feedback mechanism can be proposed? Is data collection an important tool for the development of effective policies to promote equality and tackle discrimination? Should the EU step up cooperation with national authorities and other stakeholders? What is the role of regional authorities in this field? Does the principle of subsidiarity help as the best way of involving minorities in decision-making process? Is self governance a good answer to the issues raised by the minority communities?

16.10 - 16.40 Presentations by:

- **Mr Joël THORAVAL**, Chairman of the French Commission nationale consultative des droits de l'homme

- **Mrs Jana KVIECINSKA,** Director General, Office of the Government of the Slovak Republic

– Mr Wouter NACHTERGAELE, Member of the Belgian National Focal Point on Racism and Xenophobia

16.40 - 17.10 Exchange of views

3. The views of civil society on the application of anti-discrimination policies
How can national and regional authorities, equality bodies, civil society organisations better coordinate their efforts with the social partners? Where is the role of the future Agency for Fundamental Rights? Is the strategy to combat discrimination with the help of the Structural Funds, the Cohesion fund, the European Social Fund and the Equal Community Initiative effective? Should it not be easier for NGOs representing the interests of all grounds covered by Article 13 TEC to benefit from these funds?

17.10 - 17.50 Presentations by:

– **Mr Andrzej MIRGA**, Chair of the Specialist Group on Roma and Travellers in the framework of the Council of Europe, Chairman of the Roma Advisory Council of the Project on Ethnic Relations (PER)

– **Ms Anne-Sophie PARENT**, President, Platform of European Social NGOs

– **Mr Andre WILKENS**, Director of the Open Society Institute - Brussels

– **Mrs Catelene PASSCHIER**, Elected Confederal Secretary of the ETUC

17.50 - 18.25 Exchange of views

18.25 - 18.30 Conclusion of the rapporteur

Mr Claude MORAES, Member of the Committee on Civil Liberties, Justice and Home Affairs

Tuesday, 26 April 2005, from 9 a.m. to 12.30 p.m.

Session II
Fundamental Rights and Security Challenges: Priorities for EU decision-makers before the Constitution

09.00 Opening of the session by **Mr Jean-Marie CAVADA**, Chairman of the Committee on Civil Liberties, Justice and Home Affairs

09.05 Introductory remarks by **Mr Jo LEINEN**, Chairman of the Committee on Constitutional Affairs and **Mrs Hélène FLAUTRE**, Chairperson of the Subcommittee on Human Rights

09.15 **Mr Franco FRATTINI**, Vice President of the European Commission.

1. Fundamental rights and security challenges: how can we strike a balance?

The European Union is part of the international legal order and should fully take into account the UN and Council of Europe achievements in the field of human rights protection and promotion. In particular, exchange of information and data and meaningful cooperation should be ensured between the future EU Fundamental Rights Agency and the Council of Europe. It is of utmost importance that a functional model of cooperation be worked out and an institutionalised link is established between the two bodies.

But since September 11 the overall context of human rights policies has changed. It may not be enough to ensure that legal certainty and coherence is assured in fundamental rights protection all over Europe, in particular with the Council of Europe and UN bodies.

Which lessons are to be drawn from these recent developments and the anti-terrorist policies at international, EU and national level? How to strike - and maintain - the right balance between security requirements and protection of fundamental rights? What role for the EU Agency in this context?

09.25 - 10.05 Presentations by:

- **Mr Alvaro GIL ROBLES**, Council of Europe High Commissioner for Human Rights
- **Mr Dick OOSTING**, Amnesty international
- **Mr Antoine MADELIN**, International Federation for Human Rights (FIDH)
- **Mr Tony BUNYAN**, Statewatch editor

10.05 – 10.30 Exchange of views

2. **Protecting fundamental rights: how can we ensure dialogue between European and national judges?**

The incorporation of the Charter of Fundamental Rights into the Constitutional Treaty and the EU's future accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) bring with them fundamental institutional and constitutional changes and substantially increase the Union's legal obligation to ensure that fundamental rights are actively promoted across all EU policy areas.

Under the current treaties, the Community and the EU have to legislate in areas that concern both the European and national courts (the example of the European arrest warrant, considered by several constitutional courts, is only the most recent example). Pending the entry into force of the Constitutional Treaty, it would thus be desirable to facilitate dialogue between the national and European courts and between courts and legislators, so conflicting interpretations can be avoided as far as possible. Efforts should also be made to encourage the development and gradual evolution of a common legal culture for the protection of fundamental rights.

In Parliament's view, this development could be facilitated by strengthening contact between the constitutional courts and by removing current restrictions on the Luxembourg Court's jurisdiction in preliminary rulings on policies relating to the AFSJ (Articles 35 and 68 of the EC Treaty).

What are the views of the main players, the European Supreme courts, on this new perspective, the benefits but also possible inconsistencies between the two European legal systems? Can European citizens expect a better protection of their rights further to this evolution? How to strike - and maintain - the right balance between security requirements and protection of fundamental rights

10.30 - 11.10 Presentations by:

- **Mr Vassilios SKOURIS**, President of the Court of Justice of the European Communities
- **Mr Luzius WILDHABER**, President of the European Court of Human Rights
- **Mr Guy CANIVET**, President of the Court of Cassation (France), President of the Network of Heads of Supreme Courts in the European Union
- **Mr Valerio ONIDA,** former President of Italian Constitutional Court

11.10 – 11.40. Exchange of views

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Closing session:
Challenges for and commitments from the European legislator

The promotion of fundamental rights requires a structured approach to this new context; a clear political will on its whereabouts needs yet to be expressed. This task will possibly be taken over by the Commission, within the framework of the Group of Commissioners dealing with Fundamental Rights, Anti-Discrimination and Equal Opportunities, chaired by President Barroso. Nonetheless, it is of utmost importance that the European Council and the Parliament elaborates guidelines in this field as well. The Agency will be one piece of this new European fundamental rights mechanism. What is every institution ready to commit itself to?

11.40 **Mr Josep BORRELL FONTELLES,** President of the European Parliament

11.55 **Mr Jean ASSELBORN**, President in office of the General Affairs Council (to be confirmed)

12.10 **Mr José Manuel BARROSO,** President of the European Commission

12.25 Conclusions of the rapporteur **Mrs Kinga GÁL,** member of the Committee on Civil Liberties, Justice and Home Affairs.

References

– *Seminar website*
(http://www.europarl.eu.int/comparl/libe/elsj/events/hearings/20050425/default_en.htm)
–

– *Mrs Kinga Gál's draft report on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency*
(http://www.europarl.ep.ec/meetdocs/2004_2009/documents/PR/558/558630/558630en.pdf)

– *Mr Claude Moraes' draft report on the protection of minorities and anti-discrimination policies in an enlarged Europe*
(http://www.europarl.eu.int/meetdocs/2004_2009/documents/PR/558/558192/558192en.pdf)

– *Constitutional Treaty*
(http://europa.eu.int/constitution/index_en.htm)

– *Consultation launched by the European Commission concerning the creation of a Fundamental Rights Agency (COM (2004) 693 final)*
http://www.europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm

– *Council directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of their racial or ethnic origin*
(http://www.europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf)

– *Council directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*
(http://www.europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf)

– *Green paper on equality and non-discrimination in an enlarged European Union*
(http://www.europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/green_en.htm)

ANNEXE

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Important notice for those wishing to attend the seminar

The seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain a such a pass should contact the seminar secretariat before 20 April 2005.