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REPORT

on the human rights situation in the European Union (2001)
(2001/2014(INI))

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

Rapporteur: Joke Swiebel

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PROCEDURAL PAGE

At the sittings of 18 January and 15 March 2001 the President of Parliament announced that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the human rights situation in the European Union (2001).

At the sitting of 13 December 2001 the President of Parliament announced that the Committee on Petitions had been asked for its opinion.

At the sitting of 14 March 2002 the President of Parliament announced that the Committee on Women's Rights and Equal Opportunities had been asked for its opinion. At the sitting of 24 April 2002 the President of Parliament announced that the Committee on Employment and Social Affairs had also been asked for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Joke Swiebel rapporteur at its meeting of 11 July 2001.

At its meeting of 18 January 2001 the committee decided to include the following motions for resolutions in its report:

- B5-0677/2001 by Cristiana Muscardini on establishing official registers of translators at the offices of the criminal police in the Member States, referred on 13 December 2001 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible;
- B5-0678/2001 by Cristiana Muscardini, Roberta Angelilli, Roberto Felice Bigliardo, Sergio Berlatto, Antonio Mussa, Nello Musumeci, Mauro Nobilia, Adriana Poli Bortone and Francesco Turchi on the provision of essential emergency medical treatment to third-country nationals within the European Union, referred on 16 January 2002 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy for their opinions.

The committee considered the draft report at its meetings of 4 and 20 February, 12 September, 3 October and 3 December 2002.

At the last meeting it adopted the motion for a resolution by 25 votes to 20, with 2 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Lousewies van der Laan, vice-chairman; Joke Swiebel, rapporteur; Roberta Angelilli, Mario Borghezio, Alima Boumediene-Thiery, Giuseppe Brienza, Marco Cappato (for Frank Vanhecke), Michael Cashman, Chantal Cauquil (for Giuseppe Di Lello Finuoli pursuant to Rule 153(2)), Charlotte Cederschiöld, Carlos Coelho, Richard Corbett (for Gerhard Schmid pursuant to Rule 153(2)), Thierry Cornillet, Brian Crowley (for Niall Andrews pursuant to Rule 153(2)), Gérard M.J. Deprez, Rosa M. Díez González (for Martine Roure), Marianne Eriksson (for Ilka Schröder pursuant to Rule 153(2)), Anne-Karin Glase (for Christian Ulrik von Boetticher pursuant to Rule 153(2)), Ewa Hedkvist Petersen

(for Martin Schulz), Pierre Jonckheer, Anna Karamanou (for Adeline Hazan), Heinz Kindermann (for Ozan Ceyhun pursuant to Rule 153(2)), Timothy Kirkhope, Ole Krarup, Alain Krivine (for Fodé Sylla), Manuel Medina Ortega (for Walter Veltroni), Emilia Franziska Müller (for Bernd Posselt pursuant to Rule 153(2)), Pasqualina Napoletano (for Elena Ornella Paciotti pursuant to Rule 153(2)), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Neil Parish (for Mary Elizabeth Banotti pursuant to Rule 153(2)), Paolo Pastorelli (for The Lord Bethell), Hubert Pirker, José Ribeiro e Castro, Heide Rühle, Francesco Rutelli, Amalia Sartori (for Antonio Tajani pursuant to Rule 153(2)), Olle Schmidt (for Baroness Sarah Ludford), Patsy Sørensen, Sérgio Sousa Pinto, Anna Terrón i Cusí, Maurizio Turco, Elena Valenciano Martínez-Orozco (for Margot Keßler pursuant to Rule 153(2)), Ieke van den Burg (for Carmen Cerdeira Morterero pursuant to Rule 153(2)) and Sabine Zissener (for Eva Klamt pursuant to Rule 153(2)).

The opinions of the Committee on Women's Rights and Equal Opportunities, the Committee on Petitions, and the Committee on Employment and Social Affairs are attached. The Committee on the Environment, Public Health and Consumer Policy decided on 19 February 2002 not to deliver an opinion

The report was tabled on 13 December 2002.

MOTION FOR A RESOLUTION

European Parliament resolution on the human rights situation in the European Union (2001) (2001/2014(INI))

The European Parliament,

- having regard to the motions for resolutions by:
 - (a) Cristiana Muscardini on establishing official registers of translators at the offices of the criminal police in the Member States (B5-0677/2001)
 - (b) Cristiana Muscardini, Roberta Angelilli, Roberto Felice Bigliardo, Sergio Berlato, Antonio Mussa, Nello Musumeci, Mauro Nobilia, Adriana Poli Bortone and Francesco Turchi on the provision of essential emergency medical treatment to third-country nationals within the European Union (B5-0678/2001),
- having regard to its previous annual reports on the human rights situation in the European Union and, in particular, to its resolution of 5 July 2001¹ that launched a new approach including the EU Charter of Fundamental Rights as its frame of reference;
- having regard to Articles 6 and 7 of EU Treaty,
- having regard to the third annual report of the European Union on human rights in 2001, published by the General Affairs Council on 8 October 2001²,
- having regard to the findings of the European Monitoring Centre on Racism and Xenophobia (EUMC) and to its own resolutions on the matter, with particular reference to that on the European Union's position at the World Conference against Racism, Racial Discrimination, Xenophobia and forms of intolerance connected thereto,
- having regard to the judgments of the European Court of Justice and the European Court of Human Rights,
- having regard to the international conventions on the subject and, in particular, to the findings published in 2001 by the monitoring committees for the major United Nations and Council of Europe conventions³,
- having regard to the reports by international and European NGOs concerned with human rights,

¹ OJ C 65 E, 14.3.2002, pp. 177-350.

² <http://europa.eu.int/scadplus/leg/nl/lvb/r10103.htm>.

³ UN:CAT (Committee against Torture), CCPR (Human Rights Committee), CEDAW (Committee on the Elimination of Discrimination Against Women), CERD (Committee on the Elimination of Racial Discrimination), CESCR (Committee on Economic, Cultural and Social Rights); CRC (Committee on the Rights of the Child);

Council of Europe : CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), ECRI (European Commission against Racism and Intolerance), ECSR (European Committee for Social Rights).

- having regard to the reports on the EU Member States adopted in 2001 by the Council of Europe's European Commission¹ against Racism and Intolerance,
- having regard to the public hearing organised by the European Parliament on 17 April 2002 on observance of fundamental rights in the European Union,
- 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 Employment and Social Affairs, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0451/2002),

Introduction

1. Draws attention to the fact that the Charter of Fundamental Rights of the European Union provides a résumé of the fundamental values on which the Union is based and which are referred to repeatedly in Articles 6(2), 7 and 29 of the Treaty on European Union, in connection with the establishment of an area of freedom, security and justice;
2. Believes that it is therefore up to the EU institutions, following the proclamation of the Charter, to take the initiatives needed for them to exercise their role in monitoring respect for human rights in the Member States, having regard to the undertakings given at the signature of the Treaty of Nice on 27 February 2001, particularly as regards the new Article 7(1);
3. Considers that it has a basic duty to verify that due respect is being shown for fundamental rights both by Union institutions and bodies - pursuant inter alia to Rule 58 of its Rules of Procedure - and by the Member States, in accordance with the Treaties and with Rule 108 of its Rules of Procedure;
4. Considers that the European Parliament's annual report on the human rights situation in the European Union would carry greater weight if it were more closely coordinated and more consistent with the external human rights activities of the EP and if Parliament's power of scrutiny over the Commission and Council were strengthened; calls for the annual report to be adopted no later than the July part-session each year;
5. Recommends that Parliament incorporate the report on respect for fundamental rights in the EU into the early warning system provided for in Articles 6 and 7 of the EU Treaty, conferring on its committee responsible an ongoing mission to monitor compliance with the Charter, a mission in which the other relevant committees will be involved, forwarding to it any observations during the course of the year;
6. Believes, in particular, that it is up to the European Parliament, by virtue of its role under the terms of the new Article 7(1) of the Treaty of Nice, and to its relevant committee to guarantee, in cooperation with the national parliaments and those of the

¹ http://www.coe.int/T/E/human_rights/Ecri/4-Publications/1-Ecri's_Publications/ECRI_Publications.asp#P440_4915.

applicant countries, respect by the European institutions and by the Member States for the rights set out in the chapters of the Charter;

7. Welcomes the fact that, on 16 October, the Commission set up the Network of Experts on Fundamental Rights and calls on the Commission to submit to the Council and to Parliament the Network's reports on the human rights situation in the EU and the Member States on the basis of multi-disciplinary material, since this should enable Parliament to be presented with an evaluation of the implementation of each of the rights set out in the Charter, taking account of changes in national law, the case law of the Luxembourg and Strasbourg courts and significant case law of the constitutional and other courts of the Member States;
8. Considers that the Commission rejected the proposal to set up an *EU Human Rights Monitoring Agency* without sufficient grounds; intends to keep this proposal on the agenda and calls on the Commission to examine how the Network of Human Rights Experts could develop into a monitoring agency of this kind;
9. Welcomes the Commission's decision (SEC(2001) 380/3 of 13 March 2001) to review legislative proposals and other decisions in advance to see whether they are compatible with the Charter of Fundamental Rights and to establish this in a special clause; calls on the Commission to provide Parliament with an overview of how many of its legislative proposals and other decisions now include such a clause and what percentage this represents of the total number of decisions;
10. Reiterates its request to the Convention on the Future of Europe to incorporate the Charter of Fundamental Rights in the draft Constitution of the Union;
11. Welcomes the Council's proposal to ensure greater consistency between the EU's internal and external human rights policies, and to explore the development of possible means and practices to this end (General Affairs Council of 25 June 2001), but is concerned that there has been, to date, no evidence of this being put into practice; calls on the Council to inform Parliament of the action taken by 1 July 2003;
12. Urges the governing bodies of the European Parliament to introduce without delay practical improvements in cooperation and coordination between the parliamentary committees responsible for human rights issues inside and outside the European Union respectively, in particular so as to clarify which committee is to be responsible for human rights in the applicant countries;
13. Urges the Commission and Council not to restrict the annual human rights forums (designed to give the dialogue with NGOs greater continuity) to human rights issues outside the EU but also to consider such issues within the EU, thus making it possible to tackle across-the-board topics; calls on the governing bodies of the European Parliament to investigate how Parliament may be involved more closely in the preparations for such meetings with a view to ensuring increased efficiency in practice;
14. Calls on all the Member States to rectify their failure to comply with their reporting requirements to the relevant United Nations monitoring bodies under UN human rights

conventions¹; calls on the Council and the Convention on the Future of Europe to give greater weight to the Member States' obligations to comply with UN human rights conventions in the formulation of European human rights policy;

15. Calls also on those Member States that are lagging behind in reporting to the relevant Council of Europe committees to comply with their obligations if they have not already done so;
16. Recalls that democracy is based on full respect for human rights and fundamental freedoms and on the full application of the principle of legality and on the rule of law; invites Member States and EU institutions, therefore, to improve their full respect for the provisions of the international treaties on human rights, and notably the ECHR and its protocols, along with their respective Constitutions and laws.

Chapter 1: Human dignity

Right to life

17. Welcomes the fact that Ireland has removed the death penalty from its Constitution and urges Greece to abolish the death penalty in all circumstances in order to meet the human rights obligations of an EU Member State;
18. Calls on Belgium, Germany, Greece, Ireland, Italy and Luxembourg to ratify the UN Convention on the Suppression of Terrorist Bombings and on Belgium, Germany, Finland, Greece, Ireland, Italy, Luxembourg and Portugal to ratify the UN Convention for The Suppression of Financing of Terrorism;
19. - Reiterates its unconditional rejection and absolute condemnation of terrorism because, whatever outward form it takes and whether it arises or operates within or outside Union borders, it negates the most fundamental human right, the right to life,
 - reaffirms that all ideologies are legitimate, provided that they are articulated by democratic means, and roundly condemns, therefore, those terrorist organisations which threaten and kill people because they hold elective office and/or are active in given political groupings,
 - reaffirms that terrorism causes irreparable damage and untold misery to its victims and their relatives and accordingly welcomes and calls for the adoption of measures to take account of the special circumstances affecting them,
 - notes that, since terrorism seeks to destabilise the rule of law, policies to prevent and combat terrorism should seek first and foremost to maintain and strengthen the rule of law and democracy,
 - reiterates its support for measures to combat terrorism and points out that they have to be adopted without exceeding the bounds determined by the rule of law or in any way violating human rights and civil liberties,

¹ Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child,

- subscribes fully to the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002,
- expresses its concern at the negative impact on human rights already apparent as a result of the measures taken to combat terrorism,
- appeals to the Member States to continue to take proper account of fundamental rights when combating terrorism and to avoid any restriction of those rights,
- recommends that the Member States should introduce a sunset provision in their specific anti-terrorism legislation, requiring an evaluation and/or review of legislation after a reasonable period,
- and calls on the Commission and Council to carry out a review in 2003 of the measures taken by the Member States after 11 September 2001, together with a specific evaluation of their potential incompatibility with fundamental rights, and to forward it to Parliament;

Prohibition of torture and inhuman treatment

20. - Points out that Article 4 of the Charter of Fundamental Rights stipulates that ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment’ and calls for that article to be scrupulously observed in all the Member States,
- notes with concern that, for years, misconduct by police officers and other law enforcement officers and atrocious conditions in police stations and prisons have been recurring themes in human rights reports in virtually all EU Member States,
 - considers that the Member States should step up their efforts in this area, in particular by:
 - giving police and other law enforcement officers, including prison staff, better training,
 - exchanging best practice between Member States, encouraging exchanges of views between European partners and permitting training exchanges between prison staff in the various Member States,
 - upgrading prison facilities to the modern age, with appropriate arrangements for obtaining medical and legal assistance; paying particular attention to vulnerable prisoners, especially women, highlighted by cases of sexual abuse and intimidation,
 - not restricting the right to private and family life more than is strictly necessary, but creating the conditions necessary for the respect of privacy,
 - devising alternative punishments in the public interest to tackle overcrowding in prisons,
 - encouraging the adoption of administrative penalties and/or fines for minor offences, while promoting alternative penalties such as work in the public interest, developing as far as possible open or semi-open prison regimes, and making use of conditional leave,
 - setting up specific social rehabilitation programmes for prisoners,
 - establishing an independent body to investigate human rights violations and come up with suggestions for improvements,
 - ensuring that sufficient expert staff are available in reception centres for asylum seekers, and by

- restricting detention as far as possible, even in the case of expulsion proceedings, and completely avoiding taking children into custody save in absolutely exceptional cases,
- has noted with concern the report by Amnesty International, entitled 'Greece: Ill-treatment, shootings and impunity' and shares the view that serious violations of human rights in one Member State are not just the responsibility of that country but should also be the proper concern of the EU as a whole,
- considers that the long-term and serious nature of this problem goes to the core of the community of values to which the European Union aspires but notes that the current EU Treaties offer little scope for policies in this area,
- recommends that the Convention on the Future of Europe should recognise the scope for more effective regulation and policy in this area at EU level;

Prohibition of slavery and forced labour

21. - Calls on Austria, Belgium, Germany, Denmark, Finland, France, Greece, Italy, Ireland, Luxembourg, the Netherlands, Portugal, Sweden and the United Kingdom to ratify the UN Convention against transnational organised crime and the associated protocols on trafficking in persons,
 - calls on Germany, France, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Sweden and United Kingdom to ratify the UN Protocol on the involvement of children in armed conflict;
22. Welcomes the fact that, in July, the Council adopted the Commission proposal¹ for a framework decision on combating trafficking in human beings and calls on the Member States to transpose the framework decision into national legislation without delay and to adopt the proposal for a directive on the short-term residence permit issued to victims of trafficking in human beings as soon as the EP has delivered its opinion;
23. Calls on the Member States, in particular Greece, to devise and implement a balanced policy to prevent and combat all forms of trafficking in human beings, particularly women, focusing not only on the prosecution of offenders but also the protection and rehabilitation of victims and covering not only trafficking for the purposes of forced prostitution but also other forms of forced labour and exploitation;
24. Notes that approximately half a million women from Eastern and Central Europe are transported every year to the European Union to be sold into prostitution: calls on the Member States to make serious efforts to combat trafficking by improving the input of the police, judicial and social authorities and through intensive cooperation with the applicant countries and other countries adjoining the EU;
25. Considers it essential to intensify the efforts to combat illegal immigration, given that it very often creates a pool of workers who have no rights and have to suffer unacceptable conditions of employment and exploitation;

¹ OJ L 203, 1.8.2002, p. 1.

26. Calls on the Council to conclude its deliberations on the Commission proposal on combating the sexual exploitation of children and child pornography;

Chapter 2: Freedoms

Freedom of thought, conscience and religion

27. Calls on Finland and Greece to recognise the right of conscientious objection to military service without restriction and without reference to any religious grounds, to introduce forms of alternative service which do not last longer than compulsory military service and to release immediately all those serving prison sentences in this connection;
28. Deplores the violations of fundamental rights such as freedom of expression and movement, the right of due process and the right to physical integrity that have occurred during public demonstrations, particularly at the time of the G8 meeting in Genoa;
29. Calls on the Member States to pay particular attention to the sometimes unlawful or criminal activities of certain sects which threaten physical or mental harm to individuals, and in particular for:
- the launching, by independent specialist human rights bodies, of information and awareness-raising activities, so as to enable everyone to decide to join or leave a religious or spiritual movement,
 - the adaptation of judicial, fiscal and criminal law provisions which are adequate to counteract the unlawful activities of certain sects, with account being taken of the principles of the rule of law, so as to combat the illegal activities and breaches of individual rights committed by some sects, which should be refused the recognition as religious or spiritual organisations which brings them tax advantages and a degree of legal protection;
30. Considers that the freedom no longer to adhere to a religion or ideology and to leave the community concerned should also be deemed a fundamental freedom and that this right should be actively safeguarded by governments where necessary;
31. Calls on the Member States to ensure that this freedom does not infringe the autonomy of women and the principle of equality between women and men and that it is exercised in accordance with the requirement of separation between Church and State;

Freedom of expression and information, right to privacy, protection of personal data and access to documents

32. Recommends that the Union adopt a legally binding instrument offering guarantees under the 2nd and 3rd pillars equivalent to those laid down in Directive 95/46/EC on the protection of personal data; is disturbed at the substance of Directive 2002/58/EC, which opens up the possibility of data relating to electronic communications being stored (data retention), and advocates once again the adoption of measures to guard against extra-legal communications interception systems;

33. Calls on Belgium, Denmark and Ireland to sign and ratify the Council of Europe Convention on transfrontier television of 3 May 1989, calls on Greece, Luxembourg, the Netherlands and Sweden to ratify this Convention and calls on those countries and Portugal to sign and respectively ratify the Protocol of 1 October 1998 amending that Convention;
34. Calls on the Member States to guarantee freedom of opinion and the freedom to express one's ideas in public, since these are essential prerequisites for any fundamental rights policy;
35. Urges the Member States to guarantee journalists' freedom of investigation and the right of non-disclosure (the right of journalists not to disclose their sources), by revising their legislation, where necessary;
36. Calls on members of governments and other politicians in the Member States to attach paramount importance to the value of a free press and to refrain from legal actions or public statements that tend to curtail or influence journalists' freedom and independence;
37. Categorically rejects all violence, intimidation or threats likely to restrict the freedom to exercise the occupation of journalism; calls, therefore, on all the Member States to respect and defend the right to freedom of conscience and expression and reaffirms its solidarity with those journalists on whose lives attempts are made because they refuse to yield and freely exercise that right;
38. Recommends that the Member States pay particular attention to political interference with the media so as to ensure that they are not divided up on a purely political basis merely for the purpose of using them against political opponents;
39. Recommends that the Member States closely monitor virtual monopolies or very large concentrations of the audiovisual media and the press and calls on those Member States that do not yet have independent self-regulatory bodies to establish the latter so as to combat effectively all anti-democratic tendencies, preserve cultural diversity and guarantee the quality and plurality of programmes and free access for all;
40. Recalls Regulation (EC) No 1049/2001 concerning public access to the institutions' documents and calls on the Commission, the Council and its own Secretariat to guarantee that the Regulation and its spirit are respected and actually result in greater transparency and accessibility for the public; urges the EU to implement the Regulation on access to documents in a spirit of transparency, apply the exceptions and the stipulations on special treatment for sensitive documents only when absolutely necessary and adopt as soon as possible an instrument that makes the rules on access to documents of the EU agencies and bodies conform to the Regulation;

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

41. Reiterates its repeated calls for the Council to expedite the adoption of a common EU asylum policy based on humanism and respect for international conventions and emphasises that observance of human rights is, and must remain, the inviolable principle underlying policy;
42. Recommends the adoption and implementation by the EU and the Member States of an ambitious programme for the integration of third-country citizens, one based on the principle of non-discrimination;
43. Recommends, in view of the non bis in idem principle, that double jeopardy (conviction and deportation) should be abolished;
44. Recommends that the Member States increase the flexibility of their naturalisation and/or dual nationality procedures so as to enable residents of foreign origin who so desire to acquire full citizenship;
45. Urges the Member States to ensure that national and EU asylum policies, as well as border and entry policies, respect the principle of non-refoulement (as laid down in the Geneva Convention and the European Convention on Human Rights) and be aware that, at present, the combination of the Dublin Convention rules and the safe-third-country and safe-country-of-origin concepts, as well as rules on carrier sanctions and transporters' liability, limited access to interpreters and lawyers and the lack of suspensive effect of certain appeal procedures constitute a threat to this principle;
46. Urges Member States to refrain from any initiative that aims at changing the Geneva Convention itself;
47. Calls on the Member States to monitor constantly whether their decisions in individual asylum cases do not undermine the principle of *non-refoulement*;
48. Calls on the Member States, in their fight against terrorism, to ensure that they comply with their international obligations on asylum and that any non-application of the Refugee Convention is based on the grounds listed in the Convention itself (Article 1(f) and Article 32) and that no exclusion of this kind is ever made systematically;
49. Urges the Member States to limit detention of asylum seekers to exceptional cases, to a limited period and only for the reasons set out in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers;
50. Calls on the Member States to ensure that people are not extradited to countries where they risk the death penalty for their offences or where they risk being tortured or maltreated and not to accept any non-binding guarantees; calls, further, on the Member States not to undermine this right through bilateral agreements;
51. Is concerned at the cases of collective expulsion that have occurred and reminds the Member States that collective expulsion is prohibited by the Charter and by Article 4 of

Protocol No 4 to the EHRC, unless there is a specific, justified and objective reason for the decision on the collective expulsion of aliens;

Chapter 3: Equality

Anti-discrimination policy

52. Welcomes the fact that, following ratification by Luxembourg in 2001, all the Member States have now ratified ILO Convention 111 concerning discrimination in employment and occupation;
53. Urges Denmark, Spain, France, Sweden and the United Kingdom to sign Protocol No 12 to the Convention on Human Rights and Fundamental Freedoms and all the EU Member States to ratify this Protocol;
54. Calls on the Member States to pursue a coherent anti-discrimination policy at both national and EU level and, in principle, to afford an equal degree of protection from discrimination on different grounds; calls on the Commission to publish a White Paper on the EU's future strategy for equal treatment, in which the departure point referred to above is given more tangible form and on the Member States to take all the appropriate measures to put this principle into practice;
55. Notes that, in the period under review, Member States have been condemned by the European Court of Human Rights in Cases Nos 37119/97, 35972/97 and 29545/95 for discrimination in access to public service employment; calls on the Commission to ascertain whether, in the cases in question, Directive 2000/78/EC¹ establishing a general framework for equal treatment in employment and occupation has been breached and, if so, to take appropriate measures; calls, furthermore, for specific proposals for directives to be submitted on the basis of Article 13 of the EU Treaty to combat all the grounds for discrimination referred to in Article 13;
56. Calls, further, on Italy to take immediate action to comply with the judgment of the European Court of Justice in Case C-212/99 which established that foreign-language university assistants were subject to discrimination;
57. Calls on the Commission to finalise as soon as possible its proposal for a directive on equal treatment for men and women outside the employment sphere and to submit it to the Council and Parliament;

Racism and xenophobia

58. Calls on the Member States to pursue a consistent policy to combat discrimination and to promote integration in order to tackle racism and xenophobia as a structural problem in society, thereby complying with their obligations under the relevant international conventions, including the reporting requirements, and incorporating dialogue with the

¹ OJ L 303, 2.12.2000, p. 16.

relevant international monitoring bodies into the policy-making process in a positive way;

59. Calls on the European institutions and the Member States to continue the fight against racial discrimination and xenophobia in a consistent way and, in doing so, to focus not only on members of ethnic or religious minority groups that have been living in Europe for some time but also on asylum seekers and new economic migrants;
60. Expresses concern at the growing incidence of racial discrimination and xenophobia, which is undoubtedly fuelled by reactions to the attacks of 11 September 2001, but is also encouraged by the many good practices on the part of political leaders and opinion-formers who have sent out a message of reconciliation, equality and solidarity;
61. Expresses concern at the rising number and increasing violence of acts of anti-Semitism and calls on the Member States to pay greater attention to detecting and preventing such offences and prosecuting the perpetrators;
62. Expresses concern at discrimination against the Roma, above all in housing policy (particularly in Greece and Italy), and urges the authorities concerned to guarantee equality of access to education and other public services, to promote integration and to prevent police violence and intimidation;
63. Calls on political parties in the Member States to sign and enforce the Charter of European parties for a non-racist society and, hence, refrain from any political alliance or cooperation with political parties which commit or incite racial or ethnic prejudice and racial hatred;
64. Welcomes the efforts of the European Monitoring Centre for Racism and Xenophobia (EUMC) to compile the necessary data on racism and xenophobia and analyse it and urges the EUMC to use this information proactively; calls on the EUMC to step up its dialogue with governments and administrative bodies in the Member States;

Cultural, religious and linguistic diversity

65. Welcomes the fact that, in 2001, Belgium signed the Council of Europe Framework Convention for the protection of national minorities; urges France to do likewise; further urges Belgium, France, Greece, Luxembourg and the Netherlands to ratify the Convention;
66. Urges Belgium, Greece, Ireland and Portugal to sign the European Charter for regional or minority languages; welcomes the fact that Austria, Spain and the United Kingdom ratified the Charter in 2001 and calls on Belgium, France, Greece, Italy, Ireland, Luxembourg and Portugal to do likewise;
67. Calls on all the Member States (except Denmark and the Netherlands, who have already done so) to sign and ratify ILO Convention No 169 on indigenous and tribal peoples;

68. Calls on the Member States to recognise the national minorities living in their territory and to guarantee their rights as enshrined in the above conventions; urges the Member States to interpret the concept of 'national minority' broadly and to extend it to all ethnic minorities whose emancipation and social integration is a policy objective;

Equality between men and women

69. Considers that women's rights must be seen as individual rights and should not be made conditional on women's role in the family or on any other social restriction;
70. Welcomes the fact that Germany, Greece, the Netherlands, Portugal and Spain have ratified the Optional Protocol to the UN Convention on the Elimination of all Forms of Discrimination against Women; calls on Belgium, Luxembourg, Sweden and the United Kingdom to follow their example;
71. Notes that there is no extensive and up-to-date, yet comparable and accessible, review of the current state of equal treatment of men and women in the Member States; urges the Commission once again to present an analysis of implementation by the Member States of the equal treatment directives and to develop its strategies in order to improve implementation, not least by initiating Treaty infringement procedures and possibly by revising the directives themselves; urges the Commission to ensure that action is taken to combat and punish sexual harassment, since it constitutes humiliating and degrading treatment for any human being;
72. Calls on the Member States to recognise that freedom from domestic violence and marital rape is a fundamental human right; notes that, despite the breakthroughs achieved, violence against women is continuing to increase; takes the view that it is necessary to explore effective new ways of combating this intolerable form of inhuman treatment;
73. Considers that a legal approach to equal treatment of men and women must be seen against the background of the process of social emancipation and calls therefore on the Commission to make a comparative analysis of the current situation regarding the emancipation process in the Member States, so that the results of a quarter of a century of European equal treatment policy may be identified and form the cornerstone of future policy;
74. Urges the European institutions and the Member States to make gender mainstreaming a systematic and visible part of all their activities in the human rights sphere;
75. Draws attention to the fact that trafficking in human beings largely involves trafficking in women and is linked in particular to women's lack of economic independence and discrimination on the labour market; invites the Member States to continue to recognise this gender-specific dimension and to be careful not to confuse it with the smuggling of human beings;
76. Urges the Netherlands to comply with the UN Convention on women and to take to heart the conclusions of the CEDAW; therefore advises the Netherlands to take

measures to combat effectively the exclusion of women from membership of political parties and to eliminate the remaining sexual discrimination in the Law on Names;

77. Calls on France to abolish the difference in the minimum age for marriage for young women and men (15 and 18 years of age respectively);
78. Requests the lifting of the ban on women entering Mount Athos in Greece, a geographical area of 400 km², where women's access is prohibited in accordance with a decision taken in 1045 by monks living in the twenty monasteries in the area, a decision which nowadays violates the universally recognised principle of gender equality, Community non-discrimination and equality legislation and the provisions relating to free movement of persons within the EU;

Discrimination on grounds of sexual orientation

79. Calls on the Commission to compile an up-to-date and comparative review of the situation of homosexual men and lesbian women in the Member States so as to provide an insight into the increase or reduction in incidences of discrimination and the success of European and/or national anti-discrimination policy;
80. Calls on the Member States to pursue an explicit and coherent policy to combat discrimination against homosexual men and women, to promote their social emancipation and integration and to combat prejudice through culture and education and, in particular, by launching an information and solidarity campaign at European level;
81. Welcomes the fact that, on 13 August 2002, Austria repealed Article 209 of its Criminal Code and thus ended discrimination on the basis of sexual orientation in legislation;

Forms of partnership

82. 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;
83. Invites the Member States to open up marriage to same-sex couples;
84. Urges the European Union to put the mutual recognition of unmarried partnerships and the issue of marriage between persons of the same sex on the political agenda and to draft specific proposals on the subject;

Rights of the Child

85. Calls on Belgium and the United Kingdom to sign Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms; welcomes the fact that Ireland ratified the Protocol in 2001 and calls on Belgium, Germany, Spain, the Netherlands, Portugal and the United Kingdom to do likewise;

86. Calls on Belgium, Spain, Finland and the Netherlands to sign the European Convention on the adoption of children and further calls on Belgium, Spain, France, Finland, Luxembourg and the Netherlands to ratify the Convention;
87. Calls on Belgium, Germany, Spain, Finland and the Netherlands to sign the European Convention on the legal status of children born out of wedlock; also calls on Belgium, Germany, Spain, France, Finland, Italy and the Netherlands to ratify that Convention;
88. Calls on Belgium, Denmark, the Netherlands and the United Kingdom to sign the European Convention on the exercise of children's rights; urges Austria, Belgium, Denmark, Spain, France, Finland, Italy, Ireland, Luxembourg, the Netherlands, Portugal, Sweden and the United Kingdom to ratify that Convention;
89. Urges the Member States to continue to guarantee the rights of children in accordance with their existing international obligations and to pay particular attention to disadvantaged children, such as children of asylum seekers, children from poor families and children in child protection institutions, and to combating the smuggling of children for the purposes of sexual or commercial exploitation;
90. Calls on the Member States to ensure that all children present on their territory have the right of access to education;
91. Considers that the placing of children in care solely on the grounds that they are living in extreme poverty constitutes a violation of fundamental rights; takes the view that, where this cannot be avoided, it should, as far as possible, be regarded as temporary and should seek to achieve the return of the child to its family; believes that the conditions of such care, whether in a foster family or in an institution, and the process aiming at eventual adoption, must respect all the rights of the family and of the child in question; believes that the parents, in particular, must be given help in continuing to exercise their full responsibilities vis-à-vis the child and to maintaining the emotional links necessary for the child's development and well-being;

Protection against discrimination on the ground of age

92. Considers that the rights of both young people and the elderly must be seen as an integral part of human rights and, in this connection, refers in particular to the right to liberty, the right to exercise autonomy in decision-making and the right to privacy; calls on the Member States to adopt a coherent policy to combat age discrimination and promote access and participation in society, in particular by combating any form of isolation;

Rights of disabled people

93. Welcomes the fact that, in 2001, Luxembourg ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention and calls on Austria, Belgium and the United Kingdom to do likewise;

94. Welcomes the fact that 2003 has been declared European Year of Disabled People and calls on the Member States and the EU institutions to compile sufficient comparable data to give a clearer picture of this issue and to develop a coherent policy and legislation to combat discrimination against disabled people and to promote the social integration of disabled people in all aspects of life; calls on the Member States to monitor closely anti-discrimination measures and, in so doing, to consider the impact thereof on the disabled; calls for policy development in this field to be undertaken in consultation with representative disability organisations;

Chapter 4: Solidarity

95. Notes with regret that the jurisprudence of the European Court of Human Rights, the fifteenth report of the Committee of Ministers of the European Social Charter and the report of experts of the International Labour Organisation point to a significant number of violations of fundamental social rights in the Member States in 2001;
96. Calls once again on the EU Member States to ratify, more than a decade after it was signed, the UN Convention of 18 December 1990 on the protection of the rights of all migrant workers and the members of their families;
97. Calls on Germany and the Netherlands to sign the revised European Social Charter and on Austria, Belgium, Germany, Denmark, Spain, Greece, Luxembourg, the Netherlands and the United Kingdom to ratify the revised Charter;
98. Is concerned at the large number of violations of the European Social Charter in EU Member States revealed by the survey conducted by the European Committee for Social Rights and urges the Member States to rectify these infringements;
99. Calls on the Commission to draw up a review of the similarities and differences between, on the one hand, the obligations of EU Member States under the European Social Charter and, on the other, the fundamental social rights that are part of the Community acquis and the rights enshrined in the EU Charter of Fundamental Rights and to forward this review to the Council and Parliament, together with a communication putting forward proposals on how any inconsistencies may be eliminated;
100. Criticises the fact that seven Member States are violating their obligations under the European Social Charter as regards the access of foreigners to the labour market, in particular by applying fixed immigration quotas and introducing limited residence permits, the automatic withdrawal of residence permits in the event of the loss of employment and discrimination as regards workers' rights in general;
101. Regrets that there are still major restrictions in some Member States on the right to form trade unions, to engage in collective bargaining and to take part in collective action for people employed in the public sector, particularly in the uniformed services such as the armed forces, the police, the customs service, etc.; calls for the possibilities for exceptions to these rights included in the European Social Charter to be applied much more restrictively and, where possible, to be abolished altogether;

102. Points out that the Committee of Ministers of the Council of Europe has established 56 cases of violations by the Member States of the provisions of the European Social Charter in the fields of child labour, maternity protection and the access of foreigners to the labour market;
103. Criticises the fact that most Member States have failed to meet their obligations with respect to child labour under the European Social Charter; notes, in this connection in particular, that the Committee of Ministers of the Council of Europe has issued a reasoned recommendation to Ireland and a warning to Spain in this matter; calls on the Commission, in view of the scale of the violations, to submit a proposal revising Directive 94/33/EC¹ on the protection of young people at work;
104. Criticises the fact that most Member States have failed to comply with their obligations under the European Social Charter as regards maternity leave, the protection from dismissal of pregnant and breastfeeding mothers and as regards the right to breastfeeding periods; calls on the Commission to take into account the findings of the Committee of Ministers of the Council of Europe in revising Directive 92/85/EC² on the protection of pregnant workers and also to put forward a proposal for the revision of Directive 96/34/EC³ on parental leave;
105. Calls on Finland to sign the European Code of Social Security (1964) and on Finland and Austria to ratify it; calls on Finland, Austria, Spain and the United Kingdom to sign the Protocol to the European Code of Social Security, on Denmark, Finland, France, Greece, Ireland, Austria, Spain and the United Kingdom to ratify it, on Denmark, Ireland and the United Kingdom to sign the revised European Code of Social Security (1990) and on all countries to ratify it;
106. Calls on Denmark, Germany, Finland, the United Kingdom and Sweden to sign and ratify the 1972 European Convention on Social Security and on Ireland and France to ratify that Convention;
107. Welcomes the fact that Italy has ratified the ILO Maternity Protection Convention and calls on the other Member States to do likewise;
108. Calls for a continuing policy of ratification by Member States of recent ILO conventions such as those on part-time work, home working and private employment brokering, which tie in closely with the issues of atypical employment relationships also addressed in EU directives; urges constructive participation in, and input into, the discussion on other inadequately protected forms of employment which are often on the borderline of self-employment and wage dependency; emphasises the need for better harmonisation and coordination between policies and activities in the framework of the ESC, the ILO and the EU, with regard to both the EU Charter and concrete (secondary) legislation and regulation, and warns that coordination in an EU context must not lead

¹ OJ L 216, 20.8.1994, p. 12.

² OJ L 348, 28.11.1992, p. 1.

³ OJ L 145, 19.6.1996, p. 5.

to neglect of, or even deliberate withdrawal from, obligations arising from ILO and ESC membership;

109. Expects the applicant countries to take practical and effective measures to implement fundamental rights, with particular regard to combating trafficking in human beings and prostitution;

Chapter 5: Citizenship

Right to vote in local and European elections

110. Calls on Austria, Belgium, Germany, Spain, France, Greece, Ireland, Luxembourg and Portugal to sign and ratify the European Convention on the participation of foreigners in public life at local level, on the United Kingdom to ratify that Convention and on all EU countries to apply it;
111. Calls on Belgium, Spain, Ireland, Luxembourg and the United Kingdom to sign and ratify the European Convention on nationality and on France, Finland, Italy and Ireland to ratify that Convention;
112. Calls on the Member States to provide citizens of other EU Member States living in their country with more targeted information on the opportunities for them to vote and stand for election in local elections and elections to the European Parliament;
113. Calls on the Commission to submit a further report on the implementation of Directive 94/80/EC on the right to vote and stand for election in Member States, in the light of the new circumstances which have occurred since the previous report dated May 2001;
114. Recognises the universal right of people with disabilities to have access to all aspects of the electoral process, as promoted by the international disability movement, the International Foundation for Election Systems (IFES), and the International Institute for Democracy and Electoral Assistance (IDEA), and calls on the Member States to make this right a reality;
115. Calls on the Member States to promote a balanced representation of women and men in local and European elections, as the lack of balanced participation of women and men in the decision-making process diminishes the democratic values of our society and our political system;
116. Calls on the Member States to extend the right to vote and stand for election in local and European elections to all citizens of non-member countries who have been legally resident in the European Union for at least three years;
117. Takes the view that support should be given to the proposal to the Convention on the Future of Europe that the European Ombudsman be granted the power to refer fundamental rights cases to the Court of Justice if no solution can be found in the course of a normal investigation;

118. Believes that the right to petition should be introduced as a further important part in the draft report, since that demonstrates the fundamental right of EU citizens to bring matters of concern directly to the European Parliament for redress;
119. Considers that an assessment should be made of the means by which Parliament may address human and fundamental rights violations in instances where redress to these has been sought by citizens through petitions to the European Parliament;

Freedom of movement and residence

120. Calls on the Commission and the Member States to eliminate without delay the remaining obstacles to the effective free movement of persons that have been revealed by the decisions of the Court of Justice and, in particular, not to allow any restriction on freedom of movement in connection with EU summits where this seems appropriate to prevent people from taking part in demonstrations;
121. Calls for legislation on the free movement of persons to be simplified in accordance with the principle that any citizen of a non-EU country enjoys full freedom of movement and residence, provided that he or she holds long-term residence status;
122. Calls on Greece to remove as soon as possible the administrative obstacles to the issuing of valid residence documents to those entitled to them;

Chapter 6: Administration of justice

123. Welcomes the Commission's consultation exercise on '*procedural safeguards for suspects and defendants in criminal proceedings*' and urges it to present proposals in the near future on standards for criminal proceedings that should apply in the European Union;
124. Calls on the Council to adopt a framework decision on common standards for procedural law, for instance on rules covering pre-trial orders and the rights of the defence and including criteria for investigation methods and the definition of evidence, so as to guarantee a common level of fundamental rights protection throughout the EU;
125. Urges the Member States, therefore, to promote the publication and translation of a 'letter of rights' to be handed to persons to be questioned, either upon arrival at a police station or at the location where questioning is to take place;
126. Welcomes the debate launched by the European Commission on the need to lay down minimum common standards for compensating the victims of crime;
127. Welcomes the fact that all the EU Member States have now ratified the Statute of the United Nations International Criminal Court and that this Statute entered into force on 1 July 2002, but calls on the governments and parliaments of the Member States to refrain from concluding any (bilateral) agreement that undermines the effective implementation of the Statute of the International Criminal Court, in particular

agreements on immunity enabling certain citizens to evade prosecution by the International Criminal Court;

128. Is concerned at the large number of serious violations reported by the European Court of Human Rights on the right to a fair trial (Finland, Greece and Italy), the right of access to the courts (Belgium, France, Greece and the United Kingdom), the right to a public hearing (Austria), the principle of adversarial proceedings (Germany, France, Finland, Italy), the right to proceedings within a reasonable time (Austria, Germany, Spain, France, Greece, Italy, Luxembourg and Portugal), the right to an impartial and independent tribunal (Belgium - for criminal proceedings - France and the United Kingdom), the right to a defence (Austria, Belgium, France, Greece and the United Kingdom), the presumption of innocence (Austria) and the right not to be tried or punished twice in criminal proceedings for the same offence (Austria);
129. Urges the Member States to comply scrupulously and in good time with the judgments of the European Court of Human Rights concerning procedural safeguards and to ensure that legislation is brought into line with those judgments;
130. Urges the Member States to apply their legal aid schemes for all internal and cross-border cases to citizens who do not have adequate financial resources;
131. Urges the Member States to guarantee the effective application of the right to a fair trial by implementing the principles of adversarial proceedings, trial within a reasonable time, the presumption of innocence of the person charged until judgment is delivered, and the right to an independent and impartial tribunal;
132. Is alarmed at the very large number of cases in which the ECHR has established infringements in Italy of the right to trial within a reasonable time; sees this trend as damaging confidence in the rule of law and calls on Italy to take all the requisite measures to ensure speedy and fair proceedings;
133. Is seriously concerned at the climate of impunity that has arisen in a number of EU Member States (Austria, Belgium, France, Italy, Portugal, Sweden and the United Kingdom) in which misconduct and violence by police and prison staff, particularly against asylum seekers, refugees and members of ethnic minorities, are not punished by adequate criminal penalties and urges the Member States concerned to give higher priority to this matter in their law enforcement and prosecution policies;
134. Takes the view that the substance of this resolution will not have any restrictive effect on the (future) interpretation and development of the rights, freedoms and principles applying to citizens within the European Union, as laid down in the Charter of Fundamental Rights in the European Union;
135. Instructs its President to forward this resolution to the Council and Commission, the European Court of Justice, the European Court of Human Rights, the European Ombudsman, the Council of Europe, and to the governments and parliaments of the Member States and of the applicant countries.

EXPLANATORY STATEMENT

INTRODUCTION

A. Towards an EU human rights policy

Over the years, the European Parliament has taken on a particular role in promoting and protecting human rights - a role that has often given rise to criticism that is not always unfounded. It has been pointed out that fine declarations on human rights are used to compensate for Parliament's lack of any real political weight. Since the entry into force of the Treaty of Amsterdam, there should be less reason to talk about Parliament's human rights activities in these terms. Human rights have now been written into the treaties more clearly, and the powers of the EP have also been strengthened. Furthermore, the Charter of Fundamental Rights of the European Union has enhanced the political legitimacy of this action and given it greater focus and direction. This is also evident from the decision taken last year by Parliament's Committee on Citizens' Freedoms, Justice and Home Affairs (LIBE) to use the Charter as a guideline for the annual report on the human rights situation in the EU. Nonetheless, there is still a considerable degree of confusion and difference of opinion as to what exactly the EP's task is or should be in relation to human rights and, more particularly, on the role of the EP's annual reports. The criticism expressed early this year by two leading NGOs should, in my view, prompt us to put this question back on the agenda.¹

As I see it, Parliament's role in the area of human rights is part of, and derives from, the political functions it already has to fulfil within the EU institutional system. This is obvious when we are talking about the co-legislative role of the EP and its role in the budgetary procedure of the Union or its right of assent to agreements with non-member countries and the accession of new Member States to the Union itself. In these spheres, human rights considerations are part of the political assessment that the EP has to make within the framework of its formal tasks. But how should this be seen within the context of the annual reports on human rights? In my view, the EP primarily plays a monitoring and scrutinising role, with the Council and Commission being held accountable for the human rights policies that they have pursued. This approach would also cover information-gathering, monitoring and reporting, which should primarily be carried out on the responsibility of the Council and/or Commission, and would allow the relevant reports to be formally placed on Parliament's agenda and the subject of discussion and political opinion forming. Monitoring by the EP should not be seen as a task in itself but as a way of enabling it to carry out its role of scrutiny.

¹ *A critical assessment of the European Parliament's 2002 human rights reports*, Amnesty International and the International Federation for Human Rights, 21 March 2002. See : <http://www.amnesty-eu.org/> .

In the meantime, another practice is in danger of becoming established. The Council has now produced three annual reports¹ on human rights, which are mainly of a descriptive nature focusing on external policy. However, these reports are not formally placed on Parliament's agenda, and the EP Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) is going ahead and drawing up its own-initiative reports.

As far as internal EU human rights policy is concerned, there is no such reporting by the Council or Commission. Last year, Parliament's LIBE Committee began data collection and monitoring, taking the Charter of Fundamental Rights as a starting point. This action soon created the false impression that the EP was unilaterally assuming authority for implementation of the Charter in the Member States, although it is common knowledge that, for the time being, the Charter has no binding legal force and, in addition, the provisions of the Charter are directed at the institutions and bodies of the Union and the Member States, 'only when they are implementing EU law' (Charter, Article 51). In my opinion, Parliament should, at this stage and for the purposes of its annual reports, merely use the Charter as a political guideline and as a point of departure for the contents of its reports. At Parliament's suggestion, the EU budget for 2002 makes provision for a Network of experts on fundamental rights.² That Network was established on 16 October 2002 and has already begun work. I feel it is important that this Network should focus first of all on devising standardised methods of gathering and analysing information as a way of ensuring a more transparent approach to monitoring and evaluation.

The existing difference between, on the one hand, human rights policy in the framework of the EU's external action and, on the other, in the EU and the Member States themselves is a major difficulty. Only if internal and external policies are coordinated and consistent will the EU itself become credible. This also applies to relations within the EP, where coordination between the AFET Committee and the Committee on Development and Cooperation (DEVE), on the one hand, and the LIBE Committee, on the other, is far from evident. I am not the first person to draw attention to these shortcomings. Efforts have been made in the past to clarify the situation and formulate clearer terms of reference. I am thinking in particular of the

¹ General Affairs Council; European Union Annual Report on Human Rights 1999, first annual report of 11.10.99 (See http://www.europa.eu.int/comm/external_relations/human_rights/doc/report_99_en.pdf), European Union Annual Report on Human Rights 2000, second annual report of 09.10.00 (See http://www.europa.eu.int/comm/external_relations/human_rights/doc/report_00_en.pdf), European Union Annual Report on Human Rights 2001, third annual report of 8.10.01 (See http://www.europa.eu.int/comm/external_relations/human_rights/doc/report_01_en.pdf).

² See text of invitation to tender: 2002/S 60-046435. *The Commission wishes to have a network of experts on fundamental rights at its disposal in order to assess how each of the rights listed in the European Union's Charter of Fundamental Rights is applied at both national and Community levels. This will take into account developments in national legislation, the case law of constitutional courts and Member State jurisdictions, as well as the case law of the Court of Justice of the European Communities and the European Court of Human Rights.*

The tasks of this network will be the production of a written report summarizing the situation of fundamental rights in the context of both European Union law and national legal orders, as well as the organization of two annual meetings with the Commission and the Parliament. In addition, the network must assist the Commission and the Parliament by giving advice on documents submitted to them and specific information on the protection of fundamental rights.

findings of the major study launched at the conference in Vienna on 9 and 10 October 1998.¹ In a short but trenchant report entitled *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000*, a select Committee of Wise Men called for EU human rights policy to be enhanced and given a new political agenda. 'There is an urgent need for a human rights policy which is coherent, balanced, substantive and professional'.² These recommendations were taken further in the *Final report* by Philip Alston and J.H.H. Weiler, the essence of which was a call for greater coherence between internal and external policy, an improvement in quality and a strengthening of the role of providing information.

In the declaration to mark the 50th anniversary of the Universal Declaration of Human Rights, on 10 December 1998 the European Council took up this challenge and put a number of matters of the agenda, although these were still formulated in rather weak terms.³ Some of these recommendations have since been implemented wholly or in part (by the Commission and Council), for example an annual report by the Council and an NGO Forum, but others have never met with any response, for instance the call for a Commissioner with special responsibility for human rights, or are regularly rejected, such as the question of establishing an EU 'Human Rights Monitoring Agency'.

Parliament has taken a stance on the last point on a number of occasions, but it appears to have focused on this single issue. The report as such has never been taken up by Parliament. The main message that the Committee of Wise Men addressed to Parliament in 1998 was to ensure greater expertise, improved internal coordination and a more targeted approach in its dialogue with the Commission and Council, but it has never been acted upon. In the preparations for a new committee structure for the following parliamentary term (1999-2004), it certainly played no significant role.

We are now almost three years down the line. It is time to take stock of a number of important aspects of EU human rights policy. What is the current state of affairs? Which recommendations for improvements have been put into effect, and which still need to be followed up? Only by answering these questions can we create a framework that will give direction to the current report.

1. Consistency and coherence between internal and external policy

1.1 Commission

The recommendation made by the Committee of Wise Men in 1998 that there should be one Commissioner with special responsibility for human rights policy both inside and outside the EU has not been followed up. This is hardly surprising; given the way in which the College of Commissioners is formed and the political interests of the Member States that come into play, it would be asking too much for a portfolio of this kind with a far-reaching remit to be created. The complaint that the Commission's EU human rights policy lacks leadership and profile now seems to have been rectified to some extent. A number of Commissioners are now seeking the limelight on human rights issues. However, policy is still splintered and fragmented, and human rights frequently still play a marginal role in decision-making.

¹ See <http://www.iue.it/AEL/events.htm>, and Philip Alston, M Bustelo and James Heenan (eds.), *The European Union and Human Rights*, Oxford etc. (Oxford University Press) 1999.

² See <http://www.iue.it/AEL/events.htm>, *Human Rights Agenda for the European Union for the Year 2000*.

³ See http://europa.eu.int/comm/external_relations/human_rights/doc/50th_decl_98.htm.

On 13 March 2001, the Commission took an important step when it suggested that, in future, all Commission legislative proposals or other draft instruments should first be examined to see whether they are compatible with the Charter of Fundamental Rights. Where appropriate, proposals should include a special Charter clause.¹ An internal procedure of this kind can increase awareness, enhance information for policy-makers and benefit transparency. It would be good for the EP to use this clause - or the absence of it - to step up its scrutinising role. In its Communication on the European Union's role in promoting human rights and democratisation in third countries (COM (2001) 252 of 8 May 2001), the Commission says that its action in the field of external relations will be guided by compliance with the rights and principles set out in the EU Charter of Fundamental Rights. In exercising its powers of control, Parliament should make a critical assessment of the way in which the Commission puts this approach into practice.²

1.2. Council

On 25 June 2001, the General Affairs Council approved the Commission communication referred to above and emphasised 'the necessity to ensure consistency between the external and internal policies as well as the need to explore the development of possible means and practices to this end'. This is not only extremely vague, but, to date, nothing has emerged to put this into practice. Nor is there any evidence of involvement of the Justice and Home Affairs Council.

1.3. Parliament

For some time now, there have been calls, particularly from NGOs, for Parliament to set up a single human rights committee responsible for both internal and external policy. Although I appreciate the reasons behind this suggestion, I feel that such an approach should be rejected as ineffective and unrealistic. It does not reflect the way in which the work of the Council and Commission is organised, and it would make it too easy for the other standing committees of the EP to shirk their responsibility for human rights issues. Experience of across-the-board policy areas - in both national government administrations and international organisations - has taught me that frequently the best approach does not lie in the reallocation and transfer of tasks. Agreements on better coordination, mobilising tangible political support and co-responsibility at the highest political and administrative level are often more useful.

Translated to the EP context, this would mean that both the Conference of Presidents and the Conference of Committee Chairmen and the Secretary-General should consider without delay how they could help to improve the current lack of coordination and coherence between the AFET and LIBE committees in particular. In my view, a solution might be found in a joint subcommittee or working party supported by a joint secretariat. I do not feel that I should develop this suggestion any further at this juncture or to try to secure the support of the plenary for a specific suggestion. There are already sufficient proposals on the table, and responsibility for the current absurd situation must be laid at the door of those responsible.

¹ See SEC (2001) 380/3, *Memorandum from the President and Mr Vitorino: Application of the Charter of Fundamental Rights of the European Union*.

² See also resolution of 25 April 2002 based on the Diez Gonzalez report, PE 309.653.

One last observation on this issue, which may well be superfluous. Parliament will shortly have to deliver its opinion on the accession of new Member States, an opinion in which human rights criteria will undoubtedly be of great significance. At that time, it would be good to know that Parliament is basing its assessment on a consistent approach.

2. Monitoring

In 1998, the Committee of Wise Men recommended the setting up of an *EU Human Rights Monitoring Agency* to gather information and analyse the human rights situation within the EU.¹ The Cologne European Council (December 1999) suggested looking into whether the setting up of such a body would be useful². Although the report by the Committee of Wise Men suggested that a feasibility study should be submitted to the European Parliament, the idea of a monitoring agency was rejected by the Commission in various paragraphs of its communication of May 2001³, without its providing specific reasons and without any feasibility study having been published.

Looking in greater detail at the arguments put forward, the Commission says:

'However, the Commission considers that the European Union does not lack for sources of advice and information. It can draw on reports from the United Nations, the Council of Europe and a variety of international NGOs. Furthermore there is no monopoly of wisdom when it comes to analysing human rights and democratisation problems, or their implications for the European Union's relations with a country. The real challenge for any institution is to use the information in a productive manner, and to have the political will to take difficult decisions. An additional advisory body would not overcome this challenge. The Commission does not therefore intend to pursue this suggestion, nor the related one which has been occasionally been made that the Commission should produce, or subcontract an organisation to produce, a world-wide overview of the human rights situation by country, as is done by the US State Department'.

The first point to be made is that this passage obviously refers to countries outside the EU, evidenced by the fact that it appears in a text produced by the external affairs sector of the Commission. However, the original proposal related to the human rights situation in the EU itself. Furthermore, while it may be true that there is no lack of information, knowledge and wisdom, there is a lack of standardised methods of gathering and analysing the information so that it is comparable and useful for even-handed policy-making. There is no avoiding the conclusion that the Commission has rejected the proposal without adequate grounds and has paid no attention to the broad justification and explanations provided by the Committee of Wise Men (see footnote 5). Similarly, no account has been taken of the views of the EP, which embraced this proposal in a number of reports published earlier.⁴ The creation of a

¹ "A European Union Human Rights Monitoring Agency, with a general information-gathering function in relation to all human rights in the field of application of Community Law, is essential. One option for this purpose would be to expand the existing European Monitoring Centre on Racism and Xenophobia in Vienna. Another is to establish a new and separate Agency.", *Leading by Example*. Op. cit., page 7. See also : Philip Alston and J.H.H. Weiler, "An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights", in Alston (eds), *The EU and Human Rights*, op. cit., pp. 55 - 59.

² Cologne European Council, 3 and 4 June 1999, Conclusions of the Presidency, para. 46 (Press Release 150/99).

³ COM(2001) 252, para 5.

⁴ See, inter alia, Resolution on the annual report on human rights in the EU (1998-1999), (Haarder report) of 16 March 2000 (A5-0050/2000), para. 94; Resolution on the annual report on human rights in the world

budget line for the setting-up of a Network of human rights experts and the actual establishment thereof has, however, created a new situation. The top priority will have to be to provide the EU institutions with information gathered and analysed in a systematic and professional way. The possibility of creating an EU human rights agency, as proposed earlier, must be seen against the background of the development of this Network.

3. Dialogue with society

The first EU Human Rights Discussion Forum, which took place on 30 November and 1 December 1999, had an agenda which gave considerable scope for the discussion of human rights problems occurring in the EU. At the second meeting of the Forum¹, this was less true. Parliament was scarcely, if at all, involved in the preparations for and practical organisation of these meetings. It has, however, held specialist hearings on human rights issues arising in the EU, and the annual human rights reports are also prepared through the EP's own hearings.

4. Reporting

In 1998, the Committee of Wise Men made the following observations on reporting:

'Balanced and objective surveys of the human rights situation both within the EU and in the world at large are an indispensable basis for informed analysis and policy-making. The Commission, in consultation with the Council, should develop a global report for this purpose, while the new Monitoring Agency should develop such a report in relation to the EU and its Member States. Action would then be taken at whatever level is appropriate in light of the principle of subsidiarity'.²

The reports that have since been published by the Council are primarily descriptive in nature and relate to activities in connection with the EU's external policy. There is no comparable reporting by the Council or Commission on the human rights situation within the EU and, as explained above, the proposed Monitoring Agency has not yet been established. The setting up of the Network of experts on fundamental rights in the Commission will make it possible to start filling these gaps at the beginning of next year. Parliament must not fall into the trap of carrying out tasks on a permanent basis which are ultimately matters for the Council or Commission. It does not have adequate institutional capacity to do this. Parliament's activities in the human rights sphere should be part of its function of scrutiny of the Council and Commission. The annual reports by the Council or Commission should therefore be presented by the latter in Parliament, after which is up to Parliament to carry out its own political function.

(Malmstrom report) of 16 March 2000 (A-5-0060/2000), para. 10.

¹ An overview can be found on the Commission's external affairs website http://europa.eu.int/comm/external_relations/human_rights/conf/index.htm.

² *Leading by example*, op. cit., page 7.

B. Aim of the present report

Until such time as the Network is in operation, Parliament cannot allow any loopholes to occur and must continue the approach adopted last year to the best of its ability. This approach is circumscribed by resources which are, by definition, unsuitable and inadequate and, indeed, more or less at odds with the principles described above concerning Parliament's task and role. During a transitional period, there has to be some give and take. The material and staff resources available and the other political duties of a Member of the European Parliament do not in fact allow such a project to be carried out.¹ This means that choices had to be made, and it has not been possible to follow all the articles of the Charter. The availability of material also involved choices, because there was insufficient material available on the situation in the Member States on certain subjects. Similarly, it was not possible for me to make my own thorough investigation of certain issues; I had to restrict myself more or less to easily accessible public sources of information.

Each paragraph begins with a review of the situation concerning the signature and ratification of the relevant international human rights conventions. This approach follows up Parliament's recommendations in the resolutions adopted on the human rights situation in the EU in the previous two parliamentary terms.²

In addition to the case law of the European Court of Human Rights (ECHR) and of the Court of Justice of the European Communities and reports by EU institutions and recognised European and international NGOs, I have also examined the conclusions reached by the monitoring committee of the main United Nations human rights conventions in 2001.³ All the EU Member States have ratified these conventions and are required to submit periodic reports to the monitoring committees and to explain and defend their findings in a constructive dialogue with the committees. Unfortunately, most EU Member States are lagging behind in compliance with their reporting requirements. Only Belgium and Finland have fulfilled their requirements, the other EU Member States having failed to do so. The number of outstanding reports by country is as follows: ⁴

France	7
Greece	5
Italy	5
Luxembourg	5
Spain	5
Germany	4
Netherlands	3

¹ I therefore decided to use the summer recess, which is why the draft report was not presented until September 2002.

² Haarder report, A5-0050/2000 of 16 March 2000 and Cornillet report, A5-0223/2001 of 5 July 2001.

³ It was not possible to incorporate all the conclusions of the UN monitoring committees in the 19 country reports dealt with in 2001; I have included only those observations that relate to the topics covered by this report. This selective approach was unavoidable. Owing to lack of time, the observations relating to individual complaints under the various optional protocols to the conventions have also been disregarded.

⁴ Source:

<http://www.unhchr.ch/tbs/doc.nsf/newhvoerduebycountry?OpenView&Start=1&Count=250&Collapse=10#10> .

Austria	3
United Kingdom	3
Portugal	2
Ireland	2
Denmark	1
Sweden	1

It is interesting to note that, although the Council's third annual human rights report dated 8 October 2000 (Annex 16, footnote 2) refers to the reports to the monitoring committees, it fails to mention those reports that are still outstanding under the reporting requirements of the conventions. Nor is it clear at any point what action the EU Member States have taken in response to the conclusions of the UN monitoring committees.

Reference has also been made to the conclusions and findings of other monitoring bodies, such as those of the International Labour Organisation (ILO) and the Council of Europe. Given that these mechanisms differ in nature and that the accessibility of the material also varies, this may have resulted in a not wholly representative selection. Your rapporteur hopes that this problem may be solved in the future if more human resources are made available for the preparation of this report. Moreover, EU Member States are also lagging far behind in meeting their reporting requirements to these monitoring agencies.

This report covers the calendar year 2001, but this appears simpler than it actually is. Data that are not strictly comparable have slipped in here and there. Only part of the report relates to human rights violations that actually occurred in 2001; another section concerns judgments handed down in 2001 or other findings published in 2001 which actually relate to matters that occurred earlier. Furthermore, as far as the ratification of conventions is concerned, for the practical purposes of this report I have taken 30 June 2002 as the cut-off date in the footnotes, so as to avoid recommendations that have since been overtaken by events.

In the case of the findings of convention monitoring committees and the Council of Europe Commissioner for Human Rights, it should be taken into account that the countries reported on depend on the agenda set for the visits that the bodies made in 2001; this means that it cannot be said that similar situations did not also occur in other EU countries.

The information set out in the explanatory statement has been filtered as far as possible. To make it easier to digest, an effort has been made to focus on the facts and to avoid broad political generalisations. Where possible, references to an Internet source have been given in a footnote. In the motion for a resolution, I have drawn political conclusions and put forward proposals. I have tried not to include too many details in the policy recommendations in order to avoid overlapping with Parliament's normal policy statements in a whole range of other reports. On the contrary, an effort has been made to tackle the issue at a conceptual level, in other words to suggest what steps might be taken to put certain subjects on the EU agenda.

The report specifically relates to the human rights situation in the current EU Member States. It does not review or assess the action taken by the Council, Commission and Parliament; this approach has been adopted not only because of the lack of resources but also to avoid

overlapping with other EP reports. Consequently, this report should not be seen as an annual report on the activities of the EU institutions. For the same reasons, the findings of the European Ombudsman are not repeated here. Similarly, there is no discussion of the human rights situation in the applicant countries or in the Overseas Territories of the Member States of the EU, simply because this is not covered by the mandate given to your rapporteur. This necessarily creates a significant discrepancy in the way in which Parliament deals with human rights issues in the current Member States (covered by a single report) and in the applicant countries (to be found in different sections of 10 country reports). This apparent technical difference is not conducive to coherence and transparency and is a good illustration of the need for greater coherence and cooperation within the EP that I advocated earlier.

As is customary, the opinion of the Committee on Petitions (PETI) is attached to this report; on this occasion, the Committee on Women's Rights and Equal Opportunities (FEMM) and the Committee on Employment and Social Affairs (EMPL) have also been asked for their opinions. The draftsman of the latter committee has been asked primarily to deal with matters falling within Chapter 4 of the Charter. Within the framework of gender mainstreaming, it may be expected that the opinion of the Committee on Women's Rights will cover the whole breadth of the report, although detailed information concerning Article 23 of the Charter will obviously be provided.

Finally, I have refrained from discussing issues relating to the binding nature of the Charter and its incorporation into the European treaties. This subject is now under discussion in the Convention, and Parliament has already indicated its stance on this matter on a number of occasions.

CHAPTER I : DIGNITY

ARTICLE 1: HUMAN DIGNITY

ARTICLE 2: RIGHT TO LIFE

The right to life and human dignity are the most essential and fundamental rights in the whole human rights spectrum.

We should welcome the fact that Ireland has removed the death penalty from its constitution and that Greece has abolished the death penalty except in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.¹

Terrorism and human dignity

UN Convention for the Suppression of Terrorist Bombings

This Convention was signed on 15 December 1997 and entered into force on 23 May 2001. It has been signed by all the Member States, and DK, P, UK, SV ratified the Convention in 2001. However, D, B, FIN, GR, IRL, I, L, NL have not yet ratified it.

¹ Amnesty International, *concerns 2002*, p. 110 and 133.

UN Convention for the Suppression of the Financing of Terrorism

This Convention, which was signed on 9 December 1999, has not yet entered into force. It has been signed by all the Member States and was ratified by the UK in 2001.¹

Terrorist attacks are a violation of democracy, fundamental standards and values that pose a threat to the civil rights of individuals and, in particular, to their physical integrity. Terrorism must be resolutely rejected and condemned as a means of achieving specific ends. In practice, terrorist attacks are still taking place, both within the EU and outside it, with the 11 September attacks in the United States marking the low point of 2001. In the EU, Amnesty International (AI) draws attention to the following facts: in 2001, ETA murdered 15 people, including eight civilians, and wounded more than 100 people in attacks.² In Northern Ireland, 19 people were murdered by armed groups of Loyalists and Republicans, and the number of sectarian attacks, including the petrol bombing of homes of civilians, rose in 2001.³

Following 11 September 2001, a large number of measures were taken, and legislation was adopted at European, international and national level to step up the fight against terrorism. On 20 September 2001, at an extraordinary meeting, the JHA Council adopted an action plan to combat terrorism. In this context, two proposals were rapidly presented by the Commission, namely the framework decision on combating terrorism and the framework decision on the European arrest warrant and surrender procedures.⁴

The extent to which the implementation of these framework decisions by the Member States have, in practice, resulted in human rights infringements is one of the matters dealt with in this report. Although a number of Member States have tabled draft legislation, which had not been adopted when this report was finalised, legislation has been adopted in other Member States which involves infringements of individual civil rights.

In the United Kingdom, the Anti-Terrorism, Crime and Security Act 2001 was adopted in December; under this act it is possible for *non-UK-nationals* to be held in indefinite administrative detention without being charged or prosecuted and without access to an appeal in law.⁵ The only conditions that have to be met are, firstly, that the person is a terrorist suspect and, secondly, that he is a risk to national security. In such a case, the *Secretary of State* may issue a detention order. The basis for such action may be secret evidence. In order to make this possible, the United Kingdom made a derogation from Article 5(1) of the EHRC and Article 9 of the ICCPR. By December 2001, eight people had already been detained under the Act, at least one of whom has opted to return to his country of origin, Morocco, instead of serving indefinite administrative detention. Furthermore, people suspected of terrorist acts are denied the right to have their requests for asylum considered.⁶

¹ The Convention on the suppression of terrorist bombings entered into force on 10 April 2002, in 2002 (reference date 30 June) the convention was ratified by A, F, NL and ESP.

² Amnesty International, *concerns 2002*, p. 224.

³ Amnesty International, *concerns 2002*, p. 256.

⁴ COM (2001) 521 and COM (2001) 522, the JHA Council formally adopted the two proposals on 13 and 14 June 2002, see OJ L 164/3 of 22.06.2002 (combating terrorism) and OJ L 190/1 of 18.07.2002 (arrest warrant).

⁵ The UN Human rights committee in its *concluding observations* in the matter of the UK and N-IRL of 6 December 2001 expressed its concern at this legislation. See: doc. CCPR/CO/73/UK and doc. CCPR/CO/73/UKOT,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2153823041947eacc1256afb00323ee7?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2153823041947eacc1256afb00323ee7?Opendocument).

⁶ Amnesty International, *Concerns 2002*, p. 255, see also HRW, *World Report 2002*, p. 273 and 618.

In Germany, anti-terrorist legislation entered into force in December which allowed the German authorities to ban religious organisations which may be regarded as a cover for individuals carrying out unconstitutional activities. About 20 organisations have been banned under the legislation.¹

In Sweden, three citizens of Somali origin encountered problems when they were unintentionally placed on the UN terrorist list of persons or bodies whose assets should be frozen in the fight against terrorism. Since they had been placed on the UN list, they were subsequently included in the annex to Regulation (EC) No 881/2002 of 27 May 2002 on the same subject.² The problem is that the victims have no possibility of making the Swedish Government or the courts examine whether they are guilty of terrorism, or of raising the matter with a national or UN body, or of having it reviewed.

It is clear from the situation described above that combating terrorism may have unwanted negative effects that may jeopardise rights such as the right to non-discrimination, the right to an effective remedy in law and to a fair trial, freedom of thought, conscience and religion, freedom of assembly and association and the right to property. The Council and the Member States should therefore assess, and possibly review, the measures taken within a reasonable period.

ARTICLE 4 BAN ON TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

UN Convention against Torture and Other Inhuman or Degrading Treatment or Punishment
In 2001, this Convention had been ratified by all the Member States, except Ireland.³ In October 2001, Germany recognised the Committee against Torture's (CAT) right to investigate individual complaints.⁴

Action by the police and other law enforcement officers

Once again this year, there were various reports of conduct by police and law enforcement officers that leaves something to be desired. Amnesty International reports the use of excessive force by the police in various demonstrations: in Austria on 4 and 22 February, in Belgium at the time of the Laeken Summit, in Italy during the demonstrations in Genoa in March, in Brescia and Naples and at the G8 summit in Genoa in July, in Spain during a demonstration against the World Bank in July and in Sweden at the Göteborg Summit in June.⁵ There were also a large number of individual citizens, a large proportion of whom were citizens of non-member countries and/or from minority groups, whose civil rights were violated or who were mistreated by police officers, both on the street and during arrest or in detention: Austria, Belgium, France, Germany, Greece, Italy and Spain. In some cases, this

¹ Amnesty International, *Concerns in Europe July-December 2001*, section Germany, see: <http://web.amnesty.org/ai.nsf/Index/EUR010022002?OpenDocument&of=REGIONS/EUROPE> .

² OJ L 139, 29.05.2002, p. 9.

³ In 2002 (reference date 30 June) the convention was ratified by IRL.

⁴ http://www.unhchr.ch/html/menu3/b/treaty12_esp.htm .

⁵ Amnesty International, *Concerns 2002*, p. 39, 47, 137, 226, 233 and 234.

resulted in **police killings or death in police custody**, for example in France, Germany, Greece, Portugal and the United Kingdom. Border police in Greece mistreated or shot and killed a number of people.¹

Situation in prisons and conduct of prison staff

The Council of Europe's European Committee on the prevention of torture and inhuman or degrading treatment or punishment has pointed out that there is still overcrowding in prisons in the Member States. In its concluding observations in the case of Greece of 8 May 2001, it confirms that this is the case in Greek prisons.² Human Rights Watch (HRW) is mainly concerned about old prison facilities in Italy and the United Kingdom, where the sanitary facilities, in the United Kingdom in particular, are far below standard. In the United Kingdom, there are also problems relating to access to medical treatment.³ Amnesty International reports a large number of complaints about inhuman treatment, possibly leading to torture in prison: France, Germany, Ireland, Italy, Portugal, Spain and the United Kingdom. In some cases the conduct of prison officers has resulted in **death in custody**, for example in Austria. In some cases, a lack of supervision or active intervention leads to detainees committing suicide or being mistreated by fellow prisoners, resulting in death; this has occurred in Portugal and the United Kingdom.⁴ The UN Human Rights Committee (UNHCR) is concerned by the increasing number of racist incidents in prisons in the United Kingdom involving prison staff or among prisoners themselves.⁵

In 2001, the European Court of Human Rights (ECHR) handed down a number of judgments relating to respect for the physical and moral integrity of persons. In several cases brought against Greece, Italy and the United Kingdom, the Court concluded that there had been a violation of Article 3 of the European Human Rights Convention in prisons⁶: these cases involved unnecessary use of physical force against detainees, inadequate and unacceptable conditions of detention and the denial of suitable medical care leading to the suicide of detainees. In two cases against the Netherlands⁷, the ECHR upheld complaints concerning the violation of Articles 3 and 8 of the Convention. These cases concerned the prison regime in the extra secure unit (EBI) in Vught. This regime may involve a violation of the right to a private and family life and inhuman treatment, as was pointed out earlier by the CPT in a visit in November 1997.⁸

¹ Amnesty International, *Concerns 2002*, p. 39, 47-48, 102, 103, 108, 110, 137-138, 200, 225-226 and 256.

² CPT, *11th General Report on the CPT's activities*, p. 14, see also HRW, World Report 2002, p. 608 and CAT: See doc. A/56/44, paras 83-88,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/336a0d9ee8c62b8ec1256a4800558d6f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/336a0d9ee8c62b8ec1256a4800558d6f?Opendocument) .

³ HRW, *World Report 2002*, p. 610 and 612.

⁴ Amnesty International, *Concerns 2002*, p. 103, 108, 133, 138, 199-200, 225 and 256-257.

⁵ See doc. CCPR/CO/73/UK;CCPR/CO/73/UKOT,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2153823041947eae1256afb00323ee7?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2153823041947eae1256afb00323ee7?Opendocument) , § 12.

⁶ *Dougoz v GR*, judgment of 06.03.01, No. 40907/98, *Keenan v UK*, judgment of 03.04.01, No. 27229/95, *Peers v GR*, judgment of 19.04.01, No 28524/95, *Price v VK*, judgment of 10.07.01, No 33394/96 and *Indelicato v I*, judgment of 18.10.01, No 31143/96.

⁷ *Van der Ven v NL*, judgment of 28.08.01, No 50901/99 and *Lorsé v NL*, judgment of 28.08.01, No 52750/99.

⁸ See doc. CPT/Inf (98)15, <http://www.cpt.coe.int/en/reports/inf1998-15en.pdf> , § 58 to 70.

Treatment of asylum seekers during detention and deportation

The following countries have been cited by NGOs as having committed violations of the civil rights of asylum seekers in reception centres, detention centres or during deportation procedures: Belgium¹, France, Greece², Spain, the United Kingdom.³ The CCPR⁴ is concerned at the fact that, in the United Kingdom, asylum seekers are held for reasons other than those strictly allowed under the International Covenant on Civil and Political Rights (PIDCP), including administrative reasons. The CCPR considers it unacceptable that asylum seekers may be held in prisons and that, when their request for asylum has been rejected, they may still be held for a considerable period without any prospect of actual deportation. The system of distributing asylum seekers throughout the country and the voucher system have, in some cases, resulted in the physical safety of asylum seekers being put at risk.

There is no simple solution to these problems. The number and nature of violations of Article 4 of the Charter vary considerably. One answer might be better training for the police and other law enforcement officers. The exchange of best practice between the Member States could be useful. In addition, prison facilities need to be brought up to date, with adequate opportunities for obtaining medical and legal assistance. The Member States should also look into alternative punishments in order to tackle prison overcrowding and, if they do not already have such bodies, they should set up independent bodies to investigate violations of civil rights and suggest improvements. With regard to asylum seekers who are unaccompanied minors, staff with medical and legal expertise must be available in detention and reception centres. Detention should be restricted as far as possible, even in the case of deportation procedures.

As rapporteur, I find it astonishing that, although the problems relating to prisons and the conduct of police services described in many reports have been pointed out for years, this is not a matter of EU policy and that the current EU treaties do not provide any basis for this. In my view, it is high time, firstly, for a thorough investigation of specific problems in the Member States. Secondly, the Convention on the Future of Europe should recognise the possibility of creating a framework within the EU for more effective regulation and policy-making in this area.

Relative impunity of police and other law enforcement officers

A problem highlighted by Amnesty International is the relative impunity of police and other law enforcement officers in criminal matters concerning the issues outlined above. This matter will, however, be dealt with in Chapter 6 of this report.

¹ Amnesty International, *Concerns 2002*, p. 47-48 and FIDH, *Belgium's "Closed centres": the backyard of democracy*, see: <http://www.fidh.org/rapports/r277.htm>.

² See also the concluding observations on Greece of the UN Committee against Torture; see doc. A/56/44, paras.83-88, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/336a0d9ee8c62b8ec1256a4800558d6f?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/336a0d9ee8c62b8ec1256a4800558d6f?Opendocument), § 87.

³ Amnesty International, *Concerns 2002*, p. 102, 110-111 (see also HRW, *World Report 2002*, p. 611), 225, 257 and *Concerns in Europe January-June 2001*, section Spain, see: <http://web.amnesty.org/ai.nsf/index/EUR010032001?OpenDocument&of=COUNTRIES/SPAIN#SPA>.

⁴ See doc. CCPR/CO/73/UK;CCPR/CO/73/UKOT : [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2153823041947eac1256afb00323ee7?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2153823041947eac1256afb00323ee7?Opendocument), § 16.

ARTICLE 5 BAN ON SLAVERY AND FORCED LABOUR

Trafficking in persons for exploitation

UN Protocol to the UN Convention on the prevention of transnational organised crime concerning trafficking in persons

This Convention and its Protocol were signed in December 2000 but have not yet entered into force. All the Member States have signed the Convention and the Protocol, but only one Member State ratified the Protocol in 2001.¹

UN Convention on the Rights of the Child

This Convention was signed in November 1989 and entered into force in September 1990. All the Member States have signed and ratified the Convention.²

UN optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict

This optional Protocol was signed in May 2000 but has not yet entered into force. All the Member States have signed it, and Spain ratified the Protocol in 2001.³

ILO Convention on the worst forms of child labour

This Convention was signed in June 1999 and came into force on 19 November 2000. All the Member States have signed the Convention and A, ESP, F, GR, L, SV ratified the Convention in 2001.⁴

According to a report by the *US Department of State*, 700 000 people, and possibly as many as 4 million, mainly women and children, were the subject of trafficking last year.⁵

They were forced to work in: prostitution or other forms of sexual exploitation, exploitation in factories, building sites, on the land or in households. Other forms of exploitation included the rounding up of children for the army, the kidnapping of children for adoption or the exploitation of children as camel jockeys or beggars.

A number of the Member States are named in this report as countries of destination or transit: Austria, Belgium, France, Greece, Italy, the Netherlands and Spain. Portugal and the United Kingdom are listed as countries of destination. Victims in the various Member States come from all over the world, in particular women from Central and Eastern Europe, Africa (in particular Nigeria) and Asia (including Thailand and the Philippines). Since it is difficult to compile reliable figures, Member States other than those referred to above are not mentioned

¹ In 2002 (reference date 30 June) the Convention and Protocol were ratified by ESP.

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

³ The Protocol on the involvement of children in armed conflict entered into force on 12 February 2002. In 2002 (reference date 30 June) the Protocol was ratified by A, B, FIN, I and ESP.

⁴ In 2002 (reference date 30 June) B, D and NL ratified the Convention.

⁵ US Department of State, *Trafficking in persons report*, June 2002, see: <http://www.state.gov/documents/organization/10815.pdf>.

in the *US Department of State* report. However, the European Commission says that all the Member States face this problem.¹

The US Department of State report names Greece as one of the countries that has failed to meet minimum standards for the elimination of trafficking in human beings and has not made significant progress towards doing so. In May 2001, a working group was set up to analyse the problems and make recommendations, but, according to HRW, action is urgently required, in particular to exempt victims from prosecution.² Under existing criminal law, few traffickers are arrested and prosecuted, partly because there is no comprehensive legislation prohibiting people trafficking. Similarly, there are no witness protection programmes. There is also a lack of provision of shelter and medical care. Victims are picked up and deported without the authorities giving them any help in connection with the mental and physical damage that they have suffered as a result of trafficking. In its concluding observations on Greece of May 2001, the CAT calls for steps to be taken to prevent and punish trafficking in women and other abuse of women.³

In January 2001, the European Commission also presented a proposal to combat trafficking in human beings.⁴ Parliament delivered its opinion in June 2001. In July 2002, the Council adopted the framework decision. Parliament hopes that the Member States will transpose it without delay.⁵

A problem in the EU highlighted by HRW is that trafficking for the purposes of sexual exploitation has received a great deal of attention in speeches and policy, compared with people trafficking for the purposes of exploitation for other ends. This is especially evident in the projects funded by the EU. A more balanced approach is required. This may be because there is little data available concerning exploitation for other purposes and it is, therefore, difficult to determine policy. The HRW also complains that EU policy on people trafficking is based very much on a law enforcement approach and that the human rights aspect is often forgotten.⁶

Sexual exploitation including child pornography

UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

This Optional Protocol was signed in May 2000 but had not yet entered into force in 2001. All the Member States have signed it, and Spain ratified the Protocol in 2001.⁷

¹ http://www.europa.eu.int/comm/justice_home/news/8mars_en.htm .

² HRW, *Memorandum of Concern*, July 2001, see http://www.hrw.org/backgrounder/eca/greece/greece_memo_noappendix.pdf .

³ See doc. A/56/44, paras.83-88, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44.paras.83-88.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.44.paras.83-88.En?OpenDocument) , §88 sub (d).

⁴ OJ L 203, 1.8.2002, p. 1.

⁵ On 27-28 September 2001 the JHA Council reached a political agreement.

⁶ HRW, *World Report 2002*, p. 551.

⁷ The Protocol on the sale of children, child prostitution and child pornography entered into force on 18 January 2002. In 2002 (reference date 30 June) Italy ratified the Protocol.

In January 2001, the European Commission presented a proposal on combating the sexual exploitation of children and child pornography¹. Parliament delivered its opinion in June 2001, and it is now up to the Council to give the proposal its final approval. During discussion of this proposal in the Council, the Member States were unable to agree on various elements of the proposal, such as the age limit for children and whether possessing child pornography without the intention of distributing it constituted a criminal offence.²

Recent developments, such as the spread of child pornography through the Internet, have increased sharply in the last few years. The Member States should therefore develop action plans, if they do not already have them, to ensure a structured approach to this form of sexual exploitation and to strengthen cooperation with their national Internet sectors. It is also important that there should be a public awareness campaign aimed at reducing the demand for child prostitution and child pornography. Combating virtual child pornography may, however, pose a threat to the right to freedom of expression.

CHAPTER II: FREEDOMS

ARTICLE 10 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Since 1998, Greece has had a law on military service and conscientious objection on religious or ideological grounds. The alternative service for conscientious objectors is 36 months as opposed to the 18 months required for military service. This amounts to an unfair and punitive alternative to military service. The same problem arises in Finland, where the alternative service lasts for 395 days as against 180 days' military service. In 2001, Amnesty International adopted 11 Finnish nationals who had been sentenced to a minimum of 77 and a maximum of 197 days' imprisonment, as prisoners of conscience.³

In the following Member States, certain religions and their followers are at an advantage compared to other religious groups owing to their historical links with the State: Denmark, Finland, Greece, Italy, Spain, Sweden and the United Kingdom. This carries a risk of potential discrimination between religions. The primary consideration should be the equal treatment of all religions without distinction. Participants at the seminar on Church-State relations organised by the Council of Europe Human Rights Commissioner on 10 and 11 December 2001 adopted a similar stance.⁴

In some countries, there is a greater or lesser degree of intolerance, rather than discrimination, against people who belong to:

- non-recognised religious groups: Austria, Belgium, France, Germany and the United Kingdom, or

¹ COM (2000) 854, OJ C 62, 27.2.2001.

² In June 2002 the Council reached a political agreement.

³ AI, *Concerns 2002*, p. 101.

⁴ CommDH (2001)15, *Conclusions on the Seminar concerning Church-State relations in the light of the exercise of the right to freedom of religion*, Strasbourg, 10-11 December 2001. See: [http://www.commissioner.coe.int/docs/CommDH\(2001\)15_E.htm](http://www.commissioner.coe.int/docs/CommDH(2001)15_E.htm) .

- recognised religions that have fewer members than traditional religions in the Member States such as Catholicism and Protestantism: Austria, Belgium, France, the Netherlands, Sweden and the United Kingdom, or
- religions other than the 'State religion': Finland, Greece and Italy.

There are also many people who do not belong to any faith or who subscribe to non-religious philosophies such as secularism or the humanist movement. The right to freedom of thought, conscience and religion also embraces the right *not* to believe, and those who exercise their right not to believe should not be subject to discrimination in the EU.

There have also been campaigns by government bodies against groups regarded as 'sects', in particular in Austria, Belgium, France, Germany and Spain. In Portugal and Sweden, the *Church of Scientology* is officially recognised as a religion, and in other countries there are numerous court decisions which also recognise it as a bona fide religion. However, at governmental level it is often not recognised as such by some Member States, including Belgium which, at some levels, even regards it as a sect. A similar problem arises in relation to Jehovah's Witnesses. When governments conduct active and intensive information campaigns against sects, it has to be asked to what extent this is a breach of freedom of religion. Who or which body may determine that a religious group constitutes a sect? It is clear that there can be differences of opinion on this matter, as is apparent in the case of the Church of Scientology.

In France, legislation referred to as the *About-Picard law* has been enacted which is damaging and discriminating towards religious groups that are regarded as sects, in particular in comparison with recognised religions. Fifty members of the Parliamentary Assembly of the Council of Europe expressed their concern about the potentially discriminatory nature of the new legislation and the possible violation of international human rights standards in a written declaration of 26 April 2001.¹

In April 2001, a law on religious freedom was adopted by the Portuguese Parliament, giving recognised religions certain advantages. However, these advantages were granted only to the Catholic Church, as they are conditional upon the religious organisations having been established in the country for at least 30 years or having been internationally recognised for at least 60 years. This suggests that it is difficult for new religious organisations to secure the advantages concerned.

ARTICLE 11 FREEDOM OF EXPRESSION AND INFORMATION

CoE European Convention on transfrontier television

This Convention was signed on 5 May 1989 and entered into force on 1 May 1993. B, DK and IRL have not yet signed it; GR, L, NL and SV have yet to ratify it.²

CoE Protocol amending the European Convention on transfrontier television

¹ Doc. 9064, written declaration No. 321; Religious freedom and religious minorities in France, 26 April 2001. See:

<http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FWorkingDocs%2FDoc01%2FEDOC9064.htm> .

² In 2002 (reference date 30 June) the convention was ratified by: Portugal.

This Protocol was signed on 1 October 1998 and entered into force on 1 March 2002. The following Member States still have to ratify the Protocol: B, DK, GR, IRL, L, NL, P and SV.¹

The ECHR has found a number of Member States to be in breach of the provisions concerning freedom of expression and information as set out in Article 10 of the EHRC: France, Austria, Luxembourg and Italy.²

Article 11(2) of the Charter says that the freedom and plurality of the media must be respected. *Reporters without borders (RSF)*³ reports a number of cases of possible breaches of this right in the following Member States:

In Austria, there was a state monopoly of TV and radio until the end of 2001. This situation was abolished on 1 January 2002 (Austria was the final Member State of the EU to do so). The written press is in the hands of two major firms. One media group, News, controlled most news magazines in 2001 and had established close links with two bodies that control the media. This may pose a risk to plurality of the media. In 2001, Jörg Haider brought legal actions against journalists, newspapers and periodicals for defamation. In three of the actions, Haider lost the case, and in one, the complaint was withdrawn.

In France, a number of courts have handed down judgments that are damaging to freedom of investigation and the disclosure of information by journalists. These judgments protect the confidentiality of information by which certain professional groups, such as lawyers and police officers, are bound. The judgments conflict with earlier judgments by the ECHR: the protection of journalistic freedom and the role of journalists as a public watchdog is important in a democratic society. RSF has called on France to change the law so that the right of journalists not to disclose their sources is better protected.

In Germany, the same problem arose in 2001 concerning the disclosure or not by journalists of information subject to an obligation of professional secrecy. Despite invoking Article 5 of the German Basic Law on freedom of the press, three journalists were fined a sum of EUR 3068 each.

In Italy, the media is controlled by a democratically elected government, but principally by Prime Minister Berlusconi, who himself owns three different commercial TV channels. Berlusconi is also indirectly interfering with the journalistic content of the state broadcaster RAI. The issue here is an entangling of interests to a degree inappropriate in a democracy. The Organisation for Security and Cooperation in Europe's Representative on the free press expressed concern about this entanglement of interests in 2001.⁴

During the election campaign in Italy in May 2001, some political parties were put at a serious disadvantage with regard to their access to the audiovisual media, and their proposals and topics were kept out of the political debate. The Italian President and government leader

¹ In 2002 (reference date 30 June) the Protocol was ratified by: France.

² *Association Ekin v F*, judgment of 17.07.01, No 39288/98, *Jerusalem v A*, judgment of 27.02.01, No 26958/95, *Thoma v L*, judgment of 29.03.01, No 38432/97 and *Perna v I*, judgment of 25.07.01, No 48898/99.

³ See: <http://www.rsf.org>.

⁴ *Freedom and responsibility yearbook 2001/2002*, inter alia p. 14, 21 and 197, see: http://www.osce.org/fom/documents/books/files/yb2001_2002.pdf.

denounced this practice and consequently urged changes to TV agendas and programmes. The Italian Telecommunications Authority acknowledged this failure to achieve editorial balance with regard to public and commercial TV stations (Decision 246/01/CSP of 13 March 2001), and criminal proceedings are under way alleging a breach of civil and political rights.

In addition, for the first time since the founding of the Republic, Italy has gone to the polls in order to confirm the amendment to the Constitution of 7 October 2001. Italian law requires TV stations to provide citizens with information on the topics in question, but such information is not actually supplied. An action - already declared admissible - has been brought before the ECHR alleging an infringement of Article 10.

In Spain, ETA has been waging a terror campaign against the media, particularly in the Basque region. In May 2001, one journalist was killed and another seriously injured (after *Euskal Herritarrok* - ETA's political wing - lost seven seats in the Basque Parliament). ETA and a related organisation have carried out other attacks or attempted attacks, once with fatal consequences and on other occasions causing serious injury or material damage.

In the United Kingdom, after 11 September, the Government called on the media to refrain from reporting on military preparations for operations in Afghanistan. It invoked reasons of national security and the need to prevent national panic. Subsequently, Prime Minister Tony Blair's spokesman appealed to the media in November to 'make a distinction between good and evil' by not putting the 'Taliban's lies' on the same level as statements by the coalition when reporting on the war in Afghanistan. This suggests a possible restriction of freedom of press.

Article 18: Right of asylum

The *United Nations High Commissioner for Refugees* (UNHCR) has reported an increase in the number of Member States that want to make access to their territory and the asylum procedure more difficult, particularly in the case of asylum seekers without identity documents.¹ Various countries have introduced measures, such as fining transport companies carrying passengers without identity documents (a matter regulated at EU level, a proposal rejected by the EP on 13 March 2001²), the deployment of government officials at airports to prevent potential refugees without identity papers from boarding aircraft bound for the EU or changes in visa requirements for nationals of non-member countries. The Council of Europe Commissioner for Human Rights has also noted in a recommendation³ that problems arise in access to the territories of Council of Europe member countries. The Commissioner makes a number of recommendations so as to render the situation at borders more human and so that persons crossing the border are not regarded as criminals or guilty of fraud.

¹ UNHCR contribution, *Respect for the right to asylum in the EU in 2001*, to the EP hearing on fundamental rights, held on 17 April 2002 in Brussels.

² Kirkhope report, A5-0069/2001. For comments on the proposal by ECRE and AI, see also: http://www.ecre.org/eu_developments/traffick.shtml.

³ CommDH/Rec (2001) 1 on 'The rights of aliens wishing to enter a CoE member state and the enforcement of expulsion orders', 19 September 2001. See: [http://www.commissioner.coe.int/docs/CommDH-Rec\(2001\)1_E.htm](http://www.commissioner.coe.int/docs/CommDH-Rec(2001)1_E.htm).

Amnesty International also reports cases in which access to the asylum procedure has been denied in Greece. This applies to immigrants and asylum seekers without identity papers who were forced to leave the country without being allowed to submit a request for asylum.¹

In France, the *Conseil d'Etat* ruled, in a judgment of 12 January 2001, that entry to France may not be refused solely on the grounds that a foreigner is arriving without documents and a visa.² In many cases in the past, asylum seekers were unable to register with the authorities responsible because they had no valid passport and were regarded as illegal immigrants. The UNHCR office in Paris issued a statement on 13 March 2001 confirming and condemning this practice, as did the NGO, *CIMADE*, following a visit to Roissy Airport in August 2001 where it found that it was still difficult to obtain assistance in order to request asylum.³

In a statement on 23 October 2001⁴, the UNHCR expressed its concern at the impact of the 11 September attacks in the United States and the fight against terrorism on the asylum procedure. In particular, the UNHCR is concerned at the growing trend of linking asylum seekers and refugees with crime and terrorism, which increases racism and xenophobia. Furthermore, there is a fear of an increase in legislation obstructing access to the asylum procedure or simply dismissing asylum claims at the border on the basis of an individual's religion, race, nationality or particular political persuasion. The UNHCR also fears that the non-application clauses of the Refugee Convention will be invoked automatically or without justification, based on the assumption that a person is a terrorist for the reasons outlined above. The UNHCR draws attention to the fact that any discussion of terrorism and security measures must be based on the assumption that refugees have fled their own country because of persecution and violence, including terrorism, and that they are not the perpetrators of such acts. HRW has expressed similar concern⁵ about statements made by EU governments equating the fight against terrorism with tackling illegal immigration and do not discount the possibility that proposed anti-terrorism measures may jeopardise access to the asylum procedure. It must be emphasised that, notwithstanding the fight against terrorism, all the Member States must ensure that they comply with their obligations vis-à-vis asylum seekers, refugees and immigrants under international conventions.

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

In an action against the United Kingdom⁶, the ECHR ruled that expulsion to Tanzania was a violation of Article 3 of the European Human Rights Convention.

Amnesty International has taken up two cases in which the principle of non-refoulement may have been violated: the first concerns two Egyptian asylum seekers in Sweden who had to leave the country after an unfair asylum procedure (in connection with the use of secret

¹ Amnesty International, *Concerns 2002*, p. 111.

² *Migration News Sheet*, February 2001, p. 13.

³ *Migration News Sheet*, April 2001, p. 14, and *Migration News Sheet*, September 2001, p. 14.

⁴ http://www.unhcr.ch/cgi-bin/taxis/vtx/home/+GwwBmeFE1X_wwwrwwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFq0E5Oc1MaBnGGdGo5MaqdDqnGD5a+XXWDzmxwwwwww1FqnN0bI/.opendoc.htm.

⁵ See HRW statement, November 2001, <http://www.hrw.org/press/2001/11/eusecurity-memo.htm>.

⁶ *Hilal v UK*, judgment of 06.03.01, No 45276/99.

evidence by the Swedish Security Service).¹ The *Ethiopian Political Prisoners Joint Committee* reports a possible violation of this principle in the case of an Egyptian asylum seeker in Belgium, who was given no opportunity to submit a request for asylum.²

Collective expulsion is prohibited by paragraph 1 of Article 19 of the Charter. According to the ECHR, collective expulsion means any measure whereby a group of aliens is forced to leave the country. However, expulsion is permissible when the measure is taken on the basis of a proper and objective assessment of each individual case in the group. On 13 March 2001, the ECHR allowed a complaint against the collective expulsion of 74 Slovakian Roma from Belgium in November 1999.³ The Court handed down its judgment in this case on 5 February 2002 and found against Belgium for violation of Article 4 of Protocol No 4 to the EHRC. One of the complaints in this case was the use of deception in apprehending the Roma. In Sweden, deception was used successfully in February 2001 to arrest, and later deport, an asylum seeker whose application had been rejected.⁴

In February 2001, the Ombudsman in Greece publicly condemned the practice of collective expulsion of migrants by Greece as illegal.⁵

CHAPTER III: EQUALITY

ARTICLE 20 EQUALITY BEFORE THE LAW

ARTICLE 21 NON-DISCRIMINATION

CoE Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

This Protocol was signed on 4 November 2000 and has not yet entered into force. The Protocol has not yet been signed by DK, ESP, F, SV and UK, and none of the 15 Member State has ratified it.

ILO Convention 111 on discrimination in employment and occupation

This Convention was signed on 25 June 1958 and entered into force on 15 June 1960. In 2001, Luxembourg was the final Member State to ratify the Convention.

Existing European legislation on equal treatment relating to the various grounds on which discrimination is prohibited by Article 21 of the Charter differs in both the level of protection and its scope. The Directive on racial discrimination has the widest scope in that it offers protection against discrimination in employment and occupation as well as in social security, education and access to goods and services. Other directives are restricted to protection in employment and occupation. This creates the impression that the EU has a pecking order of types of discrimination and that one form of unequal treatment is regarded as more serious than another. The principle of equality and protection against discrimination is a fundamental human right that lies at the core of the EU. The drawing up of these different instruments has

¹ Amnesty International, *Concerns 2002*, p. 234.

² *Migration News Sheet*, March 2001, p. 13.

³ *Conka v B*, judgment of 13.03.01, No 51564/99.

⁴ *Migration News Sheet*, June 2001, p. 18.

⁵ HRW, *World report 2002*, p. 318

created a somewhat confused and overlapping set of regulations. This has a negative impact on the quality of law-making and does not enhance transparency for citizens.

In 2001/2002, a number of gaps were still evident in measures to combat discrimination. This applies in particular to discrimination outside the workplace, other than racial discrimination, where proposals are awaited with impatience. The Commission should therefore present as soon as possible the long-awaited proposal for a directive prohibiting discrimination on grounds of gender outside the labour market. Legislation is also required to tackle discrimination outside employment and occupation on the grounds of religion or belief, disability, age, sexual orientation and so on. Unfortunately, we have yet to see any European determination to enact such legislation.

Furthermore, the Commission and Council should think about devising a strategy which will bring protection against all possible forms of discrimination up to the same level in all spheres, taking the Directive on racial discrimination as the standard because of the high level of protection that it affords.

Racial discrimination and xenophobia

All the available sources report an increase in the incidence of racial discrimination and xenophobia in Europe in 2001, primarily in reaction to the 11 September attacks in the United States. The reported increase in anti-Islamic reactions and incidents cannot, in your rapporteur's view, be seen in isolation from a structural undercurrent of spreading racism in Europe. In its first annual report (published in November 2001 but covering the year 2000), the European Monitoring Centre on Racism and Xenophobia (EUMC)¹ reported an increase in complaints of discrimination from members of ethnic minority groups, particularly on the labour market, and an increase in racially motivated violence. It pointed out that, in some countries (Belgium, Greece, Ireland and Portugal), racial motives are not recorded in crime statistics, while in other countries (Germany, Spain and Italy), police statistics provide much lower figures than those produced by NGOs. The comparability of such data and the validity of the measurements leave room for improvement, as the EUMC itself points out.

In 2001, the UN Committee for the Elimination of Racial Discrimination (CERD) published its conclusions on the basis of reports from 8 EU countries: Germany, Finland, Greece, Italy, the Netherlands, Portugal, Sweden and the United Kingdom², all of which related to reporting periods of different lengths.

The report drew attention to the disproportionately high unemployment rate among ethnic minorities and inadequate protection against discrimination on the labour market and access to public services, *de facto* segregation in housing and education, racist propaganda, including through music and the Internet (Germany, Sweden), racist threats and attacks (Germany, the

¹ *Diversity and Equality for Europe*. Annual report 2000. Vienna (EUMC), November 2001. See also: <http://eumc.eu.int/publications/index.htm>.

² <http://www.unhchr.ch/tbs/doc.nsf> (CERD, concluding observations).

United Kingdom¹), and 'institutional racism', for instance in the police (idem).² The report also refers to discrimination against the Roma in employment, education and housing (Finland, Greece, Italy and Sweden) and against the Sami as regards land rights³ and the right to the official use of their own language (Finland, Sweden).⁴

The *European Roma Rights Centre* in Budapest has compiled extensive information on discrimination against the Roma in housing policy in Italy: the practice of segregation in isolated camps is widespread, as is discrimination in access to education and other public services, and there is evidence of frequent police brutality.⁵ HRW also reports discrimination against the Roma in Greece. In a report dated January 2001, the Greek Ombudsman condemned the expulsion of Roma and the destruction of houses in a district of Athens in July 2000 as a breach of Greek law. In September 2001, however, the authorities ordered a further six houses in the same district belonging to Roma to be destroyed.⁶ Only after intervention by the Ombudsman and the *Greek Helsinki Monitor* was this action stopped. A positive development is that, in May 2001, the Greek Government adopted an action plan to combat discrimination against Roma in healthcare, education and housing. Unfortunately, Roma children from the Aghia Sofia community are still facing opposition to their attending schools. In 2001, this community also experienced problems in obtaining electricity. In August 2001, four homes in a Roma community in Patras were destroyed.⁷ A complaint about this has been submitted to the Greek Ombudsman.

In France, the FIDH⁸ reports problems on caravan sites for Roma and other travelling communities. There are not enough caravan sites available, and those that are available are not always equally accessible. If these groups stop somewhere illegally, they are moved on, although, in theory, this is allowed only where it is absolutely essential. Since July 2000, there has been a law in France requiring municipalities with more than 5000 inhabitants to establish caravan sites, but this law is not generally applied.

In 2001, the Council of Europe's *European Commission against Racism and Intolerance* (ECRI) published its findings from on-the-spot investigations in Austria, Germany, Denmark, Ireland and the Netherlands that took place in 2000.⁹ Incidents of racism and xenophobia are

¹ The UN Human Rights Committee also expresses concern at the rise in racially aggravated violence and harassment in the United Kingdom and harassment and intimidation on the basis of religious affiliation. See doc. CCPR/CO/73/UK;CCPR/CO/73/UKOT, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2153823041947eaec1256afb00323ee7?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2153823041947eaec1256afb00323ee7?Opendocument) §§ 11 and 14.

² Misconduct resulting in death in police custody, particularly of members of ethnic minorities are discussed in Chapter 1 of this report.

³ The Committee on Economic, Social and Cultural Rights also makes this point in its concluding observations on Sweden.

⁴ The CoE Commissioner for human rights draws a similar conclusion following a visit to Finland. See Comm DH(2001)7.

⁵ Letter of 29 June 2001 from the European Roma Rights Center to the CERD Committee. See also publications referred to in <http://errc.org>.

⁶ See also OMCT Appeal, *Greece: Destruction of Roma homes in Aspropyrgos*, 20/9/2001 <http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=1115&Language=EN>.

⁷ OMCT Appeal, *Greece: Destruction of Roma homes in Aspropyrgos*, 20/9/2001, <http://www.omct.org/displaydocument.asp?DocType=Appeal&Index=1070&Language=EN>.

⁸ FIDH, Report 2000-2001, *Observations on the human rights situation in France*.

⁹ See http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-

still occurring in all these countries. The ECRI draws attention to an inadequate legal framework to combat discrimination in core areas such as the labour market, education and housing (Austria, Germany, Denmark, the Netherlands and the United Kingdom), expresses its concern at the use of racist propaganda (Austria, Denmark) and anti-foreigner rhetoric (the United Kingdom) in politics and about racist treatment by police officers (Austria, the United Kingdom). It also points to the negative portrayal of foreigners and ethnic minorities in the media.

In its annual report for 2001¹, the ECRI also makes the more general point that racial discrimination is persistent in Europe in terms of inadequate legislation and unsatisfactory enforcement of the existing provisions. Xenophobic attitudes among the general public provide a fertile breeding ground for spreading the view that some cultures are superior to others. The degree of incitement to racial hatred is a source of concern; after 11 September in particular, many countries experienced a sharp rise in hostility to and attacks on Muslim communities. The ECRI is concerned at the degree to which xenophobia is accepted by some political parties. It also noted an increase in violence against Jews and a rise in the spread of anti-Semitic propaganda², along with an increase in racist acts and discrimination against asylum seekers, refugees and immigrants.

The EUMC has conducted various surveys among the *national focal points* of its RAXEN network to gauge the extent of anti-Islamic reactions after 11 September. This series of reports has been summarised in a publication that appeared in May 2002.³ So as not dilute the force of this material, I am quoting the findings in the summary of this comprehensive report verbatim. For further details the reader is referred to the original. The authors concluded as follows:

' In general (...)

- acts of violence/aggression:

relatively low levels of physical violence were identified in most countries, although verbal abuse, harassment and aggression was much more widespread. Muslims, especially Muslim women, asylum seekers and others, including those who 'look' of Muslim or Arab descent were at times targeted for aggression. Mosques and Islamic cultural centres were also widely targeted for damage and retaliatory acts.

- measures of anti-Islamic actions and reactions:

the picture remained mixed, where in a number of countries latent and/or pre-existent Islamophobia was seen to find expression in the mentioned acts of violence/aggression. This was reflected in the increase of activity by far-right and neo-Nazi groups. Other forms of nationally determined ethnic xenophobia were also given a greater impetus. A renewed interest in Islamic culture was identified, although this did not necessarily equate to an increased acceptance.

- good practice to reduce prejudice:

numerous inter-faith initiatives, especially between the Abrahamic traditions were undertaken as were similar initiatives emanating from Muslim communities themselves. Academic institutions and other organisations aided the situation with events, debates, seminars and meetings to discuss relevant issues. A number of campaigns for intercultural tolerance and awareness were launched.

[country_approach/default.asp#TopOfPage](#) .

¹ See Annual Report on ECRI's activities covering the period from 1 January 2001 to 31 December 2001, http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/1-Presentation_of_ECRI/4-Annual_Report_2001/Annual_report_2001.asp#TopOfPage .

² See also paragraph on anti-Semitism in this Chapter.

³ Christopher Allen and Jorgen S. Nielsen, *Summary Report on Islamophobia in the EU after 11 September 2001*, Vienna (EUMC), May 2002. See also: <http://eumc.eu.int/publications/terror-report/index.htm> .

- reaction by politicians and other opinion leaders:

the role of national politicians, both governing and in opposition was considered where the vast majority offered conciliation and solidarity with Muslim communities. Some however chose to remain silent whilst a few made unfortunate and somewhat unnecessary statements. Some NFPs noted that political capital was made where immigration and 11 September became entwined. Increased attention by the media was identified by the NFPs as being both positive and negative, largely depending upon the respective country. Instances of sensationalism and stereotypical representations of Muslims were noted'.¹

The spread of racism and xenophobia via the Internet and in football stadiums is a particular problem in the EU. There are more and more Internet sites that incite racial hatred, the *Simon Wiesenthal Center* puts the figure at around 3300 websites.² In and around football stadiums, there has been an increase in groups expressing neo-Nazi and extreme right-wing views, ranging from shouting slogans to carrying banners with swastikas. The EUMC has analysed this problem in a report on 'Racism, Football and the Internet'.³

Anti-Semitism

It is probably true to say that the escalation in the conflict between Israel and the Palestinians since spring 2000 (the second Intifada) has been reflected throughout Europe in a sharp rise in the number of anti-Semitic acts of violence, threats and incidents. We were unable to secure comparable figures for the various countries for 2001. However, material is available for France from the annual report of the National Advisory Committee for Human Rights⁴ and for the Netherlands from the annual report of the CIDI.⁵ In the first instance, there were acts of violence and physical threats against Jewish bodies and against individuals. In the Netherlands, it was more a question of verbal abuse (slanging matches, groups chanting at football matches) and minor violent incidents, such as vandalism. However, the reports warn against becoming inured to commonplace anti-Semitism and calls for the police and judicial authorities to take the problem more seriously.

Article 22: Cultural, religious and linguistic diversity

CoE Framework Convention on the protection of national minorities

This Convention was signed on 1 February 1995 and entered into force on 1 February 1998. The Convention has been signed by most countries. Belgium signed the Convention in 2001, and only France has yet to do so. B, F, GR, L, NL and P have not yet ratified the Convention.⁶

CoE European Charter for regional and minority languages

This Charter was signed on 5 November 1992 and entered into force on 1 March 1998. The Charter has been signed by most of the Member States, and only B, GR, IRL and P have not done so. A, ESP and UK ratified the Charter in 2001. B, F, GR, IRL, L and P have still to do so.

¹ Summary report, op. cit., p. 7.

² http://www.wiesenthal.com/social/press/pr_item.cfm?itemID=6089 .

³ <http://www.eumc.at/publications/football/index.htm> .

⁴ <http://www.commission-droits-homme.fr/LiensFr/PlanSite.html> .

⁵ <http://www.cidi.nl/html/antisem/asr-nl-06.frameset.html> . Israel Information and Documentation Centre; Hadassa Hirschfeld, *Review of anti-Semitic incidents in the Netherlands 2001 and provisional review for 2002*.

⁶ In 2002 (reference date 30 June) the convention was ratified by Portugal.

ILO Convention 169 on indigenous and tribal peoples

This Convention was adopted on 27 June 1989 in the ILO General Assembly and entered into force on 5 September 1991. Of the EU Member States, only DK and NL have ratified it.

France is the only EU Member State not to have signed the Framework convention on the protection of national minorities. The traditional view of the French authorities is that it is prohibited from doing so because all citizens are equal before the law. The UN monitoring committee for the UN Convention on Economic, Social and Cultural Rights (CESCR) has pointed out that equal treatment before the law is not always sufficient to ensure that minority groups may assert their social and cultural rights. The CESCR believes that France should ratify the CoE conventions to protect national minorities and minority languages. In the Netherlands, the procedure to ratify the Framework convention came to a standstill when it emerged that the First and Second Chambers had different views as to whether, as the Government believed, the Convention applied to ethnic minorities belonging to target groups of Netherlands integration policy as well as to the Frisians.¹ The scope of the Convention is also under discussion in other Member States.

In 2001, the CoE Committee of Ministers published for the first time resolutions on compliance with the Framework convention in Denmark and Finland, as provided for in the relevant monitoring arrangements.² When the Framework convention was ratified, Denmark stated that it would apply to the German minority in South Jutland, thereby precluding Greenlanders, natives of the Faroe Islands and the Roma from claiming the rights provided by the Framework convention. The *Advisory Committee* had already strongly criticised this approach³, and this criticism was echoed by the CoE Committee of Ministers who recommended that Denmark should look again, in consultation with those concerned, at the groups to which the Framework convention is applied.⁴

In the case of Finland, the CoE Committee of Ministers concluded that a great deal is being done for the Swedish-speaking Finns and Sami – although the question of land rights has still not been resolved satisfactorily. On the other hand, Finnish policy towards the Roma and Russian minority is much less successful, and more support should be given to the language and culture of these two minorities. It is remarkable that, according to the Government of Finland, 'Old Russians' are protected by the Convention, but other Russians, in particular recent immigrants, are not, a situation that has also been questioned by the CoE Commissioner for Human Rights.⁵

¹ Source: Netherlands Second Chamber, 2001-2002 term, Annex 1058 (Questions by Middelkoop of 7 March 2002).

² See

http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/Monitoring%20by%20the%20CM/Decisions/771st_meeting.htm .

³ doc. ACFC/INF/OP/1(2001)5 of 22 September 2000, see also:

<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Denmark.htm> .

⁴ Judgment of the CoE Commissioner on the privileged position of the Lutheran church in DK is discussed in Chapter 2 of this report.

⁵ Report on his visit to Finland, June 2001, CommDH(2001)7; see also [http://www.commissioner.coe.int/docs/CommDH\(2001\)7_E.pdf](http://www.commissioner.coe.int/docs/CommDH(2001)7_E.pdf) .

In its conclusions on Finland and Sweden, the CERD says that the conflict between the authorities and the Sami population over land rights is a threat to traditional Sami culture. The CERD calls on Finland and Sweden to ratify ILO Convention 169 on indigenous and tribal peoples.¹ The CoE Commissioner for Human Rights reiterated this call following his visit to Finland.²

Article 23: Equality of men and women

UN Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

This Optional Protocol was signed on 6 October 1999. All the Member States have signed the Protocol, and Spain ratified it in 2001. B, D, GR, L, NL, P, SV and UK still have to do so.³

No comprehensive and generally recognised review is available that provides a clear picture of the situation regarding equal treatment of men and women in the Member States of the EU. The available figures, broken down by gender, on part-time work, distribution of income, independent entrepreneurship, political participation and so on⁴ may be taken as indicators of the degree of equality. However, not every inequality is, by definition, an actual human rights violation. These figures are more a reflection of progress in social emancipation which, as it were, forms the background to human rights issues.

The European Commission is responsible for the enforcement of the rules on equal treatment laid down in various European directives. The *Legal experts group on the application of European law on equal treatment between men and women* which works under the auspices of the Commission, reports on the situation in the Member States⁵ and provides extremely detailed, disparate and wide-ranging information. In your rapporteur's view, it is beyond the scope of this report on 2001 to analyse all these facts.

In the past, Parliament has drawn attention to the large number of violations of Community rules on equal treatment⁶; in other words, it is obvious that there is a problem in the Member States. What is absolutely essential is an up-to-date and comprehensive review of the situation as regards equal treatment of men and women in the Member States, as called for by Parliament on numerous occasions.⁷

It is clear from the above that there is a lack of adequate and clear information on violations of the principle of equal treatment of men and women. Nonetheless, your rapporteur has done her best to compile some specific data, in the expectation that the Committee on Women's Rights and Equal Opportunities will supplement this when drawing up its opinion.

¹ docs. CERD/C/304/Add. 103 and Add.107, of 1 May 2001. See also <http://www.unhchr.ch/tbs/doc.nsf>.

² [http://www.commissioner.coe.int/docs/CommDH\(2001\)7_E.pdf](http://www.commissioner.coe.int/docs/CommDH(2001)7_E.pdf).

³ In 2002 (reference date 30 June) the Protocol was ratified by D, GR, NL and P.

⁴ For example, compiled by the European Commission. See:

http://www.europa.eu.int/comm/employment_social/equ_opp/statistics_en.html.

⁵ See Bulletin of the group : http://europa.eu.int/comm/employment_social/equ_opp/rights_en.html.

⁶ Resolution A5-0250/2001 on the Commission's seventeenth annual report on monitoring the application of Community law (1999), §15.

⁷ Most recently in Resolution A5-0197/2002, §5, on implementation of the programme on equal opportunities for men and women adopted on 4 July 2002.

In 2001, the European Court of Justice handed down a number of judgments on the interpretation of the principle of equal treatment of men and women. The difficulties highlighted related to indicators for assessing whether there is equal pay for equal work (Austria), dismissal in the event of pregnancy (Denmark, Spain) and pension rules (Germany, France).

In a judgment of 26 June 2001¹ the Court concluded that the fact that two workers of different sexes are classified in the same job category under the collective agreement governing their employment is not in itself sufficient for concluding that the two employees concerned are performing the same work or work of equal value, since this fact is only one indication amongst others that this criterion is met. In the case of work paid at time rates, a difference in pay awarded, at the time of their appointment, to two employees of different sex for the same job or work of equal value cannot be justified by factors which become known only after the employees concerned take up their duties and which can be assessed only once the employment contract is being performed.

On the question of pregnancy, the Court ruled in a judgment of 4 October 2001² that a worker may not be dismissed on the ground of pregnancy, even where she was recruited for a fixed period, she failed to inform the employer that she was pregnant even though she was aware of this when the contract of employment was concluded and because of her pregnancy she was unable to work during a substantial part of the term of that contract. Such a dismissal is a breach of Article 5(1) of Council Directive 76/207/EEC and Article 10 of Council Directive 92/85/EEC. In another judgment of 4 October³ the Court held that where *non-renewal of a fixed-term contract* is motivated by the worker's state of pregnancy, it constitutes direct discrimination on grounds of sex, contrary to Article 2(1) and 3(1) of Council Directive 76/207/EEC.

In a judgment of 9 October⁴ the Court ruled that German pension funds entrusted with providing benefits under an occupational pension scheme are, like employers, required to ensure equal treatment between men and women, laid down in Article 141 of the EC Treaty and neither the legal independence that they enjoy nor indeed their status as insuring bodies are of any importance in that respect.

The Court also handed down two judgments⁵ on French pensions rules for civil servants. The Court ruled that Pensions provided under the French Civil and Military Retirement Pensions Code fall within the scope of Article 119 of the EC Treaty (now Article 141 TEC). Certain provisions such as Article L. 12(b) and Article L.24-I-3.(b) infringe the principle of equal pay inasmuch as they deprive male civil servants of certain advantages to which female civil servants in the same situation would be entitled, such as a credit for male civil servants who assume the task of bringing up their children and entitlement to a retirement pension with immediate effect if their partners suffer from a disability or incurable illness.

In its conclusions on Finland⁶, the Netherlands⁷ and Sweden⁸ published in 2001, the *UN Committee on the Elimination of Discrimination against Women* (CEDAW) reports

¹ C-381/99, *Susanna Brunnhofer v. Bank der österreichischen Postsparkasse AG*.

² C-109/00, *Tele Danmark A/S v. Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*.

³ C-438/99, *Melgar v. Ayuntamiento de Los Barrios*.

⁴ C-379/99, *Pensionskasse für die Angestellten der Barmer Ersatzkasse VVaG v. Menauer*.

⁵ C-366/99, *Griesmar v. Ministre de l'Économie, des Finances et de l'Industrie & Ministre de la Fonction publique, de la Réforme de l'État et de la Décentralisation*, 29 November 2001, and C-206/00, *Mouflin v. Recteur de l'académie de Reims*, 13 December 2001.

⁶ See doc A.56.38, paras.279-311, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.38.paras.279-311.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.38.paras.279-311.En?OpenDocument).

⁷ See doc. A.56.38, paras.185-231, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.38.paras.185-231.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.38.paras.185-231.En?Opendocument).

⁸ See doc. A.56.38, paras.319-360, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.38.paras.319-360.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.38.paras.319-360.En?Opendocument).

continuing discrimination in employment and expresses concern with the 'horizontal' and 'vertical' gender segregation of the labour market. Equal opportunities are far from being a reality in high-ranking posts. Violence against women, trafficking in women and forced prostitution, as well as the double discrimination against women immigrants and refugees, are a cause for concern.

The Committee notes with concern that, in the Netherlands, there is a political party represented in the Parliament that excludes women from membership, which is a violation of Article 7 of the Convention to which the Netherlands is committed. This is the Staatkundig Gereformeerde Partij. The Government of the Netherlands has since let it be known that it will respond to the Committee's call to rectify the situation, given that a number of fundamental rights are at stake.¹ The Committee also recommends that the Government review the Law on Names and amend it where it contravenes the principle of equality and the provisions of the Convention.

The CESCR draws attention to the fact that, in France, the minimum age for marriage is 15 years for girls and recommends that it be made the same as for boys (18 years).²

*Discrimination on grounds of sexual orientation*³

There is no recent review of the situation of homosexual men and lesbians in the Member States which provides a measure of the current situation or shows any increase or reduction in discrimination on grounds of sexual orientation; the ILGA-report⁴ sponsored by the Commission dates from a few years ago (1998).

Austria, Portugal and Ireland still have provisions in their criminal law that discriminate on the basis of sexual orientation or conduct. These are the *age of consent* provisions which establish a minimum age limit below which sexual intercourse is a criminal offence.⁵ These provisions establish a higher age limit for sexual relations between partners of the same sex. The European Commission on Human Rights has declared that provisions of this kind contravene the EHRC,⁶ and the European Parliament has called on Austria to abolish these provisions on several occasions.⁷ In Portugal and Ireland, these provisions have become a dead letter in recent years, but in Austria, over the last few years, there have been between 20 and 40 convictions a year under this article, the statutory minimum prison sentence being

¹ A ban on a political party would indeed be a very far-reaching measure; however changes to the law to exclude political parties that practise discrimination from government subsidies and, via the courts, excluding such parties from taking part in elections might be appropriate.

² See doc. E/C.12/1/Add.72,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/725fbbe3c6279e52c1256b18003cbe50?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/725fbbe3c6279e52c1256b18003cbe50?Opendocument) § 16.

³ Only applies to the Dutch version

⁴ *Equality for Lesbians and Gay Men; a relevant issue in the civil and social dialogue*. Brussels (ILGA), June 1998.

⁵ See http://www.ilga.org/Information/legal_survey/europe/world_legal_survey_europe.htm.

⁶ *Sutherland v UK*, No. 25186/94, 1 July 1997, European Commission on Human Rights.

⁷ Res. A5-0223/2001, adopted 5 July 2001, para. 80 and 83; Res. A5-0050/2000, adopted 16 March 2000, para. 59 and 60; Res. A4-0468/98, adopted 17 December 1998, para. 53; Res. B4-0824 and 0852/98, adopted 17 September 1998; Res. A4-0034/98, adopted 17 February 1998, para 69; Res. A4-0112/97, adopted 8 April 1997, para. 136 and 140; Res. A4-0223/96, adopted 17 September 1996, para. 84; Res. A3-0028/94, adopted 8 February 1994, para. 6.

six months. In February 2001, Amnesty International adopted a man arrested under this article as a prisoner of conscience¹ – the first person recognised as a political prisoner in Austria for decades. In June 2002, the Austrian Constitutional Court declared this provision to be unconstitutional. On 13 August 2002, Austria deleted Article 209 from its Penal Code.²

Forms of partnership

Over the past 20 years, the number of couples in the EU living together without being married has increased dramatically. In 2000, 33% of young people (under the age of 30) and 8% of all couples in the EU were living together without being married, and 27% of births took place outside marriage.³ The number of people of the same sex living together, whether in registered partnerships or not, has also increased or become more visible. At the end of 2000, more than 30 000 Europeans were living in a registered partnership.⁴

A number of EU Member States recognise forms of cohabitation outside marriage and, to a greater or lesser extent, grant them the same rights as apply to marriage. In 2001, Germany, Finland and Portugal adopted legislation recognising unmarried partnerships⁵, thereby bringing the number of EU Member States in which this is possible to seven (Germany, Denmark, France, Finland, the Netherlands, Portugal, Sweden). In 2001, the Netherlands opened up marriage to same-sex couples.⁶

The question whether differing national regulations on unmarried partnerships and the opening up marriage in the Netherlands will be recognised in other EU Member States is uncertain or not yet resolved. In view of the growing economic and cultural interaction in the EU, this must be seen as an obstacle to the right to freedom of movement, one of the pillars of the internal market that the Union has a duty to safeguard. Similar problems arise in the case of transnational recognition of partnerships involving nationals of non-member countries legally resident in the EU. There are a number of Commission legislative proposals⁷ involving family relations which refer to unmarried partners. In two cases, the Commission has opted for an approach under which family members (whether third-country nationals or not) may be taken to include partners in those Member States whose national legislation puts unmarried partnerships on the same footing as married couples. In the other proposal on family unification, the Member State has to take a number of factors into account in order to assess whether or not there is a lasting non-married relationship. These other factors include having a child together, living together in the past or registration of the partnership. The doctrine of mutual recognition would, however, suggest a more far-reaching solution under which an unmarried partnership registered in one EU Member State would automatically be recognised in all other EU Member States, as is the case for driving licences, qualifications and a whole range of other technical provisions.

¹ Amnesty International, *Concerns 2002*, p. XXX.

² See: <http://www.ilga-europe.org/> under: *archives, media releases, 24 June*.

³ *The Social Situation in the European Union*, Eurostat/European Commission, 2002, p. 61.

⁴ Kees Waaldijk in R. Wintemute, *Legal Recognition of Same-Sex Partnerships: A study of National, European and International Law*, Oxford 2001, p. 464.

⁵ For couples of the same sex only or for both same-sex couples and couples of different sexes.

⁶ A similar proposal is being discussed by the parliament in Belgium. See :

http://minsoc.fgov.be/old/press_releases/nl/aelvoet/2001/2001_04_01_huwelijkhomos.htm .-

⁷ COM (2000) 624, OJ C 062, 27.02.2001, a new proposals has since been presented, nl. COM (2002) 225, not yet published in the OJ; COM (2001) 127, OJ C 240, 28.08.2001 and COM (2001) 257, OJ C 270, 25.07.2001.

Article 24: Rights of the Child

CoE Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms

This Protocol was signed on 22 November 1984 and entered into force on 1 November 1988. The Protocol still has to be signed by B and UK. In 2001 Ireland ratified the Protocol. B, D, ESP, NL, P and UK still have to do so.

CoE European Convention on the adoption of children

This Convention was signed on 24 April 1967 and entered into force on 26 April 1968. B, ESP, FIN and NL still have to sign the Convention, and B, D, ESP, F, FIN, I and NL have yet to ratify it.

CoE European Convention on the legal status of children born out of wedlock

This Convention was signed on 15 October 1975 and entered into force on 11 August 1978. The Convention has still not been signed by B, D, ESP, FIN and NL, and B, D, ESP, F, FIN, I and NL have yet to ratify it.

CoE European Convention on the exercise of children's rights

This Convention was signed on 25 January 1996 and entered into force on 1 July 2000. The Convention has not yet been signed by B, DK, NL, UK and still has to be ratified by A, B, D, DK, ESP, F, FIN, I, IRL, L, NL, P, SV and UK.¹

In a judgment of 10 May 2001², the ECHR ruled that the protection of children fell within the scope of Article 3 of the EHRC. Member States were bound to ensure that individuals within their jurisdiction were not subjected to inhuman or degrading treatment, including such ill-treatment administered by private individuals.

Children's rights to protection and the necessary care often come under pressure in the case of children growing up in poverty and social deprivation, with negative effects on health, social participation and performance at school.³ The ill-treatment and sexual abuse of children is still a widespread problem. The UN Committee on the Rights of the Child (CRC) has drawn attention to discrimination against children from minority groups and poor families, among other things in education, in Denmark⁴ and Portugal⁵. The CRC draws attention to the fact that some families still administer corporal punishment and calls for legislation to ban such punishment. In Portugal, the procedure for the review of decisions on children and alternative care outside the family is inadequate. This procedure should offer greater possibilities of review and make the paramount considerations the interests of the child and the opinion of the

¹ In 2002 (reference date 30 June) the convention was ratified by: Germany.

² *Z and others v UK*, 10.05.2001, N° 29392/95.

³ Contribution from *Save the Children* to the Hearing on fundamental rights in the EU held on 17 April 2002 in the European Parliament.

⁴ See doc. CRC/C/15/Add.151,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6ab9f1ddc73ed057c1256a760033a14b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6ab9f1ddc73ed057c1256a760033a14b?Opendocument) .

⁵ See doc. CRC/C/15/Add.151,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/88189ee7fb0b5a2ec1256aea002cc448?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/88189ee7fb0b5a2ec1256aea002cc448?Opendocument) .

child itself. The UN Committee remains concerned at the large number of street children in Portugal's large cities.

In relation to street children without identity papers and children in residential centres, there is also a problem in Spain. On many occasions, Spain has tried to expel Moroccan children living in Ceuta and Melilla, with a view to family reunification, but, once in Morocco, no parents could be identified, and the children immediately tried to return to Spain¹.

Amnesty International² reports that, in France, under-age children of asylum seekers are separated from their parents or mothers. In June 2001, there was a case of two children aged three and five who were held at Roissy Airport. In another instance, a 14-year-old Congolese girl was separated from her mother for a period of 10 days and detained in ZAPI 3, with adult men and women. Another case relates to child abuse by the police in Nanterre, where a 16 year-old boy required surgery after ill-treatment by police officers. In contravention of French law, his mother was not immediately informed, even though the boy had requested it. A group of children of different origins have also reported ill-treatment by the police in Paris, in the *Goutte d'Or* district.³

In the summer of 2001, many under-age asylum seekers without parents were excluded from the programme for obtaining legal residence in Greece.⁴ If the children could not prove that they had been living in Greece before June 2000, they were forcibly expelled if they did not leave the country voluntarily.

The Council of Europe Commissioner for Human Rights says, in his report on Finland⁵, that the child protection authorities there are extremely quick to remove children from parental control and place them in institutions. Partly in response to a judgment handed down by the ECHR⁶, he urges the Finnish Government to strike a better balance between the right to family life and the need for government intervention.

In Northern Ireland, children are indirectly caught up in the conflict between Loyalists and Republicans. In September 2001, Loyalists tried to prevent Roman Catholic children and their parents from reaching the *Holy Cross Primary School* when they had to walk through a Protestant area. During the protest, stones and bottles were thrown at the children and their parents, a bomb was exploded near the school, and death threats were also made. Parents and politicians complained that the police had failed to give these children adequate protection.⁷

Article 25: Rights of the elderly

With regard to the rights of the elderly, there are no significant changes to report compared to 2001. Given the lack of specific data in the Member States, or data revealing specific

¹ <http://web.amnesty.org/ai.nsf/Index/EUR410032001?OpenDocument&of=COUNTRIES\SPAIN> , and Amnesty International, *Concerns 2002*, p. 225-226.

² Amnesty International, *Concerns 2002*, p. 102.

³ *idem*.

⁴ HRW, *World Report 2002*, p. 529.

⁵ See doc. COMMDH(200)7, [http://www.commissioner.coe.int/docs/CommDH\(2001\)7_E.pdf](http://www.commissioner.coe.int/docs/CommDH(2001)7_E.pdf).

⁶ *K and T v FIN*, 12.07.2001, N° 25702/94.

⁷ HRW, *World Report 2002*, p. 517-518.

problems in this area, we are making only a number of general points which were raised during a seminar organised by the Council of Europe Commissioner for Human Rights in October 2001 in Switzerland.¹

It is important for older people to be able to maintain their network of personal and social contacts. When elderly people are living in old people's homes or other institutions, they should have adequate room to meet their family and friends without any invasion of their privacy. It is also crucial to organise adequate recreational and cultural activities in order to stimulate the intellectual capacities of older people. Older people themselves should be able to determine how their day is organised, and what time they want meals to be served, what activities take place when and to choose what food is on the menu and when. In the case of health care and welfare, the principle must be self-determination. Healthcare places a huge burden on Member State budgets. However, as far as access to care for older people is concerned, the Member States must never impose rationing on the basis of economic interests and the fact that older people may sometimes only have one or two years to live. The final point that your rapporteur wishes to make is that forcibly placing the elderly in old people's homes or care institutions against their will is a violation of Article 5 of the EHRC, unless a justification can be found on the basis of Article 5(1) of the Convention.

Article 26: Rights of people with a disability

ILO Convention concerning vocational rehabilitation and employment (disabled persons)

This Convention was signed on 20 November 1983 and entered into force on 20 June 1985. In 2001, Luxembourg ratified the Convention; A, B and UK still have to do so.

In the case of the rights of disabled people, we also found that there was a lack of specific data in the Member States or any data highlighting specific problems. The year 2003 has been declared *European Year of Disabled People*, and it is important that the focus should be on: equal treatment in employment and occupation, full participation in the life of the community and better access to the media.

CHAPTER IV: SOLIDARITY

UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

This Convention still has to be signed and ratified by all the Member States.

ILO Maternity Protection Convention

This Convention was signed on 15 June 2000 and entered into force on 7 February 2002. Italy ratified the Convention in 2001, but the other 14 Member States still have to do so.

CoE European Code of Social Security

This Code was signed on 16 April 1964 and entered into force on 17 March 1968. FIN has not yet signed the Code, and A and FIN still have to ratify it.

¹ See doc. CommDH(2001)16, [http://www.commissioner.coe.int/docs/CommDH\(2001\)16_Bil.pdf](http://www.commissioner.coe.int/docs/CommDH(2001)16_Bil.pdf).

CoE Protocol to the European Code of Social Security

This Protocol was signed on 16 April 1964 and entered into force on 17 March 1968.

A, FIN, IRL, ESP and UK have not yet signed the Protocol, and A, DK, FIN, F, GR, IRL, I, ESP and UK still have to ratify it.

CoE European Code of Social Security (Revised)

This revised version of the Code was signed on 6 November 1990 and has still not entered into force. DK, IRL, ESP and UK have not yet signed the revised version. All the Member States still have to ratify the revised Code.

CoE European Convention on Social Security

This Convention was signed on 14 December 1972 and entered into force on 1 March 1977. DK, FIN, D, SV and UK have not yet signed the Convention. The following Member States still have to ratify the Convention: DK, FIN, F, D, GR, IRL, SV and UK.

CoE European Social Charter

The Charter was signed on 18 October 1961 and entered into force on 26 February 1965. All the Member States have signed and ratified the Social Charter.

CoE Protocol 1 (adding new rights)

Protocol 1 was signed on 5 May 1988 and entered into force on 4 September 1992.

IRL, P and UK have still not signed it. A, B, D, F, IRL, L, P and UK still have to ratify Protocol 1.

CoE Protocol 2 (revision of control machinery)

Protocol 2 was signed on 21 October 1981 and has still not entered into force.

D and DK have not yet signed it. Spain ratified Protocol 2 in 2001. D, DK, L and UK still have to do so.

Protocol 3 (system of collective complaints)

Protocol 3 was signed on 9 November 1995 and entered into force on 1 July 1998.

D, ESP, L, NL and UK have still not signed it, and A, B, DK, D, ESP, L, NL and UK still have to ratify it. F, GR, IRL, I, P and SV have ratified the Protocol but have not yet submitted a declaration concerning national NGOs' right of complaint.

CoE Revised European Social Charter

This revised Charter was signed on 3 May 1996 and entered into force on 1 July 1999. D and NL have not yet signed this revised version, and A, B, D, DK, ESP, FIN, GR, L, NL, P and UK still have to ratify it.¹

The substance of Chapter 4 of the Charter of Fundamental Rights of the EU overlaps to a large extent with the rights laid down in the International Labour Organisation conventions.² However, there are a number of gaps and discrepancies.³ The obligations entered into by EU

¹ In 2002 (reference date 30 June) the revised Charter was ratified by: FIN and P.

² Unless otherwise indicated, the information in this paragraph is taken from the ILO website: <http://www.ilo.org>

³ This applies in particular to the matters covered by other chapters of the Charter, in particular Chapter 3. For practical reasons, I have dealt with these considerations in only one section of this report.

Member States as members of the ILO or through their ratification of ILO Conventions do not necessarily coincide with the social rights that EU Member States are required to guarantee under Community law.¹ The ILO legacy is considerable - there are now 184 ILO conventions - and the monitoring arrangements are extensive and highly specialised. These mechanisms are treated in rather a peculiar way by international human rights experts; often they are overlooked in handbooks and other reviews or put away in some forgotten corner. In other instances; they are praised for their effectiveness.² However, this area appears primarily to be a matter for specialists in labour law.

All the EU Member State have now ratified the eight ILO *Fundamental Conventions*³, but when it comes to a number of specialist conventions relating to health and safety at the workplace, the picture is much less rosy; none of the Member States has ratified all of the conventions, and most Member States have ratified only a few. In view of the complicated nature of ILO monitoring mechanisms, the specialist subject area and limited time and human resources available, your rapporteur was unable to investigate which EU Member States were tackled by the ILO monitoring bodies in 2001 and on what issues and how the relevant matters were resolved or not. It was, however, easy to see that cases are still pending against a number of EU countries (Denmark, France, Greece, Spain, Sweden and the United Kingdom⁴) on trade unions and freedom of negotiation and the application of collective labour agreements. Some of these complaints are notorious in ILO history; they concern a still unresolved difference of opinion with the UK on the violation of the right to organise by the putting of trade union members on a blacklist.

The lack of coordination between Community law, the EU Charter and the obligations of EU Member States under ILO conventions is an obstacle to the transparency of current international social law and its development. Given their attachment to the European social model, the EU and its Member States might be expected to address this problem. It is striking that, where there has recently been coordination and cooperation between the EU and the ILO, the approach is a global one, and problems inside the EU itself have not been considered. This can be seen in the very illuminating Commission communication on promoting core labour standards and improving social governance in the context of globalisation⁵ and in a resolution adopted by the EP on the subject.⁶

In your rapporteur's view, an effort should be made to see how the relationship between the EU and ILO with regard to the social rights applying within the EU may be put on the agenda. As a start, the Commission could be asked to produce a Green Paper, or the EP could draw up an own-initiative report.

¹ An interesting illustration of this - although one that is no longer topical - is the question of the ban on night working for women which the ILO wanted to maintain to protect women workers and the EU wanted to abolish because of its duty to ensure equal treatment. The *Applications Committee* (in full: *Conference Committee on the Application of Conventions and Recommendations*) discussed this again at length at the 89th International Labour Conference in summer 2001.

² V. Leary, 'Lessons from the experience of the International Labour Organisation', in: Ph. Alston (ed.), *The United Nations and Human Rights; a critical appraisal*. Oxford (OUP) 1992, pp. 580 -619.

³ These are Conventions 29 and 105 on forced labour, 87 and 98 on freedom of assembly, 100 and 111 on discrimination and 138 and 182 on child labour.

⁴ See <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?lang=EN> .

⁵ COM (2001) 416, not yet published in the OJ.

⁶ P5_TA-PROV (2002) 0374, adopted on 2 June 2002.

In comparison with the ILO database, it is easier to find information from the Council of Europe on compliance with the European Social Charter.¹ The Council of Europe *European Committee of Social Rights* (ECSR) has produced a clear review of the application of the European Social Charter, detailing the infringements of the European Social Charter that have been found in each country. Given that the substance of the European Social Charter overlaps to large extent with the articles of Chapter 4 of the Charter of Fundamental Rights, we have looked at the extent to which specific violations can be found on the basis of that information.²

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

The ECSR found that, in Austria and Luxembourg, non-EU and non-EEA citizens are not eligible for election to works councils.³

Article 28: Right of collective bargaining and action

The ECSC found that civil servants in Denmark do not have the right to strike.⁴ In France, too, there are problems in this area: if civil servants go on strike, part of their salary is withheld, but this is not proportional to the duration of the strike. It is also the case that only the most representative trade unions have the right to initiate collective action in the public sector.⁵ In Germany, all strikes that are not aimed at reaching a collective agreement and are not called or endorsed by a trade union are prohibited. Furthermore, employees in the railways and the Post Office who have civil servant status are denied the right to strike.⁶ In Ireland, there are clauses which allow a closed shop. In addition, the right not to join a trade

¹ The Member State have to submit an annual report on how the Charter is applied in law and in practice. Each report covers one part of the provisions accepted by the country: in odd years the report covers the hardcore provisions (Articles 1, 5, 6, 12, 13, 16, 19, and Articles 7 and 20 of the revised Charter) and in even years the 'non hard core provisions'.

Reports on the hard core provisions

B, DK, GR, IRL, I, L and ESP have not yet submitted any reports (deadline was 30 June 2001). A submitted a report on 11 July 2001, FIN on 16 August 2001, Germany on 6 November 2001, NL on 10 September 2001, Portugal 10 October 2001 and the UK on 4 September 2001.

Reports on the hard core provisions revised charter

F submitted the report on the hard core provisions revised Charter on 27 July 2001 and Sweden on 3 September 2001.

² Council of Europe, Implementation of the European Social Charter, Survey by Country - 2001, Information Document of the Secretariat of the European Social Charter (Provisional Edition). The facts reported in this explanatory statement are based on the findings of the European Committee for Social Rights of the Council of Europe in implementing the procedure for monitoring the national reports. Once this Committee has published its findings, the Member States have an opportunity to make the necessary adjustments. Should they fail to do so or do so inadequately, the Committee of Ministers can make a recommendation to the member states concerned on suitable measures to solve the problem. (See p. 30-31 of the report). In 2001 the Committee of Ministers made a recommendation to Ireland in connection with the lack of protection for workers on strike (p. 44). The Committee of Ministers has not yet made any recommendations concerning the findings mentioned in this report.

³ *idem*, 50, 94.

⁴ *idem*, 62.

⁵ *idem*, 69.

⁶ *idem*, 72.

union is not sufficiently protected in law¹. The rules for obtaining authorisation to undertake collective bargaining are much too strict.² In Sweden, the freedom not to join a union is not protected in law.³ In the United Kingdom, the law unduly restricts the possibilities for collective action. Employers may also dismiss all workers who take part in collective action. There are also excessive restrictions on trade unions' right to refuse membership or expel a member. Employers are also allowed to persuade workers to relinquish the right to trade union representation and collective bargaining. Finally, trade unions are restricted in taking disciplinary action against their members.⁴

Article 29: Right of access to placement services

In Greece, the ECSR found that the performance of public employment services was unsatisfactory.⁵

Article 30: Protection in the event of unfair dismissal

In Denmark, the ECSR found that the law permits the dismissal of a worker who refuses to join a trade union if, at the time of his engagement, he knew that his employment was conditional on membership of the trade union. The law also permits the dismissal of a worker who refuses to continue as a member of a trade union after being informed, subsequent to his engagement, that membership was a condition for continued employment.⁶ In France, protection against dismissal is inadequate for employees who have worked for a long period for the same employer, the period of notice being only two months.⁷ In Greece, too, the notice periods are insufficient for workers with less than ten years' service.⁸ In the United Kingdom, the notice period for workers who have been employed for less than three years is not reasonable.⁹ In Italy, protection from dismissal is inadequate in certain sectors, particularly the food industry.¹⁰ In Sweden, a notice period shorter than the statutory period can be negotiated in collective agreements.¹¹

In Ireland, the Netherlands and Spain, the notice periods are too short, and Irish civil servants do not receive a notice period but instead a 14-day period during which the person concerned may make representations against a proposed dismissal.¹² Members of non-authorised trade unions in Ireland are not protected against dismissals based on their membership of a trade union or trade union activities, and employers may dismiss employees for taking part in strike action.¹³

Article 31: Fair and just working conditions

¹ idem, 124.

² idem, 85, 86.

³ idem, 124.

⁴ idem, 131.

⁵ idem, 76.

⁶ idem, 62.

⁷ idem 69.

⁸ idem, 76.

⁹ idem, 131.

¹⁰ idem, 88.

¹¹ idem, 124.

¹² idem, 85, 103, 122.

¹³ idem, 85.

In Belgium, Ireland, Italy, Luxembourg and the Netherlands, the ECSR found that there was no system of time off (reduced working time or additional paid leave) for those employed in dangerous or unhealthy occupations.¹ In Finland, the legislation on working time enables daily rest periods during employment to be reduced to seven or even five hours.² In Belgium, Luxembourg, Spain and the United Kingdom, there is inadequate remuneration (in time or money) for overtime (in Belgium and Luxembourg in the public sector).³ In Ireland and Spain, there is legislation in force that allows a 60-hour week, and even a 66-hour week for hotel staff in Ireland.⁴ Legislation on working hours in Ireland does not apply to certain categories of employees, such as office workers, sales representatives or the self-employed.⁵ In Finland, the Committee found that, for non-EU and non-EEA citizens, financial assistance for vocational training is dependent on the length of residence.⁶ In Portugal, employees in firms with ten or more workers are not entitled to compensation for hours worked on public holidays.⁷

Article 32: Prohibition of child labour⁸ and protection of young people at work

In France, children who take part in theatrical performances during the school holidays are not entitled to a minimum rest period. The statutory rest periods during school holidays for children who are still in compulsory full time education is not sufficient to ensure that the children may take full advantage of their schooling in the following Member States: Germany, Sweden and the United Kingdom. In Belgium, the ECSR found that young people in apprenticeship schemes are at a disadvantage in their first year of apprenticeship, as they are paid less than the statutory minimum adult wage.⁹ In Ireland and the Netherlands, young people are also paid considerably less than adults.¹⁰ In Italy, national legislation on the minimum age at which young people may work is not observed; in both Italy and Luxembourg, there are no restrictions on working hours for young people; as a result, young people have an excessively long working week.¹¹ In Spain, there are many gaps in legislation to protect young people: for example there are no regulations on nightwork, no medical supervision of young people under the age of 18 working in family businesses and young self-employed workers not covered by labour law, the law does not guarantee the right of children working in family businesses and young self-employed workers to the full benefit of compulsory education, the minimum age for young people to go to work is not enforced in practice, no account is taken of the maximum number of working hours, and the minimum wage is not always guaranteed.¹² In Sweden, a regular medical examination for young workers is not guaranteed.¹³

¹ *idem*, 51, 85, 88, 94, 102.

² *idem*, 66.

³ *idem*, 52, 94, 122, 131.

⁴ *idem*, 84, 121.

⁵ *idem*, 84.

⁶ *idem*, 66.

⁷ *idem*, 111.

⁸ See also Chapter 1.

⁹ *idem*, 52.

¹⁰ *idem*, 85, 103.

¹¹ *idem*, 88, 89, 94.

¹² *idem*, 121, 122.

¹³ *idem*, 124.

Article 33: Family and professional life

The ECSR found that, as a rule, in Belgium, France and Finland, women who are dismissed because they are pregnant are not reinstated, and the compensation payable is not sufficiently dissuasive for employers.¹ It was also found that, in Belgium, France and Sweden, employers are under no legal obligation to give employees time off for breast-feeding during working hours.² In Italy, domestic employees are not entitled to breaks for breast-feeding, nor are they paid for such breaks.³ In Spain, domestic workers do not have the same entitlement to maternity leave as other workers.⁴ In Denmark, Ireland, Sweden and the United Kingdom, the ECSR found that there is no statutory post-natal maternity leave of at least six weeks.⁵ In the United Kingdom, the amount paid after six weeks is inadequate.⁶ In France, periods in which women are unemployed are not taken into account for the purposes of entitlement to maternity benefits.⁷

Article 34: Social security and social assistance

In 2001, the ECSR found that, in Austria, the granting of family allowances to non-EU and non-EEA citizens is subject to the condition of being gainfully employed for at least three months and to a residence requirement for the children.⁸ This is also the case in Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg and the United Kingdom.⁹ It was also found that, in Denmark, Finland and Ireland, non-EU and non-EEA citizens were subject to discrimination in the social security system because they are not entitled to accumulate periods of insurance or employment.¹⁰ In Germany, non-EU and non-EEA citizens are not entitled to supplementary family allowances in Baden-Württemberg and Bavaria. Similarly, they are not entitled to certain social assistance benefits because they do not have German nationality.¹¹ In Greece, the authorities have a wide measure of discretion on social assistance, which undermines the effectiveness of judicial review.¹² In Portugal, foreign nationals may claim social assistance but only if local resources permit.¹³ In Spain, a benefit based on minimum income is conditional upon a certain period of residence (throughout the country) and a minimum age limit of 25 (in most parts of the country).¹⁴

Article 35: Health care

¹ *idem*, 52, 66, 69.

² *idem*, 52, 69, 124.

³ *idem*, 89.

⁴ *idem*, 122.

⁵ *idem*, 62, 84, 124, 130.

⁶ *idem*, 131.

⁷ *idem*, 68.

⁸ *idem*, 50.

⁹ *idem*, 62, 66, 68, 76, 86, 89, 130.

¹⁰ *idem*, 62, 66, 86.

¹¹ *idem*, 73.

¹² *idem*, 77.

¹³ *idem*, 111.

¹⁴ *idem*, 122.

The ECSR found that, in Belgium, rates of vaccination against a number of diseases are inadequate to ensure effective protection against those diseases in accordance with World Health Organisation (WHO) objectives.¹ In Denmark, the Committee found that non-EU and non-EEA citizens are not entitled to long-term social and medical assistance.² In France, young people under the age of 25 do not qualify for the minimum integration income, and other social assistance measures are inadequate.³ In Ireland, entitlement to health care is conditional on a minimum period of residence (one year).⁴ In Greece, it was found that measures taken to combat smoking are insufficient.⁵ In Italy and the Netherlands, insufficient measures have been introduced to ensure safety and health at work for self-employed people (Italy: certain sectors).⁶ In Portugal, the right to safety and health at work is not effectively enforced, given the large number of accidents, some fatal, at the workplace and the low number of workplace inspections.⁷ In Italy, an individual right to social assistance is not guaranteed in all regions.⁸

The Court of Justice of the European Communities has highlighted a problem in the Netherlands with access to medical care in a Member State other than the Member State of insurance. The Court has ruled that, where an insured person has wrongly been refused authorisation to go to another Member State for treatment by the competent institution, the person concerned is entitled to be reimbursed the costs incurred if authorisation is subsequently granted, in this particular case through the courts. The Court holds that a system of prior authorisation for hospital treatment in another Member State may not involve such authorisation being refused on arbitrary grounds.⁹

CHAPTER V : CITIZENSHIP

Chapter 5: Citizenship

CoE Convention on the Participation of Foreigners in Public Life at Local Level

This Convention was signed on 5 February 1992 and entered into force on 1 May 1997.

A, B, D, ESP, F, GR, IRL, L and P have not yet signed the Convention. Finland ratified it in 2001. A, B, D, ESP, F, GR, IRL, L, P and UK have not yet done so.

¹ idem, 52.

² idem, 62.

³ idem, 69.

⁴ idem, 85.

⁵ idem, 76.

⁶ idem, 89, 102.

⁷ idem, 110.

⁸ idem, 89.

⁹ CJEC, C-157/99, *Smits v Stichting Ziekenfonds VGZ and Peerbooms v Stichting CZ Groep Zorgverzekeringen* and C-368/98, *Vanbraekel v Landsbond der christelijke mutualiteiten (LCM)*, judgments of 21 July 2001.

CoE European Convention on Nationality

This Convention was signed on 15 November 1997 and entered into force on 1 March 2000. It has yet to be signed by B, D, ESP, IRL, L and UK¹. The following countries ratified the Convention in 2001: NL, P, SV, and the following States still have to do so: B, D, DK, ESP, F, FIN, GR, I, IRL, L and UK.

European citizenship

The CJEC has delivered a judgment² on the concept of citizenship within the meaning of Community law relating to nationals of the United Kingdom of Great Britain and Northern Ireland. In order to determine whether a person is a national of the United Kingdom of Great Britain and Northern Ireland for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals'.

Another problem involves the political rights of Italian citizens and respect for provisions of the Constitution. Pursuant to the Italian Constitution, the Chamber of Deputies consists of 630 Members – no exceptions are possible (see also the Decision of the Supreme Court of Appeal of 26 May 2001). Since 13 May 2001, that obligation has been contravened, and meetings of the Chamber are not up to strength. On 15 July 2002, the Chamber decided to maintain the current situation because of the problems involved in allocating the 13 vacant seats. The citizens in five constituencies are thus being unfairly underrepresented in the legislative chamber - in terms of the ratio of seats to inhabitants - and their votes have been 'lost'. In contradiction to all the provisions of the law, they have had no influence on the allocation of seats. An action is currently before the ECHR for a breach of Article 3 of the Additional Protocol to the ECHR adopted in Paris on 20 March 1952.

Article 40: Right to vote and to stand as a candidate in municipal elections

In May 2002, the European Commission published a report³ on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections. Most of the Member States were too late in transposing the directive into national law. However, before or during 2001, municipal elections in which European citizens living in a country other than their country of origin were able to exercise their right to vote and stand as candidates took place in each of the Member States. One of the problems that arose concerned entry in the electoral roll.

The Commission concludes that the right of Union citizens to vote in municipal elections in their Member State of residence was exercised only to a fairly limited extent. In the case of the right to stand as a candidate, the Commission reached the following conclusions. In a number of Member States (Finland, Sweden, Luxembourg, Spain, Netherlands, Portugal, Germany and Austria), nationals of other Member States stood as candidates, but it is not known whether this was the case in all the Member States. In seven Member States, some of these candidates were actually elected (*idem*, except for Luxembourg). Some Member States

¹ Germany has since signed the Convention (04/02/02)

² CJEC, C-192/99, *The Queen/Secretary of State for the Home Department ex parte: Kaur*, judgment of 20 February 2001.

³ COM (2002) 260, see: <http://www.europa.eu.int/cgi-bin/eur-lex/udl.pl>.

provided too little information for nationals of other Member States concerning the electoral law, resulting in a low turnout.

The UN Human Rights Committee is concerned about an old law in the United Kingdom under which convicted prisoners are not allowed to exercise their right to vote. This entails an additional punishment which can no longer be justified in the modern era, since it does nothing to contribute to the change and social rehabilitation of prisoners. This provision contravenes Article 10(3) read in conjunction with Article 25 of the ICCPR.

Article 45: Freedom of movement and residence

In 2001, the CJEC issued a number of judgments on freedom of movement and residence. A large number of problems arose in the interpretation of various regulations relating to social security for migrant workers.¹

In two cases, the Court found against Italy² for imposing residence requirements, although this is no longer allowed, for certain professional groups, in particular dentists wishing to practise in Italy who were not Italian nationals, and transport consultants who were not Italian nationals. Transport consultants must be in possession of an administrative authorisation, the issue of which is subject to the condition that nationals of other Member States reside in Italy and lodge a security. In another judgment,³ the Court ruled against Italy for not guaranteeing recognition of the rights acquired by former foreign-language assistants who have become associates and mother-tongue linguistic experts, even though such recognition is guaranteed to all national workers. This case involved discrimination on the basis of nationality. In these judgments, the Court found that Italy had failed to fulfil its obligations under Articles 39, 43 and/or 49 of the EC Treaty.

In another judgment⁴, the Court ruled that, in the interests of public health, the national authorities responsible may interpret national law on health care as follows: certain examinations to determine optical defects may be reserved to a category of professionals holding specific qualifications, such as ophthalmologists, to the exclusion, in particular, of opticians who are not qualified medical doctors. Article 43 of the EC Treaty does not preclude such an approach.

¹ CJEC, C-95/99, C-96/99, C-97/99, C-98/99 and C-180/99, *Khalil ea./Bundesanstalt für Arbeit, Nasser/Landeshauptstadt Stuttgart, Addou/Land Nordrhein-Westfalen*, C-98/99, *Stallone/Office national de l'emploi (ONEM)*, C-189/00, *Ruhr/Bundesanstalt für Arbeit*, judgments of 11 October 2001, C-52/99 and C-53/99, *Rijksdienst voor Pensioenen (RVP)/Camarotto and Vignone*, judgment of 22 February 2001, C-215/99, *Jauch/Pensionsversicherungsanstalt der Arbeiter*, judgment of 8 March 2001, C-68/99, *European Commission/Federal Republic of Germany*, judgment of 8 March 2001, C-444/98, *De Laat/Bestuur van het Landelijk instituut sociale verzekeringen*, judgment of 15 March 2001, C-85/99, *Offermanns and Offermanns*, judgment of 15 March 2001, C-347/98, *European Commission/Kingdom of Belgium*, judgment of 3 May 2001, C-389/99, *Rundgren*, judgment of 10 May 2001, C-43/99, *Leclere e.a./Caisse nationale des prestations familiales*, judgment of 31 May 2001, C-C-118/00, *Larsy/Rijksinstituut voor de sociale verzekering der zelfstandigen (RSVZ)*, judgment of 28 June 2001 and C-368/98, *Vanbraekel/Landsbond der christelijke mutualiteiten (LCM)*, judgment of 12 July 2001.

² CJEC, C-162/99, *European Commission/Italian Republic*, judgment of 18 January 2001 and C-263/99, *European Commission/Italian Republic*, judgment of 29 May 2001.

³ CJEC, C-212/99, *European Commission/Italian Republic*, judgment of 26 June 2001.

⁴ CJEC, C-108/96, *Quen e.a./Grandvision Belgium SA*, judgment of 1 February 2001.

France was condemned by the Court¹ for its failure to enact legislation specifically concerning the recognition of diplomas giving access to the profession of psychologist for the purpose of implementing Council Directive 89/48/EEC of 21 December 1988.

In Greece, there are still problems in relation to Article 45(2) of the Charter of Fundamental Rights of the EU. People without identity papers who have become legally resident in Greece by means of a *Green Card* (but who have only a temporary residence permit 'veveosi') are still being picked up in identity checks because the administration has a backlog in processing all the applications, as a result of which the police think that those concerned are still illegally resident in Greece. It is estimated that at least 100 people have been deported as a result.²

CHAPTER VI: JUSTICE

For the time being, the Charter of Fundamental Rights of the EU has the status of a political declaration; it is not yet a legally binding instrument. However, the Charter reaffirms the 'rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms (...) and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights'.³ We have therefore included this aspect in the report.

There are still a large number of rulings against Member States for violation of Article 6 of the EHRC. This indicates that a great deal remains to be done with regard to procedural safeguards. There are many cases relating to people not being brought to trial within a reasonable time, with the largest number of cases involving Italy. Another cause for concern is the length of proceedings before a judgment is actually reached. Most of the cases on which the ECHR handed down judgments in 2001 relate to violations that occurred in the mid-1990s. It also emerges from the report of the *Evaluation Group of Ministers on the European Court of Human Rights*⁴ that compliance with the judgments of the ECHR is not always satisfactory. In many cases, actions are brought that relate to violations that are the same or very similar to ones on which the Court has already issued judgments. Many of these cases would never come to the Court if general measures relating to further violations had been taken or applicants informed at an earlier stage of the conditions on which the ECHR may examine a case.

Terrorism and the rights of suspects in criminal proceedings

In the wake of the 11 September attacks in the United States, the EU quickly adopted a number of instruments to combat terrorism. It is, of course, extremely important that people in the EU should be protected against terrorist acts. Measures taken with a view to combating terrorism and organised crime should not, however, jeopardise the protection of human rights. It is particularly important that international human rights standards, including the Charter of

¹ CJEC, C-285/00, *European Commission/French Republic*, judgment of 10 May 2001.

² *Migration News Sheet*, February 2001, p. 6.

³ See Preamble to the Charter of Fundamental Rights of the EU.

⁴ See doc. EG Court (2001)1 of 27 September 2001, <http://cm.coe.int/stat/E/Public/2001/rapporteur/clcedh/2001egcourt1.htm>.

Fundamental Rights in the EU, should be fully observed and that there should be adequate safeguards to protect suspects in criminal proceedings. In practice, this means that suspects must have access to legal assistance, an impartial and fair trial and so on. This applies in particular to the forthcoming implementation of the framework decisions on the European arrest warrant and on combating terrorism. The European Commission's discussion paper on *Procedural safeguards for suspects and their defendants in criminal proceedings*¹ may be seen as a first step towards establishing common minimum standards for procedural rules in criminal cases and should therefore be supported. It is hoped that rapid progress will be made in establishing a Community framework of procedural rules for criminal cases.

UN International Criminal Court

Another major step forward in the administration of criminal justice has been setting up of the International Criminal Court under the auspices of the UN. The Statute of the International Criminal Court was signed on 17 July 1998. In 2001, Denmark, Sweden, Netherlands and the United Kingdom ratified the Statute. In 2002, Portugal, Ireland and, as the final EU Member State, Greece also did so.² The Statute entered into force on 1 July 2002.

ARTICLE 47 RIGHT TO AN EFFECTIVE REMEDY AND A FAIR TRIAL

The first paragraph of Article 47 is taken from Article 13 of the EHRC. The second paragraph is the same as Article 6(1) EHRC, while the third paragraph is based on the case law of the ECHR.³

In 2001, the CJEC delivered only one judgment in this area. It related to an alleged violation of the rights of the defence (Article 6(1), EHRC). The Court held that the recognition of an absolute right of silence goes further than is necessary to protect the right of the defence of undertakings. An undertaking has a right of silence only if it is compelled to provide answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to prove.

Case law of the Court of Justice

T-112/98, Mannesmannröhren-Werke AG v Commission (First Chamber, Extended composition), judgment of 20 February 2001⁴

The Commission initiated an investigation into possible infringements of the competition rules by Mannesmannröhren-Werke. It adopted a decision requiring the firm to provide information. In response Mannesmannröhren (hereafter 'the applicant') brought an action in the Court of First Instance. The applicant argued in its petition that the rights of the defence had been infringed in breach of Article 6(1) EHRC. The applicant claimed that, on the basis of Article 6(1) of the Convention, it may lawfully refrain from any positive action that would compel it to give evidence directly against itself in an investigation procedure. The Court said that it is settled case-law that fundamental rights form an integral part of the general principles of Community law whose observance is ensured by the Community judicature. It then went on to consider whether certain

¹ See http://europa.eu.int/comm/justice_home/unit/penal/consult_paper_proc_safeguards_en.htm.

² <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>.

³ Airey, case of 9 October 1979, Series A, Volume 32, 11.

⁴ ECR 2001, p. II-00729.

limitations on the Commission's powers of investigation are implied by the need to safeguard the rights of defence. The Court concluded that to acknowledge the existence of an absolute right to silence, as claimed by the applicant, would go beyond what is necessary in order to preserve the rights of defence of undertakings, and would constitute an unjustified hindrance to the Commission's performance of its duty under Article 89 of the EC Treaty (now, after amendment, Article 85 EC) to ensure that the rules on competition within the common market are observed. It follows that an undertaking can be recognised as having a right to silence only to the extent that it would be compelled to provide answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to prove.¹

European Court of Human Rights

In 2001, the ECHR handed down a number of judgments on the right to a fair trial. The violations established by the Court concerned various aspects of a fair trial, such as attempts by the State to influence the outcome of proceedings, declaring a judgment of the Vatican to be enforceable without any grounds, and decisions that failed to give sufficient reasons.

Greece: The Court reaffirmed that the principle of the rule of law and the notion of fair trial preclude any interference by the legislature – other than on compelling grounds of the general interest – with the administration of justice designed to influence the judicial determination of a dispute. Through new legislation, the State had ensured that the outcome of proceedings in which it was a party was favourable to it.²

Italy: The Court found that the Italian courts had breached their duty of satisfying themselves that the requirements of a fair hearing and adversarial proceedings had been met, before authorising enforcement of the Vatican court's judgment. It condemned the Italian courts for not recognising the applicant's right to adversarial proceedings in the Vatican court.³

Finland: Failure to satisfy the requirements of a fair trial, judgment did not adequately state the reasons on which it was based. The prima facie contradictory reasoning of the Court of First Instance was simply endorsed by the higher court. The subsequent approval of the lower court's inadequate reasoning by the appellate body failed to fulfil one of the requirements of a fair trial.⁴

In the area of access to the courts, the ECHR concluded in six cases that there had been a violation, such as: for a reason beyond his control, a person was denied a trial, the applicant must not be prevented from making use of legal remedies. Another case concerned someone who was not allowed to be represented in the higher court, the Court ruled that this was a disproportionate restriction of the right of access to the courts. There was another case in which no appeal was possible against a rejection, although the facts had never been investigated by an independent court. In the final case, an applicant was informed that, after his application had been rejected, he should have submitted a further application on the same grounds. The Court found that there had been no effective access to the court.

Greece: Because of a mistake by the post, an application for the fixing of compensation for expropriated property was sent to the authorities too late. The applicant was subsequently denied further proceedings.⁵

¹ See para 66 and 67.

² *Agoudimos and Cefallonian Sky Shipping Co. v. Greece*, judgment of 28.06.01, No 38703/97, para 35.

³ *Pellegrini v. Italy*, judgment of 20.07.01, No 30882/96, para 44, 45 and 47.

⁴ *Hirvisaari v. Finland*, judgment of 27.09.01, No 49684/99, para 31, 32 and 33.

⁵ *Platkou v. Greece*, judgment of 11.01.01, No 38460/97, para 49.

France: The applicant, who lives in Tahiti, received the notification of his indictment on the day that the time limit for submitting an application to the Court of Cassation expired, according to the interpretation given by the Court of Cassation. Time limits are in the interests of legal certainty but must not prevent persons subject to the law from seeking an available legal remedy. In this case, the right of access to the courts was infringed.¹

Belgium: The applicant was not allowed to be represented in a higher court.²

Greece: The applicant claimed that the forced auction of his property was null and void. The court held that the possibility of an appeal against the decision had lapsed as the sale had already taken place. The applicant was not notified of the sale because of gross negligence on the part of the bailiff. Moreover, he could not have anticipated the sale, as he had come to an arrangement with his bank on the repayment of a loan. The ECHR ruled that there had been a disproportionate restriction on the applicant's right of access to a court.³

United Kingdom: Rejection by the British Government of the applicant's application for a post in the *Northern Ireland Civil Service*. A certificate issued by the State indicated that the refusal was made on grounds of national security. No appeal was possible. The ECHR concluded that there had been an infringement of the applicant's right of access to a court. There was no independent scrutiny of the facts which led the Secretary of State to issue the conclusive certificate.⁴

France: The applicant's passport and a sum of money were confiscated by the French judicial authorities, and there was no response to an application for their return. The Court did not accept France's argument that, after rejection of the application to the Public Prosecutor, a request should have been made to the office of the clerk of the court on the same grounds. According to the Court, there was no reason for the applicant to assume that a second request on the same grounds as the application that had been rejected could have been successful. The argument that not all national remedies had been exhausted was rejected, and the Court ruled that the applicant did not have effective access to the court.⁵

In the case of the right to a public hearing, the ECHR established a violation by Austria.

Austria: The applicant was convicted by an administrative authority for failure to comply with the instructions of the authority to inform them who had used his car. The applicant filed an appeal, which was dismissed by the administrative authority without any hearing being held. The Court found that there had been a breach of Article 6 of the EHRC.⁶

In 2001, the ECHR ruled that there had been violations of the right to a hearing within a reasonable time in approximately 400 cases. The situation is most serious in Italy (more than 300 violations in civil cases), more than 30 violations in criminal cases and more than 10 in administrative cases. Other Member States were also found to have infringed the principle that a hearing must be held within a reasonable time: France (19 violations), Portugal (10 violations), Austria (6 violations), Germany (5 violations), Greece (4 violations), Luxembourg (1 violation) and Spain (1 violation).

¹ *Tricard v. France*, judgment of 10.07.01, No 40472/98, para 33.

² *Stroek v. Belgium*, judgment of 20.03.01, No 36449/97 and 36467/97 and *Goedhart v. Belgium*, judgment of 20.03.01, No 34989/97.

³ *Tsironis v. Greece*, judgment of 06.12.01, No 44584/98.

⁴ *Devlin v. United Kingdom*, judgment of 30.10.01, No 29545/95.

⁵ *Baumann v. France*, judgment of 22.05.01, No 33592/96.

⁶ *Baischer v. Austria*, No 32381/96, para 30.

During 2001, the ECHR also found that there had been a number of violations of the right to adversarial proceedings. A suspect has the right to conduct his own defence. In another case, someone was convicted solely on the basis of a statement by one other person. In yet another case, someone was unable to test the reliability of a statement and was therefore not effectively able to participate in the proceedings because of a lack of information given to him.

France: The nature of the appeal procedure can justify a specialist lawyer being given the right to speak in an appeal hearing but not that suspects who, under national law, are entitled to conduct their own defence are not given the means to guarantee their right to a fair trial.¹

Italy: An applicant's conviction based solely, or to a decisive degree, on depositions that had been made by a person whom the accused has had no opportunity to examine or to have examined, was in breach of Article 6(1) and (3) of the ECHR.²

Germany: Applicant convicted of sexual abuse of an 8-year old girl. The conviction relied on the statements made by the mother and the police concerning the girl's account of the relevant events. The applicant complained that he could not put questions to the child. The Court noted that at no stage of the proceedings had the girl been questioned by a judge, nor did the applicant have any opportunity of testing her reliability. As the conviction was based only, or at least decisively, on the statements of one witness that the applicant had no opportunity to question, he was denied a fair trial.³

Finland: Two social security cases, an appeal against refusal of unemployment benefit and an appeal against refusal of invalidity benefit. Both cases involved situations in which, on appeal, decisions were taken by the appellate body and later by the Court, after the latter had asked the social security institution for its opinion but had not informed the applicant of that opinion. The Court ruled in both cases that the procedure followed did not enable the applicants to participate properly in the different proceedings and thus deprived them of a fair hearing.⁴

In 2001, the ECHR had to consider two cases concerning the right to an independent and impartial tribunal. The persons concerned in the proceedings had the impression that the tribunal was not independent and impartial. The first case involved the role of the convening officer, and, in the second case, there was at least the impression that the proceedings had not been independent because of the ambiguous role of the Government Commissioner. The same situation exists in criminal law in Belgium, namely that the Public Prosecutor occupies a privileged position in the courtroom, sitting next to the judge, entering the court with the judges and then leaving the courtroom for the chambers where the judges confer. That gives a certain impression of partiality, at least for the accused, which should be avoided.

United Kingdom: Conviction by a military court. The central role played by the convening officer resulted in the procedure being in breach of the requirements of an independent and impartial tribunal.⁵

¹ *Adoud et Bosoni v. France*, judgment of 27.02.01, No 35237/97 and 34595/97, para 20 and 21.

² *Lucà v. Italy*, judgment of 27.02.01, No 33354/96, para 39, 42 and 43.

³ *P.S. v. Germany*, judgment of 20.12.01, No 33900/96, para 30, 31 and 32.

⁴ *K.S. v. Finland*, judgment of 31.05.01, No 29346/95, para 22, 23 and 24 and *K.P. v. Finland*, judgment of 31.05.01, nr.31764/96, para 26, 27 and 28.

⁵ *Wilkinson and Allen v. United Kingdom*, judgment of 06.02.01, No 31145/96 and 35580/97, para 25 and 26 and *Mills v. het United Kingdom*, judgment of 05.06.01, No 35685/97, para 25, 26 and 27.

France: The complaint concerned the impossibility of examining the conclusion reached by the Government Commissioner in proceedings in the Council of State. The principle of adversarial proceedings was infringed because the safeguards for the parties in the proceedings were violated by the Government Commissioner's withdrawing with the trial judges to attend the deliberations. This at least gave the appearance that the Commissioner had an additional opportunity to bolster his submissions.¹

The ECHR has also issued a number of judgments on the right to a defence and equality of arms. In one case, a person was convicted in absentia and in the absence of his supervisor; in another, the State had longer to prepare its case than the accused. A further case concerned someone who had no opportunity to react. In another, information was withheld, or someone was not allowed to be represented by legal counsel when he himself could not appear at the trial. A violation was also found in a case where legal counsel was present at the proceedings but was not allowed to speak. Another complaint related to the presence of a police officer within hearing distance when the applicant was speaking to his solicitor for the first time. Another of the judgments quoted here relates to a completely different decision being reached by the Court after new documents were unexpectedly submitted. The most recent infringement occurred in a guardianship case where somebody had no opportunity to react to certain evidence.

France: The applicant was placed under a supervision order for the conduct of his civil affairs. The applicant was accused of indecent assault on minors. The applicant was subsequently convicted in his absence and in the absence of his supervisor. The Court found that the applicant was prevented from exercising his rights under Article 6 of the Convention. The particularly serious nature of the offences also made an assessment of the applicant's mental condition necessary. The Court therefore failed to see on what basis or for what reason an individual who it is accepted is incapable of defending his civil interests and is entitled to assistance for that purpose should not also be given assistance to defend himself against a criminal charge.²

Greece: An appeal judge ruled that the State had a longer time to submit its claim than the other party because the time limit was suspended during the court's summer recess.³

Austria: The applicant was not notified of the other party's appeal against the order for costs and had no opportunity to react.⁴

United Kingdom: The prosecution's failure to lay undisclosed evidence before the trial judge and to permit him to rule on the question of disclosure deprived the applicants of a fair trial.⁵

Belgium: Applicant denied the right to be represented in criminal proceedings by legal counsel, when he himself could not appear before the court.⁶

France: Applicant's counsel was present at the appeal court hearing but was not allowed to represent the applicant. Applicant was sentenced in absentia to a prison term and to pay reparation for non-pecuniary damages. The Court of Cassation prohibits appeals against convictions entered in default. The ECHR ruled that to penalise the applicant's failure to appear by such an absolute bar on any defence appeared manifestly disproportionate.⁷

¹ *Kress v. France*, judgment of 07.06.01, No 39594/98, para 85, 86 and 87.

² *Vaudelle v. France*, judgment of 30.01.01, No 35683/97, para 59 and 62.

³ *Platakou v. Greece*, judgment of 11.01.01, No 38460/97, r.o.47 and 48.

⁴ *Beer v. Austria*, judgment of 06.02.01, No 30428/96, para 19, 20 and 21.

⁵ *Atlan v. United Kingdom*, judgment of 19.06.01, No 36533/97, para 45 and 46.

⁶ *Goedhart v. Belgium*, judgment of 20.03.01, No 34989/97, para 28.

⁷ *Krombach v. France*, judgment of 13.02.01, No 29731/96, para 87, 90 and 91.

United Kingdom: The presence of a police officer within hearing distance during the applicant's first consultation with his solicitor.¹

France: At the start of criminal proceedings, the Public Prosecutor produced new documents relating to the sexual conduct of the applicant when he was a minor. During the hearing, an expert who had drawn up a psychiatric report gave evidence. There was a radical change in the opinion of the expert which was very unfavourable to the applicant. The Court considered it extremely likely that this sudden change caused the jury to attach particular weight to the opinion of the expert. It concluded that there had been a violation of the right to a fair trial and the rights of the defence.²

Austria: Applicant in a guardianship case had no opportunity to react to certain evidence.³

In addition to these judgments by the CJEC and ECHR, Amnesty International raises other issues in relation to criminal procedures. Some Member States are extremely slow in investigating and prosecuting abuses such as the use of excessive violence by the police or brutality by prison staff, for example Austria, Belgium, France, Italy, Portugal, Sweden and the United Kingdom. In some countries, there also appears to be a kind of climate of impunity, and proceedings are not even initiated or are terminated prematurely owing to lack of evidence, for example in Italy and Portugal. The facts outlined here often relate to incidents that occurred in the 1990s and sometimes to events in 2000 or 2001 but are reported here because the decisions were taken in 2001.

Belgium: The criminal prosecution of a number of policemen, who, in 1998, when deporting the Nigerian Semira Adamu, pressed a cushion into her face, as a result of which she died, has still not been wound up. The hearings were suspended by the judge.⁴

France: A number of cases of violation of the right to a hearing within a reasonable time. A woman (Aïssa Ichich) died in 1991 while on remand as a result of an asthma attack after she had been beaten on a number of occasions. Only in 2001 was a prosecution brought, and it has still not been concluded.⁵

Italy: A number of general observations concerning excessive overrunning of a reasonable time to bring those holding public office to court, there appears to be a climate of impunity.⁶

*Austria*⁷: On 1 May 1999, a 25-year-old Nigerian asylum seeker, Marcus Omufuma, died while being forcibly deported from Vienna to Nigeria, via Bulgaria. His death was probably caused by ill-treatment by three police officers who have been charged. Almost three years later, no date has been set for the start of the trial of these three officers (March 2002).

Portugal: Again, serious reports of excessive overrunning of a reasonable time to bring cases to court. It is striking that very little progress has been made in judicial investigations into ill-treatment or excessive use of violence by the police. Proceedings take a very long time. Only after 11 years was the policeman convicted who fired the fatal shot that killed Rui Matias

¹ *Brennan v. United Kingdom*, judgment of 16.10.01, No 39846/98, para 62 and 63.

² *G.B. v. France*, judgment of 02.10.01, No 44069/98, para 69 and 70.

³ *Buchberger v. Austria*, judgment of 20.12.01, No 32899/96, para 50 and 51.

⁴ Amnesty International, *Concerns 2002*, p. 47 and 48.

⁵ Amnesty International, *Concerns 2002*, p. 102 and 103.

⁶ Amnesty International, *Concerns 2002*, p. 137 and 138.

⁷ Amnesty International, *Concerns 2002*, p. 38 and 39.

Oliveira after a car chase. There are also number of cases concerning people who died while in custody, where the judge decided to close the case because of lack of evidence that the police had anything to do with the deaths.¹

Spain: The judge investigating the death in custody of Antonio Fonseca closed the case concluding that his death could not be attributed to a third party. The testimony of eyewitnesses who had given evidence to the contrary was rejected as unreliable, and the findings of a forensic expert were dismissed as incomplete.²

United Kingdom: Revision of the coroner system covering post-mortem examinations and inquests. The High Court ruled that there should be a public and independent investigation into the 'systemic' failures which led to the murder of Zahid Mubarek in his prison cell in March 2000. A government appeal against the decision had not been heard by the end of 2001. It was not until 2001 that three police officers were convicted for the ill-treatment of prisoners in the 1990s.³

Sweden: In 2001, a commission of inquiry was set up into the controversial death of Osmo Vallo in 1995, while he was in detention. In addition, a decision was taken by the Public Prosecutor to reopen the investigation into the death of Peter Andersson, since the cause of death had not been sufficiently investigated.⁴

ARTICLE 48 PRESUMPTION OF INNOCENCE AND RIGHT OF DEFENCE

Article 48 coincides with Article 6(2) and (3) of the EHRC. The ECHR has handed down two judgments in this area. In one case, there was no entitlement to damages because the innocence of the applicant could not be proved, and, in another case, the burden of proof was wrongly placed on the defence.

Austria: A claim for compensation for detention. The person who was acquitted was denied compensation for the criminal proceedings because the acquittal was not on the grounds of proven innocence but only 'in dubio pro reo', whereas the law says that the accused must be proven innocent for compensation to be paid.⁵

Austria: The alleged driver of a car was convicted of driving off after an accident. In requiring the applicant to provide an explanation, although they had not been able to establish a convincing prima facie case against him, the courts shifted the burden of proof from the prosecution to the defence. The courts had a preconceived view of the applicant's guilt.⁶

¹ Amnesty International, *Concerns 2002*, p. 199 and 200.

² Amnesty International, *Concerns 2002*, p. 224, 225 and 226.

³ Amnesty International, *Concerns 2002*, p. 255, 256 and 257.

⁴ Amnesty International, *Concerns 2002*, p. 233 and 234.

⁵ *Lamanna v. Austria*, judgment of 10.07.01, No 28923/95, para 40.

⁶ *Telfner v. Austria*, judgment of 20.03.01, No 33501/96, paras 19 and 20 and *Weixelbraun v. Austria*, judgment of 20.12.01, No 33730/96, para 31.

ARTICLE 50 RIGHT NOT TO BE TRIED OR PUNISHED TWICE IN CRIMINAL PROCEEDINGS FOR THE SAME CRIMINAL OFFENCE

This article is derived from Article 4 of Protocol 7 to the European Human Rights Convention. The Court has ruled that, even if there nominally appear to be two different offences involved, there can nonetheless be a single criminal offence.

Austria: According to the Court, even nominally different offences can constitute a single act if they have the same essential elements. In the present case, the applicant was first convicted by the administrative authority for drunken driving. In subsequent criminal proceedings, he was convicted of causing death by negligence with the aggravating element of driving under the influence of alcohol. The Court found that the administrative proceedings and the criminal proceedings were based on a single act within the meaning of Article 4 of Protocol 7 to the European Human Rights Convention.¹

¹ *Fischer v. Austria*, judgment of 29.05.01, No 37950/97, para 25 and 28.

LIST OF ABBREVIATIONS

AFET	Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
AI	Amnesty International
CAT	United Nations Committee against Torture
CESCR	UN Committee on Economic, Social and Cultural Rights
CJEC	European Court of Justice
CoE	Council of Europe
CPT	European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	UN Committee on the Rights of the Child
DEVE	Committee on Development and Cooperation
ECHR	European Court of Human Rights
ECSR	European Committee of Social Rights
EHRC	European Human Rights Convention
EMPL	Committee on Employment and Social Affairs
EP	European Parliament
ETA	Basque Separatist movement
EU	European Union
FEMM	Committee on Women's Rights and Equal Opportunities
HRW	Human Rights Watch
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organisation
JHA	Justice and Home Affairs
LIBE	Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
NGOs	Non-governmental organisations
OSCE	Organisation for Security and Cooperation in Europe
PETI	Committee on Petitions
UN	United Nations
UNHRC	United Nations Human Rights Committee
WHO	World Health Organisation
A	Austria
B	Belgium
D	Germany
DK	Denmark
ESP	Spain
FIN	Finland
F	France
GR	Greece
I	Italy
IRL	Ireland
L	Luxembourg
NL	Netherlands

P	Portugal
SV	Sweden
UK	United Kingdom

MINORITY OPINION

(pursuant to Rule 161(3))

José Ribeiro e Castro (UEN)

To my mind, the motion for a resolution constitutes an abuse that infringes the basic precepts of the democratic rule of law and, to that extent, is a grave affront to the fundamental rights that it professes to safeguard. The frame of reference invoked for this report, like its predecessor adopted a year ago, is the Charter of Fundamental Rights. However, the Charter has, firstly, no legal force whatsoever at the present time and, secondly, the letter of the text (Article 51) restricts its scope in such a way that it cannot be made the starting point for judgments passed on Member States. The report and the resolution proposed are thus stirring up hostility to the democratic rule of law, a line of conduct which has its devotees in Parliament, and manipulating the Charter as if it were a supra-constitutional instrument designed to bring political and legal regulation to bear on the democratic freedom of citizens and national institutions, disregarding the rules and competences laid down in the Treaties and concocting a 'pretend' decision-making framework. But, in so doing, they are directly betraying one of the prime responsibilities incumbent on the European Parliament, namely to uphold the rule of law.

To judge purely by the references to Portugal, I can confirm that the report is, in many respects, factually incorrect, and I can easily believe that the same kind of unfair treatment has been meted out to other Member States.

That is why I have voted against the report.

MOTION FOR A RESOLUTION B5-0677/2001

Motion for a European Parliament resolution on establishing official registers of translators at the offices of the criminal police in the Member States

pursuant to Rule 48 of the Rules of Procedure

by Cristiana Muscardini

The European Parliament,

- A. whereas for some time now crime has been becoming steadily more international in scope,
 - B. whereas, owing to the fact that it is now easy for citizens to move from one Member State to another, cross-border crime is becoming increasingly common,
 - C. whereas it is becoming increasingly common for the official and other documents required to carry out investigations with due dispatch to be drawn up in languages other than those of the criminal police responsible for the investigations,
 - D. whereas cooperation between the criminal police of the various Member States needs to be harmonised and encouraged in order to enable more effective action to be taken against organised crime,
 - E. whereas swift and accurate translation of official and other documents relating to investigations is essential to the proper conduct and satisfactory outcome of the proceedings,
1. Calls on the Member States to establish official registers of translators in the offices of the criminal police with a view to ensuring that translations of official and other documents relating to the administration of justice are produced more promptly and may be relied upon.

MOTION FOR A RESOLUTION B5-0678/2001

Motion for a European Parliament resolution on the provision of essential emergency medical treatment to third-country nationals within the European Union

pursuant to Rule 48 of the Rules of Procedure

by Cristiana Muscardini, Roberta Angelilli, Roberto Felice Bigliardo, Sergio Berlato, Antonio Mussa, Nello Musumeci, Mauro Nobilia, Adriana Poli Bortone and Francesco Turchi

The European Parliament,

- A. whereas immigration into a Member State also involves temporary transit by third-country nationals through other Member States,
- B. whereas it is impossible for foreign nationals to obtain essential emergency medical care whilst they are in brief transit through, or on a short stay in, a Member State,
- C. whereas essential care involves medical attention, diagnosis and treatment in respect of non-serious illnesses in the immediate and short term,
- D. whereas illegal immigrants also need medical assistance to protect their health or that of others,
 - 1. Calls on the Member States to make accredited public and private facilities available for the provision of free medical assistance to foreign nationals (including those whose situation is not in accordance with the rules on entry and residence) who are passing through their territory;
 - 2. Calls on the Member States to legislate in such a way as to enable medical care relating to pregnancy, maternity, children's health and the prevention, diagnosis and treatment of infectious diseases to be made available free of charge to foreign nationals who are passing through a Member State, even if their situation is not in accordance with the rules on entry and residence;
 - 3. Calls on the Commission and the Council to lay down rules establishing a minimum threshold for free medical treatment for any foreigner legally present on EU territory.

2 October 2002

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

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

on the human rights situation in the European Union (2001)
(2001/2014(INI))

Draftsman: Johannes Voggenhuber

PROCEDURE

The Committee on Employment and Social Affairs appointed Johannes Voggenhuber draftsman at its meeting of 19 February 2002.

The committee considered the draft opinion at its meetings of 11 September, 30 September and 1 October 2002.

At the last meeting it adopted the following conclusions by 21 votes to 19.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig, Winfried Menrad and Marie-Thérèse Hermange, vice-chairmen; Johannes Voggenhuber, draftsman; Jan Andersson, Elspeth Attwooll, Paolo Bartolozzi (for Enrico Ferri), Regina Bastos, Philip Bushill-Matthews, Chantal Cauquil, Alejandro Cercas, Luigi Cocilovo, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Fiorella Ghilardotti, Anne-Karin Glase, Roger Helmer, Stephen Hughes, Anna Karamanou, Arlette Laguiller, Jean Lambert, Giorgio Lisi, Raffaele Lombardo, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Ria G.H.C. Oomen-Ruijten (for Rodi Kratsa-Tsagaropoulou), Paolo Pastorelli, Manuel Pérez Álvarez, Bartho Pronk, Herman Schmid, Gabriele Stauner (for Miet Smet), Helle Thorning-Schmidt, Ieke van den Burg, Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for Lennart Sacrédeus).

CONCLUSIONS

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 points in its motion for a resolution:

1. Notes with regret that the jurisprudence of the European Court of Human Rights, the fifteenth report of the Committee of Ministers of the European Social Charter and the report of experts of the International Labour Organisation point to a significant number of violations of fundamental social rights in the Member States in 2001;
2. Notes that in the period under review Member States have been condemned by the European Court of Human Rights in Cases Nos. 37119/97, 35972/97 and 29545/95 for discrimination in access to public service employment; calls on the Commission to examine whether in the cases in question Directive 2000/78/EU¹ establishing a general framework for equal treatment in employment and occupation has been violated and, if so, to take appropriate measures; calls furthermore for specific proposals for directives to be submitted on the basis of Article 13 of the EU Treaty to combat all the grounds for discrimination referred to in Article 13;
3. Calls furthermore on Italy to take immediate action to comply with the judgment of the European Court of Justice in Case C-212/99 which established that foreign-language university assistants were subject to discrimination;
4. Points out that the Committee of Ministers of the Social Charter has established 56 cases of violations by the Member States of the provisions of the Social Charter in the fields of child labour, maternity protection and the access of foreigners to the labour market;
5. Criticises the fact that most Member States have failed to meet their obligations with respect to child labour under the European Social Charter; notes in this connection in particular that the Committee of Ministers of the Council of Europe has issued a reasoned recommendation to Ireland and a warning to Spain in this matter; calls on the Commission, in view of the scale of the violations, to submit a proposal revising Directive 94/33/EU² on the protection of young people at work;
6. Criticises the fact that most Member States have failed to comply with their obligations under the European Social Charter as regards maternity leave, the protection from dismissal of pregnant and breastfeeding mothers and as regards the right to breastfeeding periods; calls on the Commission to take into account the findings of the Committee of Ministers in revising Directive 92/85/EU³ on the protection of pregnant workers and also to put forward a proposal for revising Directive 96/34/EU⁴ on parental leave;

¹ OJ L 303, 2.12.2000, p. 16.

² OJ L 216, 20.8.1994, p. 12.

³ OJ L 348, 28.11.1992, p. 1.

⁴ OJ L 145, 19.6.1996, p. 5.

7. Calls on Member States to effectively monitor the implementation of non-discrimination initiatives in relation to how they impact on the lives of disabled people and to consult with representative disability organisations in relation to how to improve policy and practice in this field;
8. Criticises the fact that seven Member States are violating their obligations under the European Social Charter as regards the access of foreigners to the labour market, in particular by applying fixed immigration quotas and introducing limited residence permits, the automatic withdrawal of residence permits in the event of the loss of employment and discrimination as regards workers' rights in general;
9. Regrets that there are still major restrictions in some Member States on the right to form trade unions, to engage in collective bargaining and to take part in collective action for people employed in the public sector, particularly in the uniformed services such as the armed forces, the police, the customs service etc.; calls for the possibilities for exceptions to these rights contained in the European Social Charter to be applied much more restrictively and, if possible, to be done away with altogether;
10. Is concerned that the report by the committee of experts of the International Labour Organisation has established a large number of violations by the Member States against ILO Conventions, including violations against the following basic international labour standards:
 - the violation of Convention 29 concerning Forced Labour by Germany, France, Austria and the United Kingdom through their domestic rules on work by prisoners;
 - the violation of Convention 87 concerning Freedom of Association and Protection of the Right to Organise by Austria through discrimination against foreign workers as regards the right to stand for election for works councils;
 - the violation of Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively by Denmark, Germany, the Netherlands, Portugal and the United Kingdom owing to restrictions on the right of trade unions to merge and autonomous collective bargaining for certain professional groups and, in the case of the United Kingdom, owing to the acceptance of discrimination against workers due to their membership of a trade union;
 - the violation of Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value by Greece, Spain and the United Kingdom owing to the wide disparity in these countries between the wage levels of women and men;
 - the violation of Convention 105 concerning the Abolition of Forced Labour by Belgium and the United Kingdom owing to domestic provisions which continue to allow the imposition of forced labour as a disciplinary measure in certain economic sectors;

11. Calls for a continuing policy of ratification by Member States of recent ILO conventions such as those on part-time work, home working and private employment brokering, which tie in closely with the issues of atypical employment relationships also addressed in EU directives; urges constructive participation in, and input into, the discussion on other inadequately protected forms of employment which are often on the borderline of self-employment and wage dependency; stresses the need for better harmonisation and coordination between policies and activities in the framework of the ESC, the ILO and the EU, with regard to both the EU Charter and concrete (secondary) legislation and regulation, and warns that coordination in an EU context must not lead to neglect of, or even deliberate withdrawal from, obligations arising from ILO and ESC membership;
12. Warns against a tendency to restrict fundamental social and economic rights as part of the current labour market reforms in the Member States; refers in this connection in particular to the intention of the Italian Government to abolish the right of unlawfully dismissed workers to be reinstated (Article 18 of the Employees' Statute);
13. Recalls that compliance with fundamental rights is one of the basic pre-conditions for accession to the European Union; is alarmed at the large number of violations of fundamental rights through abuses by the police, the trafficking in human beings, violations of children's rights and violations of the rights of minorities (in particular the Roma and of disabled persons living in institutions) in certain candidate countries; calls on the Commission systematically to consider the human rights situation in countries applying for accession in the accession negotiations and carefully to monitor the implementation of the *acquis communautaire* in the field of non-discrimination, paying particular attention not only to formal implementation, but also to the situation on the ground in the countries concerned;
14. Expects applicant countries to take practical and effective measures to implement fundamental rights, particularly in regard to combating trafficking in human beings and prostitution;
15. Feels obliged, in view of the many serious violations of fundamental rights, to appeal earnestly to the Member States to put an end to violations of the law noted above and fully to honour their commitments as regards fundamental social rights and the right of asylum; is monitoring with concern the tendency in the Member States to further restrict fundamental rights and the right to asylum by invoking the events of 11 September 2001 in the USA.
16. Points to the Charter of Fundamental Rights of the European Union, in which fundamental rights are enshrined and which should have constitutional status so that they are enforceable for every EU citizen.

5 November 2002

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 human rights situation in the European Union (2001)
(2001/2014(INI))

Draftsperson: Marianne Eriksson

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Marianne Eriksson draftsperson at its meeting of 26 February 2002.

The committee considered the draft opinion at its meetings of 10 October 2002 and 5 November 2002.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Olga Zrihen Zaari, acting chairperson; Marianne Eriksson, draftsperson; Lone Dybkjær, Ilda Figueiredo (for Geneviève Fraisse), Maria Martens, Patsy Sørensen, Joke Swiebel and Sabine Zissener.

CONCLUSIONS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. After paragraph 15, add the following new paragraph: 'Whereas under Article 6 of the CEDAW (the UN Convention on the Elimination of all forms of Discrimination Against Women) the signatories are to take all appropriate measures, including legislative ones, to suppress all forms of trafficking and exploitation of prostitution of women.'
2. Modify the end of paragraph 16 as follows: '...and rehabilitation of victims of trafficking as an essential clause for the respect of their rights and all forms of forced labour and exploitation.'
3. After paragraph 19, add the following new paragraph: 'Calls on the Member States to ensure that this freedom does not infringe the autonomy of women and the principle of equality between women and men and that it is exercised in accordance with the requirement of separating the Church from the State'.
4. After paragraph 24, add the following new paragraph: 'Stresses that the effort to combat illegal immigration must be pursued on the basis of a genuine, coherent EU asylum and immigration policy, in order to prevent illegal immigrants from becoming to an even greater extent a work force without any rights, and female illegal immigrants from being exploited as domestic workers under unacceptable conditions'.
5. Before paragraph 44, add the following new paragraph: 'Considers that women's human rights must be seen as individual rights and should not be made conditional on women's role in the family or on any other social restriction'.
6. In the end of paragraph 45 add the following: '...; urges the Commission to ensure that special attention is paid to collecting comparable data on sexual harassment.'
7. After paragraph 46, add the following: 'Reproductive freedom must be also recognised as central to women's control over their bodies and lives and as a prerequisite for their active participation in society. Urges the Commission in consequence to ensure that permanent monitoring and evaluation of the Cairo and Beijing programmes of action are taking place and to present a comparative overview of the reproductive health situation in the Member States'.
8. Amend paragraph 47 as follows: 'Notes that all societies seem to assign men a predominant importance in society and women are seen as fulfilling a secondary role and this is the case in all EU Member States and institutions; urges, therefore, the European institutions and the Member States to make gender mainstreaming a systematic and visible part of all their activities in the human rights sphere.'
9. After paragraph 47, add the following new paragraph: 'Calls on the Member States to recognise that freedom from domestic violence and marital rape is a fundamental human right. In order to safeguard this right as well as protect women from the domestic

violence of which they are the most frequent victims, sufficient financial resources should be allocated to actions and measures destined to fight against violence in all its forms.’

10. Modify paragraph 48 as follows: ‘... discrimination on the labour market; calls therefore on the Member States to provide women with viable economic alternatives’.
11. After paragraph 69, add the following new paragraph: ‘Urges the Member States to consider the right to ‘social protection’ as a right to combine professional life and family duties, as the latter must be shared equally between spouses or partners. To this end, greater attention should be paid to childcare options.’
12. After paragraph 75, add the following new paragraph: ‘Calls on the Member States to achieve a balanced representation of women and men in local and European elections, as the lack of balanced participation of women and men in the decision-making process diminishes the democratic values of our society and our political system’.

23 October 2002

OPINION OF THE COMMITTEE ON PETITIONS

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

on the human rights situation in the European Union (2001)
(2001/2014 (INI))

Draftsman: Eurig Wyn

PROCEDURE

The Committee on Petitions appointed Eurig Wyn draftsman at its meeting of 21/22 November 2001.

The committee considered the draft opinion at its meetings of 7/8 October 2002 and 21 October 2002.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Vitaliano Gemelli, chairman; Astrid Thors, vice-chairman, Herbert Bösch, Felipe Camisón Asensio, Michael Cashman, Marie-Hélène Descamp, Jan Dhaene (for Eurig Wyn, draftsman, pursuant to Rule 153 (2)), Glyn Ford, Janelly Fourtou, Christopher Heaton-Harris (for The Earl of Stockton, pursuant to Rule 153 (2)), Margot Keßler and Luciana Sbarbati.

SHORT JUSTIFICATION

Introductory Remarks:

From the perspective of the Committee on Petitions, both the safeguarding and the promotion of the human rights of citizens in the European Union have a very practical meaning, because it is to this Committee that many citizens turn when they feel that their rights are being abused, infringed or threatened. Not everyone chooses to go through the courts or through costly legal channels in a Member State, even though the European Convention on Human Rights is generally incorporated in national legislation. Particularly since the Nice Summit and the Solemn Declaration concerning the Charter of Fundamental Rights, and its growing recognition as an EU instrument, many more people are seeking redress through the European Parliament and its Committee on Petitions.

In the recent period, over sixty petitions have been referred to the Committee where issues of fundamental rights apply explicitly. Many more petitions are received relating to employment rights, social rights, claims for equal treatment, freedom of information and privacy rights. An increasing number of petitions concern asylum matters, family reunification, freedom of movement within the EU and so on. A glance at the annual report of the Committee would provide members with many examples.

However, there is, as yet, no reference nor recognition of this situation in the draft report, in spite of the impressive number of recommendations made to Member States and the other EU Institutions. It is, nevertheless, encouraging to note that Commissioner Vitorino did refer to the role of petitions and complaints when he addressed the hearing organised by the committee responsible last spring.

Similarly, it is to be regretted that there is no reference to the very detailed and important work which is done by the European Ombudsman and his Office in defending the European citizen against our own maladministration.

Of course, we all support and abide by the principles which the rapporteur for the Committee on Citizens' Freedoms and Rights describes admirably in her draft report, and we agree, I believe, with most of the recommendations which are made concerning human dignity, freedoms and equality, solidarity and citizenship.

But, on a practical level, it is most important to strengthen our means of interinstitutional cooperation in order to act more effectively, and with greater firmness, when fundamental rights of EU citizens within the EU - and outside - are abused or in any way ignored or undermined.

As we move closer towards the inevitable enlargement of the European Union, we should also be looking more closely at the way that our legal processes and the jurisdiction of the courts in Strasbourg and Luxembourg apply. What role will the Charter of Fundamental Rights and the European Convention have in the context of a new Basic Treaty for the European Union? Even though Parliament may be a powerful player in redressing grievances of individuals, it does not have the right of injunction or the many other powers which the courts possess in order to act effectively in the name of the law. Nor should it have. But without the power and

integrity of the legal system and its application to human rights cases, parliamentary power would itself be weaker.

The draft report drawn up for the Committee on Citizens' Freedoms and Rights provides members with an impressive catalogue of areas of concern and many proposals for action. It tackles very sensitive issues related to the aftermath of the terrorist attacks in the United States and elsewhere, where Member States have been obliged to introduce new legislation to enable them to combat terrorist organisations. The rapporteur's proposal that the Commission and Council carry out a review and evaluation of such measures is a constructive suggestion, as it would make more transparent the relationship of such legislation and activities with the Charter of Fundamental Rights and the European Convention on Human Rights. Parliament should naturally formulate its own judgment on the contents of the review and its assessment.

An area which has been the subject of many petitions concerns asylum, and the issues often related with this include the situation of migrant workers and their families. The proposals set out in the draft report are most pertinent in such respects.

A study of many petitions dealing with alleged cases of human rights violation, including, for example, the aggressive and violent policing of the anti-WTO demonstrations in Genoa, shows that, as the rapporteur herself notes, the European Parliament largely lacks the means to do something immediately and effectively when such violations occur, beyond the political condemnation that a resolution allows. Parliament should give further consideration to how it can make Articles 6 and 7 of the EU Treaty more effective when Member States place themselves in situations where more widespread abuses of human rights occur.

Consideration should be given to the recent proposals made by the European Ombudsman to the Convention on the Future of Europe. He suggested that the Ombudsman ought to be given the power to take certain individual cases of human rights violations to the European Court of Justice. This would have a direct impact on the relative role of the Court of Justice vis-à-vis the Strasbourg Court of Human Rights, set up by the European Convention on Human Rights and the Council of Europe. Nevertheless, his proposals are indicative of the sort of direction that many in the EU feel the debate is going, and a very serious analysis needs to be carried out to test the feasibility of such proposals.

With such elements in mind, the following conclusions should be drawn:

1. The right to petition should be introduced as a further important part of the Draft Report, which demonstrates the fundamental rights of EU citizens to bring matters of concern directly to the European Parliament for redress.
2. An assessment should be made of the means by which Parliament can address violations of human and fundamental rights, when redress to these has been sought by citizens through petitions to the European Parliament;
3. As regards allegations of serious and persistent violations of human rights and fundamental freedoms, consideration should be given to the procedure under Article 7 of the EU Treaty and to how Parliament could play an active role in launching the procedure;

4. Support should be expressed for the proposal to the Convention on the Future of Europe to give the European Ombudsman the power to refer fundamental rights cases to the Court of Justice if no solution could be found in the course of a normal investigation;