

EUROPEAN PARLIAMENT



s e s s i o n d o c u m e n t s

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A4-0124/94

ANNUAL REPORT

on respect for human rights in the European Union (1993)

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mr. Edward Newman

- * Consultation procedure
simple majority
- ** Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position;
absolute majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
absolute majority of Parliament's component Members to give assent
except for simple majority under Articles 8a, 105, 106, 130d and 226 EC

- **** Codecision procedure (first reading)
simple majority
- ****I Codecision procedure (second reading)
simple majority to approve the common position;
absolute majority of Parliament's component Members to reject or amend the common position
- ****II Codecision procedure (third reading)
simple majority to approve the joint text;
absolute majority of Parliament's component Members to reject the Council text

PE 209.069/fin.

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C O N T E N T S

	<u>Page</u>
Procedural page	3
A. MOTION FOR A RESOLUTION	4
B. EXPLANATORY STATEMENT	19
 <u>Annex:</u> Petition N° 546/92 677/92 22/93 75/93 105/93 421/93 576/93 590/93 600/93 601/93 622/93	 37
 Opinion of the Committee on Culture, Youth, Education and the Media . .	 40
 Opinion of the Committee on Legal Affairs and Citizens' Rights	 44

By letter of 2 September 1994 the Committee on Civil Liberties and Internal Affairs requested authorization to draw up a report on respect for human rights in the European Union (1993) and appointed Mr Edward Newman rapporteur during its meeting of 4 Oktober 1994.

At the sitting of 26 Oktober 1994 the President of the European Parliament announced that the committee had been authorized by the Conference of Presidents to report on this subject.

At the sittings of 26 Oktober and of 14 November 1994 the President of the Parliament announced respectively that the Committee on Culture, Youth, Education and the Media and the Committee on Legal Affairs and Citizens' Rights had been asked for its opinion.

At its meetings of 23/24 November, 1/2 December and 19/20 December 1994 the Committee on Civil Liberties and Internal Affairs considered the draft report as well as the petitions annexed.

At the last meeting it adopted the motion for a resolution by 16 votes to 12 with no abstentions.

The following took part in the vote: Vitorino, chairman; Bontempi, vice-chairman; Wiebenga, vice-chairman; Newman, rapporteur; Ahern (for Orlando pursuant to Rule 138.2), d'Ancona, Barros Moura, Caccavale, D'Andrea, B.P. Donnelly, Elliott, Fabra Valles, Ford, Girao Pereira, Haarder, Le Chevallier, Lehne, Lindeperg, Manisco, Nassauer, Pailler, Reding, Salisch, Smith (for Crawley pursuant to Rule 138.2), Soltwedel-Schäfer (for Roth pursuant to Rule 138.2), Stewart-Clark, White and Wynn (for Zimmermann pursuant to Rule 138.2).

The opinions of the Committee on Culture, Youth, Education and the Media and the Committee on Legal Affairs and Citizens' Rights are attached to this report.

The report was tabled on 21 December 1994.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A.

MOTION FOR A RESOLUTION

Resolution on respect for human rights in the European Union (1993) (Annual report of the European Parliament)

The European Parliament,

- having regard to the Universal Declaration of Human Rights,
- having regard to the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the protocols thereto,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols,
- having regard to its resolution of 12 April 1989 adopting the Declaration of fundamental rights and freedoms¹,
- having regard to its resolution of 18 January 1994 on the European Convention for the Protection of Human Rights and Fundamental Freedoms²,
- having regard to the Treaties establishing the European Community,
- having regard to the Treaty on European Union,
- having regard to its resolution of 11 March 1993 on respect for human rights in the European Community³,
- having regard to Petitions
 - (a) No. 546/92 by Mr Edmond de Guelle (British) on activities of the 'Economic League' in the United Kingdom,
 - (b) No. 677/92 by Mr Criostòir de Baròid (Irish) on behalf of the 'BETWEEN' organization on the discontinuation of EC funding for 'BETWEEN',
 - (c) No. 75/93 by Mr Joachim Rector (German) on a ban on National Socialist ideologies,
 - (d) No. 105/93 by Mr Francisco Iribarne (Spanish) on a miscarriage of justice and arbitrary arrest,
 - (e) No. 421/93 by Mr Aristeidis Sotiropoulos (Greek) on problems of racism in Germany,
 - (f) No. 576/93 by the 'Villeurbanne Family Planning Association' bearing 19 signatures on sex tourism and child prostitution in third countries,
 - (g) No. 590/93 by Mrs Vilma Maria Fernandes-Mazgon (Italian) on behalf of 'VERITAS-Comité de Soutien', bearing 82 signatures 'for an honest police force and a free and independent legal system in France',
 - (h) No. 600/93 by Mr E.M. Ziazopoulos (Greek), on behalf of the 'Christian Union of Education Officials' on the inclusion of the holder's religious faith on new Greek identity cards,
 - (i) No. 601/93 by the 'Young Mothers Union - the Apostle Paul' (Greece), bearing 1 600 signatures, on the inclusion of the holder's religious faith on new Greek identity cards,
 - (j) No. 622/93 by Mr Ignazio Barbuscia (Italian), on behalf of the International Association for Religious Freedom, bearing 194

¹ OJ C 120, of 16.05.1989, p. 51.

² OJ C 44, of 14.02.1994, p. 32.

³ OJ C 115 of 26.04.1993, p. 178.

- signatures, on the Greek law on the statement of religion on identity cards,
- having regard to Rule 148 of the Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs on respect for human rights in the European Union (1993) and the opinions of the Committee on Culture, Youth, Education and the Media and the Committee on Legal Affairs and Citizens' Rights (A4-0124/94),
- A. whereas, despite efforts to promote human rights, human rights violations continue to occur in the European Union,
- B. whereas all citizens of the world, and including those of the Union and those residing therein, have a right to be protected against crime and to live free from fear of becoming victims of crime,
- C. whereas the decision by the Greek Parliament to retain the requirement that the holder's religion be stated on Greek identity cards causes deep concern and regarding such a requirement as a serious violation of the right to privacy,
- D. whereas it notes with concern that acts of ill-treatment and even torture have been carried out by members of the forces of law and order, particularly against asylum-seekers or third-country nationals,
- E. whereas in various EU Member States, and particularly in France, people have died in police custody following ill-treatment and even the use of firearms by the forces of law and order,
- F. whereas it is gravely concerned at the rise of racism and the extreme right in Europe,
- G. considering the successful promotion of reconciliation and human rights in Northern Ireland by the non-governmental organization 'BETWEEN',
- H. considering that 'BETWEEN' has, in recognition of its outstanding work, been in receipt of Community grants towards its annual programme of activity under item A-3030, each year from 1986 to 1992, with the exception of 1990,

A European Union system for the protection of human rights

1. Calls for accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms in accordance with its above mentioned Resolution of 18 January 1994 and calls on the European Union and the Council of Europe to conclude as soon as possible the negotiations with a view to this accession of the Union to the European Convention with the aim of ensuring better protection of the rights of Community citizens;
2. Takes the view that accession by the Union to the ECHR is a measure complementing the adoption by the Union of its own Declaration of Human Rights and Fundamental Freedoms, which would safeguard rights over and above those enshrined in the ECHR, and, given that the European Parliament adopted a declaration of this kind with its above mentioned resolution of 12 April 1989; takes the view that, in order to emphasize the complementary nature of the two approaches, the Commission, the Council and the European Parliament should, at the latest at the time of accession by the Union to the ECHR, sign a joint declaration endorsing the above-mentioned declaration adopted on 12 April 1989 and advocate the ultimate incorporation of this declaration in the Treaties and notes with satisfaction that, since the entry into force of the Maastricht Treaty and

particularly Article F, paragraph 2, the European Convention for the Protection of Human Rights and Fundamental Freedoms has been recognized as a principle of the European Union, which must be guaranteed by the European Court of Justice;

Death penalty

3. Calls once again on Member States in which the death penalty is still in force as a maximum penalty (even if it is never imposed or carried out) to abolish it once and for all and completely (by also removing it from their military criminal codes);
4. Deplores all initiatives to reintroduce the death penalty;
5. Welcomes the fact that the Greek Parliament abolished the death penalty on 6 December 1993 and that the Italian Parliament took the same decision on 5 October 1994;
6. Welcomes the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights by the Federal Republic of Germany in August 1992;
7. Calls on Belgium finally to abolish the death penalty actually and completely;

Torture and ill-treatment in police custody and prison, conditions of detention, abuse by security forces, terrorism

8. Reaffirms once again the right to life and physical integrity of everybody and the absolute ban on inhuman or degrading treatment;
9. Utterly condemns the use of torture and inhuman or degrading treatment in EC Member States;
10. Expresses its concern about the allegations of an increase in ill-treatment in Italy, the numerous allegations of ill-treatment in Portugal and the situation in Spain, which was asked by the Committee on Torture in April 1993 to ensure its compliance with the UN convention;
11. Is also concerned about allegations of ill-treatment in police custody and in prisons related to racist prejudice which is deliberately directed towards asylum-seekers, third-country nationals or ethnic minorities within several Member States;
12. Expresses its concern at the increase in the number of cases of torture and ill-treatment of persons held in police stations in Portugal, in particular the case of José Carretas;
13. Is concerned by the constant postponement of the judicial investigations and of the relevant legal proceedings concerning torture and ill-treatment in Portugal;
14. Requests the Committee on the Prevention of Torture and Inhuman or Degrading Treatment of the Council of Europe to carry out regular visits of centres or prisons where asylum-seekers are held, and to draw up a report on every incident resulting in permanent physical or mental injuries or death of an asylum-seeker;
15. Instructs its Committee on Civil Liberties to draw up a report on a social charter for prisoners;

16. Calls for the Members of the European Parliament to be authorized to visit any prison in the Union and calls for all steps to be taken to amend accordingly the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 annexed to the Treaty;
17. Takes the view that pre-trial detention should not exceed a period of 6 months;
18. Calls upon all member states to effectively prevent the use of ill-treatment in police custody and prison, which can only be achieved if ill-treatment is considered as a serious criminal offence and if perpetrators do not enjoy impunity, and calls for a thorough investigation into cases where people died in disputed circumstances;
19. Welcomes the signature of Ireland in September 1992 of the UN Convention against torture and other cruel, inhuman or degrading treatment;
20. Calls upon Member States to ensure that the living conditions in prisons meet the necessary requirements of human dignity and therefore insists that the over-population of certain prisons is unacceptable and particularly condemns all solitary confinement practices;
21. Calls on the Member States to do everything possible to ensure that minimum standards of human dignity in prisons are respected, particularly as regards impartiality, non-discrimination, material conditions and hygiene, health care, access to work, contact with the outside, prison leave, parole, religious and moral guidance, access to work and to social, educational, cultural and sports activities; to this end, calls for the Council of Europe's 'Prison Rules' (R(87)3) to be rigorously applied in prisons;
22. Calls for particular attention to be paid in prisons to groups requiring special treatment: women, immigrants, ethnic, sexual and other minorities;
23. Condemns the killings, maimings, violence and torture inflicted by armed terrorist groups and affirms the fundamental human right of people to live free from fear of terrorist attack;
24. Calls for the repeal or significant amendment of the British Prevention of Terrorism Act which has failed to successfully combat terrorism but whose application has infringed the human rights of many innocent people, usually of Irish origin and calls on the Union to continue to step up the fight against terrorism;

Freedom of expression

25. Confirms the right of freedom of expression of everybody and holds that press freedom and the right to information are integral parts of the freedom of expression;
26. Upholds the right of political participation and to exercise trade union rights;
27. Considers that obligatory stating of a person's religion on an identity card in Greece is a serious violation of privacy and could lead to discrimination;
28. Expresses its concern at the restriction of the right to demonstrate in some Member States and particularly condemns the Danish police's use of firearms against anti-Maastricht demonstrators in Copenhagen on 18 May 1993;

29. Calls upon Member States to abstain from penal judicial prosecution of any kind for the expression of views opposing the government;
30. Is of the opinion that ample access to information is a prerequisite to exercise freedom of expression and calls upon Member States and the Commission to issue appropriate regulations designed to facilitate broad access for journalists and the general public to information from the national and Community administrations;
31. Condemns the undemocratic and unilateral decision by the EU General Affairs Council to classify information and introduce security measures, or the intention to adopt such a decision, thereby withholding from the European Parliament information, particularly in the fields governed by Titles V and VI of the Treaty on European Union, and at the same time discriminating against Union officials by applying a national security clearance system;
32. Reaffirms the right of conscientious objection against military service and the terms of its resolution of 19 January 1994 on conscientious objection in the Member States of the Community⁴;
33. Considers that the right to exercise conscientious objection to military service is inherent in the concept of freedom of thought, conscience and religion as laid down in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
34. Calls once more on Greece to free the conscientious objectors currently in prison and to adopt without delay legislation recognizing the right of conscientious objection to military service and organizing a civilian service based on non-discrimination vis-à-vis military service;
35. Calls on Member States to guarantee that deserters from civil war who seek refuge in the Union are allowed entry;

Freedom of expression and privacy

36. Repeats its will to guarantee respect of freedom of thought, freedom of conscience and religion, freedom of expression and information and respect for private life;
37. Is concerned about proposals for less protection for suspects, including the removal of the right to silence;
38. Condemns telephone tapping which is not in accordance with the laws and rules concerning protection of privacy;
39. Condemns linking of computer systems if this is not in accordance with the law and rules of protecting privacy and personal data;
40. Asks for the setting up in all Member States of National Data Protection Authorities;
41. Asks for the setting up of a Central Union Data Protection Authority;
42. Reaffirms that data protection will not be a barrier for police cooperation, on condition that access to data is always subject to judicial or political and administrative supervision;
43. Condemns the keeping of 'blacklists' whether by computer or manually;

⁴ PV of this date, part II, point 6.

Crime and threats to the rule of law

44. Takes the view that fundamental human rights include the freedom to live free from crime and free from the fear of crime;
45. Supports an approach which is both tough on crime and criminals and tough on the social causes of crime, such as poverty, mass unemployment and the "drug culture";
46. Recognizes that European police cooperation has an important role to play in combating the rise in organized crime by exchanging information;
47. Urges that, when international and European agreements on police cooperation (Schengen, Europol) take effect, foreigners, whether or not they are EU citizens, should, in the countries which have signed those conventions, be assured of a clear legal position and legal protection if they are the subject of police investigations and measures taken pursuant to those agreements; considers that such provisions must be incorporated in the Treaties and that national implementing legislation pursuant thereto must be published;
48. Reaffirms its Resolution of 12 September 1989 on Compensation for Victims of Violent Crimes⁵ and calls on the Member States and the Commission to implement its recommendations;
49. Calls for a greater priority for crime prevention measures in Europe;
50. Calls similarly for European Union resources to be provided for schemes assisting the victims of crime, including the European Forum for Victim Services;
51. Calls on the Member States to organize public legal aid and simplified access to the law so as to ensure that all citizens have equal opportunities to defend their interests within the judicial system;

Racism, anti-semitism, xenophobia and discrimination against ethnic national, sexual, linguistic and religious minorities

52. Welcomes the series of measures to combat racism and xenophobia, adopted by the Justice and Interior Affairs Council at its first meeting on 29-30 November 1993 in Brussels, but regrets that it hardly goes as far as the Plan of Action combating racism, xenophobia, antisemitism and intolerance adopted by the Council of Europe at its summit meeting on 8-9 October 1993 in Vienna, and makes no reference whatsoever to combined and co-ordinated legislative measures to tackle such problems such as a Community Directive prohibiting racial discrimination, an instrument which Parliament has already requested in its resolution of 21 April 1993 on the resurgence of racism and xenophobia in Europe and the danger of right-wing extremist violence⁶ and again demands;
53. Calls upon the only Member State of the Union which has still not ratified the 1966 UN Convention on the Elimination of All Forms of Racial Discrimination, viz. Ireland, to do so immediately, and upon all Member States, which have not yet done so, to recognise the competence of the Committee on the Elimination of Racial Discrimination (CERD);

⁵ OJ C 256 of 09.10.1989, p. 32.

⁶ OJ C 150 of 31.05.1993, p. 127.

54. Urges Member States to implement immediately the multi-institutional approach to combating racism and xenophobia, as proposed in the aforementioned Council meeting, as well as the other proposals adopted in order to spare the Union from further deterioration of an already very shameful and deeply disturbing situation of violence against people who are perceived to be different;
55. Reminds Member States of the solemn declaration against racism and xenophobia to which they subscribed on 11 June 1986 which has, so far, not been followed up by much meaningful and effective coordinated action;
56. Stresses the essential role that must be played by the police forces in curbing violence against ethnic minorities, and therefore insists that membership or active support of racist groups or parties and public racist and xenophobic propaganda should be incompatible with membership of police forces, which are meant to deal with the public on a non-discriminatory basis;
57. Draws to the attention of the Member States and the Union as such that they lack credibility in demanding that developing countries respect human rights when several million people, nationals of both the Union and of third countries, live within the Union in fear of being verbally or physically abused or subjected to systematic harassment merely because they are perceived to be different;
58. Urges Member States to abstain from introducing policies discriminating against ethnic minorities as this is pandering to the agenda set by extreme-right parties and since history has clearly demonstrated that such policies will inevitably lead the problems of racism and xenophobia to escalate beyond any control;
59. Calls for the disqualification from eligibility to stand for public office, including membership of the European Parliament, of persons who incite racial hatred or advocate racial discrimination, because the human rights of the victims of racism are fundamentally rejected by the perpetrators of racism who, given the opportunity, will destroy democracy, as the experience of mid-twentieth century Europe demonstrates, and calls on all democratic political forces to combat extreme right-wing parties which advocate xenophobia;
60. Condemns racial harassment, racist attacks and murders, including of refugees and asylum-seekers who, ironically, have fled their countries of origin to seek protection in Europe, and urges the judiciary in each and every Member State to consider as an aggravating circumstance any crime perpetrated with a racist motive;
61. Notes the persistent violent racist and antisemitic acts committed in the Federal Republic of Germany and calls on the German Government to use all lawful means to protect the safety of minorities; calls on the Government to consider introducing legislation against discrimination;
62. Welcomes nevertheless the adoption on 9 July 1993 by Germany of a law, with retroactive effect as from 1 July 1990, extending the right of compensation to victims of violence to non-EU nationals, but feels that victims of non-physical aggression of a racist or xenophobic nature should also be entitled to some form of compensation and urges all Member States to adopt a law to this effect;
63. Urges the responsible authorities to do everything in their power to ensure that human rights are scrupulously respected in all EU Member States; to this end, significant progress should be made notably to combat effectively the rise of racism, intolerance and the extreme right in Europe; to this

end all racist acts should be severely punished and all actual or potential victims - asylum-seekers, third-country nationals, members of ethnic, religious, philosophical or sexual minorities, the disabled, the homeless, the elderly etc. - should receive adequate protection;

Poverty and economic, social and cultural rights

64. Reaffirms that the European Union and the Member States should unreservedly ratify and apply the Council of Europe's Social Charter, that they should respect the international conventions and recommendations of the ILO, and that the Government of the United Kingdom should without delay sign the agreement on social policy appended to the Maastricht Treaty;
65. Reaffirms its demand for the introduction of a system of minimum guarantees in respect of housing, income, social aid, health care and legal aid essential to leading a life in keeping with human dignity; such a system should be accessible in particular to the disadvantaged sections of both EU citizens and non-EU citizens legally resident on EU territories; considers that emergency medical care and legal aid should also be accessible to all those on the territory of the EU;
66. Reaffirms its support for the efforts of all those in the Community and throughout the world who refuse to accept the violation of human rights which poverty constitutes;
67. Asserts that the present unemployment level of around 20 million in the European Union is a major violation of human rights, as the right to work with a reasonable level of pay is a basic human right;
68. Maintains that the right to good quality housing at an affordable cost is a basic human right in a civilised society which should be respected in all Member States;
69. Reaffirms the need for specific measures to combat poverty and social exclusion and for these measures to be designed, implemented and evaluated in partnership with the most disadvantaged persons and families;
70. Considers that attempts should be made as soon as possible to introduce comprehensive social protection for persons moving within the Community, with specific actions to fully harmonize the social security systems of the Member States, including supplementary or complementary schemes and those provided for under agreements or legislation;
71. Calls for the United Kingdom government to repeal the law preventing reputable organisations which help the homeless such as the Salvation Army from giving temporary accommodation to homeless persons below the age of seventeen;
72. Affirms the right to the highest possible standards of health care which should be available based on the needs of a person, and not based on the ability of that person to pay;
73. Believes that respect for cultural rights is now a priority for European integration and would appear to offer a good remedy against the centrifugal force of ethnic fragmentation, and that the Member States should be encouraged to ratify the Council of Europe's Charter of Regional and Minority Languages;

Children's rights, Women's rights and rights of older people

74. Reaffirms its Resolution of 13 December 1991 on the Problems of Children in the European Community⁷, and of 8 July 1992 on a European Charter of Rights of the Child⁸ and stresses that the European Union should protect the most fundamental rights of children to enable every child to enjoy a dignified and happy childhood;
75. Urges all the Member States to ratify the United Nations Convention on the Rights of the Child forthwith and unreservedly;
76. Calls for co-ordinated measures against child abduction, in particular to stop abduction from one Member State to another preventing the return of an abducted child;
77. Calls for the protection of children from sexual abuse, and from violence, and for the outlawing of corporal punishment by means of stronger legislation;
78. Affirms that every child should have the right to good health including clean accommodation, healthy nutrition, and a non-polluted environment;
79. Calls for a full education for every child, and for the protection of children from economic exploitation, with vigorously enforced European legislation against the scourge of child labour;
80. Calls on each of the Member States to appoint a Children's Ombudsman, and for the appointment of a European Union Children's Ombudsman;
81. Calls on the Commission to take the necessary measures to reinstate, without delay, the appropriation for 1990 to the NGO 'BETWEEN' which tirelessly promotes human rights of deprived families and notably children of both communities throughout Northern Ireland;
82. Supports the right of each human being to the collective support of the community and to support of the type provided by family and family life especially because of the large numbers of lone people, often elderly, who lack such support at the present time;
83. Insists, at the close of the European Year of the Older Person and Solidarity Between Generations, on the human rights of older persons to a life and retirement of comfort and dignity, and reaffirms its resolution of 24 February 1994 on measures on behalf of the elderly;
84. Reaffirms its many resolutions on Equal Opportunities and the Rights of Women, usually deriving from reports of its Committee on Women's Rights;
85. Declares that discrimination on grounds of sexual orientation is unacceptable, that the human rights of homosexual men and women must be respected, and therefore endorses the report on the rights for homosexuals and lesbians in the EC⁹ of its Committee on Civil Liberties and Internal Affairs;

Rights of patients, disabled persons and the mentally ill

⁷ OJ C 13 of 20.01.1992, p. 534.

⁸ OJ C 241 of 21.09.1992, p. 67.

⁹ PV 57 of 08 February 1994, part II, point 5.

86. Takes note of the Recommendation 1235/94 of the Parliamentary Assembly of the Council of Europe on psychiatry and human rights; urges that a study be made of legislation and practice in the field of psychiatry in the Member States; calls on Member States and the Union to implement the above mentioned Recommendation and amend their legislation accordingly;
87. Insists that the physically disabled must be allowed the same rights and opportunities in society as the able bodied, particularly in the field of employment;
88. Reaffirms the conclusions of its Resolution of 16 September 1992 on the rights of the mentally handicapped¹⁰;
89. Believes that sufficient care and support should be provided to enable the mentally ill to live dignified lives, integrated as much as possible into society;
90. Takes the view that patients' rights vis-à-vis medical staff and institutions (hospitals and specialist units) must be guaranteed; also takes the view that as a result of the free movement of persons it is more likely that people will require medical treatment in Member States other than their own and that the rights of such patients must be better safeguarded; calls therefore for a European patients' charter to be drawn up;

Rights to associate effectively in a trade union

91. Takes the view that two of the most important human rights are the right for workers to associate in a trade union and the right to take industrial action, including the right to strike, without the threat of retaliatory sacking or court action;
92. Reiterates its condemnation of the large number of infringements of trade union rights and the rights of trade union officials in some Member States and calls for the respect of such trade union rights;
93. Concerned by the failure to grant the freedom of union association to police workers in Portugal and by the disciplinary measures adopted against union leaders for the legitimate performance of their duties of professional representation;
94. Deplores the continued unilateral denunciation of long-term collective agreements, denial of the right of elected trade union representatives to information about business management, denial of the right of workers to be represented in connection with complaints or disciplinary measures, and failure on the part of employers to consult trade union representatives about questions concerning the number of personnel and health and safety;
95. Condemns the targeting of trade union representatives and trade unions both by certain employers and by those Member States which statutorily threaten to fine or even imprison trade union officials or to sequester trade union funds, purely for exercising the trade union rights recognised by the International Labour Organisation;
96. Calls on Member States to guarantee a statutory right to trade union recognition, with a statutory framework of positive rights for trade union members to be represented by their trade union both for collective bargaining and for individual representation;

¹⁰ OJ C 284 of 02.11.1992, p. 49.

97. Calls on Member States to ensure when an employee challenges a dismissal that the burden of proof must be on the employer to demonstrate to an appropriate tribunal held without delay that the reason for dismissal is indeed a fair reason and if the dismissal is found to be unfair the dismissed worker must receive not only compensation but also mandatory reinstatement;
98. Condemns the Government of the United Kingdom for its unilateral removal of trade union rights from the workers at GCHQ in contravention of ILO Convention 87, calls for the restoration of those rights, and calls for full compensation and reinstatement for those workers sacked for refusing to give up their membership of independent, free trade unions;
99. Highlights the continued restrictions on trade union freedom in the United Kingdom, in many cases such as at GCHQ in contravention of ILO Convention 87, and appeals to the United Kingdom Government at least to allow the greater level of trade union rights which applies in other Member States of the European Union;
100. Believes that domestic workers who are third country nationals should
- (i) have a status which recognises that they are workers in their own right;
 - (ii) be allowed to change employers within the same category of employment;
 - (iii) be given the right to settle after four years of work within their category in a Member State irrespective of whether they transferred to another employer;
and
 - (iv) have their immigration status regularised if they have already left their employers and are overstayers;

Rights of asylum, situation of refugees

101. Profoundly regrets that the Commission, after having emphasized all the advantages to be gained in transferring asylum policies from the third to the first pillar, i.e. to within Community competence, concludes that the time is not yet right to do so¹¹;
102. Calls on the European Union and its Member States work for a binding international agreement on minimum standards for a fair and proper asylum procedure comprising the following minimum standards: the right not to be sent back (Article 33 of the Geneva Convention), referral to a competent independent body with decision-making power, access to legal assistance for the asylum seeker, interpretation and advisory organizations, the asylum seeker to be heard in person before the decision at first instance, the right to written notification of refusal including a right of appeal with suspensory effect;
103. Considers that the introduction of entry visa requirements for nationals of refugee-sending countries coupled with carrier liability laws, which are required under both the 1990 Dublin Convention and the 1990 Schengen Convention and which oblige carrier personnel to act as international immigration control officers, have deprived many people of being able to effectively exercise the right of asylum in the Union, forcing others fleeing persecution to resort to traffickers and/or false identity and

¹¹ Commission of the EC: Report to the Council on possibility of applying Article K.9 of the Treaty on European Union to asylum policy, 04 November 1993, SEC(93) 1687 final.

travel documents which are subsequently used against them to refuse them asylum;

104. Calls upon the Member States to put an end to the deportation of rejected asylum-seekers who happen to be army deserters refusing to take part in conflicts which have themselves been condemned by the Union as well as the General Assembly of the United Nations;
105. Calls for an inquiry into the consequences for asylum-seekers of so called readmission agreements, quite often forced upon the countries situated at the periphery of the Union in exchange for economic assistance and promises of closer ties with the Union;
106. Strongly criticizes the practice of many Member States in granting asylum-seekers a mere residence permit on humanitarian grounds instead of refugee status in order to deprive them of rights associated with such status, in particular, the right of family reunification;
107. Considers that asylum-seekers should not under any circumstances be held in closed, prison-like institutions while their applications are being considered;
108. Calls upon the Member States to stop contributing to the prevailing climate of antipathy towards asylum-seekers and explain to their public that those who do not qualify for refugee status are often people who face persecution of a kind not covered by the 1951 UN Convention on the Status of Refugees, as amended by its 1967 Protocol;
109. Urges the Member States to act together and devise an instrument of protection, even temporary, for people who fear or actually suffer from the kinds of persecution not covered in the afore-mentioned Convention, namely victims of ethnic or civil wars;
110. Regards as an individual right, to be promoted, the right of asylum on political, ethnic, religious or other grounds;
111. Unaccompanied children who seek asylum in a Member State of the EU should be treated in accordance with UNHCR guidelines and the UN Convention on the Rights of the Child. Special procedures should be established in the asylum process to ensure they are not disadvantaged with respect to adult asylum seekers. Unaccompanied children should receive appropriate care under national child-care or youth welfare legislation existing in Member States;
112. Recommends that Member States set up a system under which all administrative decisions made at border posts to refuse entry to asylum-seekers would not become effective without judicial control;
113. Calls on the Member States at all events to take into account the right of 'non-refoulement' (Article 33 of the Geneva Convention) in cases where an application for asylum is inadmissible or has been declared unfounded;
114. Demands that Member States carefully review the implementation of the principle of "safe third country of asylum", and abstain from making use of this principle unless the so-called safe third country has provided written guarantees that the asylum-seeker(s) in question will simply not be tossed over to another country;
115. Deplores the conditions of detention of asylum-seekers in so-called "international zones" where national laws are not applied, as well as the use of violent means to detain or deport them which has already caused the

loss of life of an asylum-seeker in the UK, France, Belgium, and in the Netherlands;

116. Notes in this connection that the Belgian State has once again been found guilty by one of its own courts of violating Article 3 of the European Convention on Human Rights on account of the humiliating treatment meted out to African asylum-seekers at Brussels Airport;
117. Condemns likewise the use of indirect deterrents to asylum-seekers, such as accommodating them in assembly camps and restricting their social protection;
118. Strongly condemns the spate of attacks against refugees and asylum-seekers in the streets and in reception centres, and warns that such incidents are not discouraged by the frequent reference to them in the media and by politicians as "fraudulent asylum-seekers";

Rights of immigrants

119. Deplores the fact that until today, not one Member State of the Union has either signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, approved by the United Nations General Assembly on 18 December 1990, and calls upon the Member States as well as the Union to proceed immediately with the signing and ratification procedure;
120. Requests those Member States which have not yet done so to sign and ratify convention numbers 97, 111 and 143 of the International Labour Organisation as well as the 1977 European Convention on the Legal Status of Migrant Workers;
121. Calls for a right of permanent residence within the Union for all persons of long-standing residence, including those born and educated here, who do not have or do not wish to have the nationality of a Member State;
122. Calls upon Member States to follow-up the introduction of voting rights for non-nationals who belong to the Union with legislation aimed at extending such rights to third country nationals with long-standing residence;
123. Urges Member States to respect their obligations under international agreements when implementing policies concerning family reunification;
124. Demands that friends, and especially relatives of residents within the Union not be impeded from travelling to the Union for the purpose of visits or participation at special occasions through visa policies which owing to the high costs involved, the long delays in processing applications and various supporting documents required often discourage and prevent trips from being made;
125. Condemns the fact that, despite several rulings of the European Court of Human Rights against the application of double jeopardy on youths of immigrant origin, some Member States either continue to expel youths having served prison sentences or have amended their Aliens Law to make expulsion in such cases mandatory;
126. Deplores the use of force and violence to expel immigrants without authorised residence, such as that which allegedly caused the death of a Jamaican woman in the UK, and calls upon the Member States to respect the dignity and human rights of clandestine immigrants;

Other issues and rights

127. Asks all judicial bodies to give their decisions and judgments within a reasonable period;
128. Urges the Court of First Instance and the Court of Justice to shorten the length of procedures;
129. Asks for the creation of a fund to assist those who complain to the Court of First Instance or the Court of Justice;
130. Reaffirms its comments in its Resolution of 11 March 1993 on respect for human rights in the European Community¹² concerning the situation in the former GDR, and regrets that in the ensuing period the political discrimination and discrimination in access to employment has increased rather than diminished;
131. Recalls in this connection the complaint brought by teachers from the East German Land of Thuringia and considered by the UN Human Rights Committee in Geneva in February 1994 concerning the refusal to appoint them on political grounds ('Berufsverbot');
132. Condemns the particularly acute form of discrimination in the Land of Saxony in the Federal Republic of Germany whereby the electoral rights at local-government and Land level of persons classified as 'close to the State' are restricted in that they are not permitted to stand for election;
133. Considers that the effective application of legal provisions to facts, situations and activities in the former German Democratic Republic prior to the reunification of the two German states on 3 October 1990 is a form of discrimination against the citizens and organizations of the former GDR, contrary to the provisions and practice of international law;
134. Maintains, in the light of discrimination in Britain and France against people who play "Rugby League", that people should be able to participate in sports such as "Rugby League" without fear of reprisal or discrimination;
135. Takes the view that human rights include the right to live in an environment as free from pollution as possible, that present generations have a duty to pass on a clean environment to future generations, and therefore commends the work of its Committee on the Environment;
136. Urges once again that proper legislation be adopted to protect people against trafficking in organs, misuse of genetic engineering and all other forms of exploitation of the physical and moral integrity of the human person, as well as against discriminatory use of medical and other tests in the workplace, in checks on road users and elsewhere;
137. Calls upon the Member States to grant legal recognition of the rights of occupational showmen;
138. Calls on the responsible authorities of the Member States to submit to it annually a detailed and exhaustive report on the development of the human rights situation in each Member State;

¹² OJ C 115/178 of 26.04.1993.

139. Instructs its Committee on the Rules of Procedure, the Verification of Credentials and Immunities, in collaboration with the Committee on Civil Liberties and Internal Affairs and the Subcommittee on Human Rights, to table the necessary amendments to ensure that the issue of human rights in the EU can be dealt with in the monthly debate on human rights (Rule 47);

. . .

140. Instructs its President to forward this resolution to the Commission, Council and to the Governments and Parliaments of the Member States;

B.
EXPLANATORY STATEMENT

I. INTRODUCTION

On 10 December 1993, "Human Rights Day" the United Nations Centre on Human Rights published that during 1993, 300 000¹³ communications alleging violations of human rights were received. The figure on human rights violations within the Union was not given, but compared with other parts of the world the situation is not grave.

Although the number of human rights violations brought to the attention of the rapporteur, is limited, the situation as to human rights within the Union can still be improved. It is important that in our democratically ruled part of the world, no government is co-operating with human rights violations. All Member States' Governments, are tempting to combat all human rights violations within their countries. Where human rights violations occur, they are either incidents or situations where Member States consider that more important interests must prevail. From all information which is available, it is nevertheless not possible to examine every detail. The examples and details about countries must thus be used with great care.

Attention must be drawn to the entry into force of the Union Treaty. Within the framework of the Union, article F of the Treaty on European Union mentions basic principles:

- "1. The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
3. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies."

Although the text of the second paragraph does not directly ask for accession to the Convention we will shortly examine this matter hereafter.

II. Specific subjects

The year 1993 has been a year where the human rights policy within the world has called for attention. The United Nations urged the international community to take a series of measures to realise the goals of the World Conference on Human Rights in June 1993, where representatives of 170 States met for the first time in 25 years to reaffirm their commitment to protect human rights.

On the occasion of Human Rights Day Mr Ibrahim Fall, the United Nations Assistant-Secretary-General for Human Rights called for a five points action-plan:

- "* Universal ratification of various conventions should be pursued with renewed vigour. These include the Convention on the Rights of the Child, and its full integration into national action plans by 1995; the Convention on the Elimination of all Forms of Discrimination against Women by the year 2000; the two Covenants on civil and political rights and on economic, social and cultural rights; and, the Convention against Torture;
- * Balancing the implementation of human rights, integrating economic, social and cultural rights with civil and political rights;
- * Strengthening the efficiency of implementing human rights through the United Nations Commission on Human Rights, human rights treaties,

¹³ UN Geneva Press Release HR 3606, p. 2.

monitoring bodies of various covenants, preventive diplomacy, and the participation of non-governmental organisations. This includes better coordination within the United Nations system regarding the implementation of human rights, especially in the context of linking human rights and peace-keeping and human rights and development;

- * Putting the rights of women in the mainstream of all human rights activities;
- * Strengthening the United Nations Centre for Human Rights." ¹⁴

The fact that the United Nations are getting more active and the fact that more governments consider overall respect of human rights as a condition for good relations and the granting of development aid to other countries are a step in the right direction.

1. A Community system for the protection of human rights and fundamental freedoms

Consideration has, on several occasions in the past, been given to a Community system for the protection of human rights and fundamental freedoms. In April 1979, the Commission published a report on accession to the European Convention ¹⁵. The European Parliament has always fought for the protection of human rights and in general supported the idea of accession to the European Convention of 1950.

The European Parliament addressed this issue again in 1993. The Committee on Legal Affairs and Citizens' Rights organized a hearing on this subject in 1993 ¹⁶. The rapporteur, Mr Bontempi, drew up a working document and a draft report ¹⁷ and Mr Verhagen was appointed draftsman by the Committee on Civil Liberties and Internal Affairs. The report and the opinion ¹⁸ have been transmitted to the plenary session which adopted a Resolution on 18 January 1994 (PV 52 II, p. 4).

It will be useful at this point to restate the conclusions drawn in that opinion.

"Despite the technical problems, the Committee on Civil Liberties and Internal Affairs believes that accession by the EC to the European Convention for the Protection of Human Rights and Fundamental Freedoms is a matter of great political importance in order:

- a) to extend full protection of human rights to all areas of EC policy;
- b) to lose no support for the future process of unification because of the lack of a legitimate basis;
- c) to demonstrate to third countries that the European Community itself respects human rights, both formally and materially, and is prepared to have them critically reviewed by an independent body ...".

In addition to the issue of accession to the Convention, there is also the question as to which human rights and fundamental freedoms must be protected. The Treaty on European Union sets a criterium following from the jurisprudence of the Court of Justice: "The Union shall respect fundamental rights as

¹⁴ UN Geneva Press Release HR 3606, p. 3.

¹⁵ Bulletin, supplement 2/79.

¹⁶ Hearing 2 June 1993. See doc. PE 205.033.

¹⁷ PE 204.503.

¹⁸ PE 205.837/final.

guaranteed by the Convention ... and as they result from the constitutional traditions common to the Member States ..." (article F of the Union Treaty). It is likely that the text which the European Parliament had drawn up¹⁹, will need to be revised after accession to the Convention, as some standards will then be transferred to the protection of the Convention and some not (see also paragraph 13 of the Resolution of 18 January 1994 which is repeated in paragraph 2 of the Resolution of this Report). The rapporteur believes that for the moment the European Parliament can still apply the standards of both the Convention and its own declaration.

2. Torture and ill-treatment in police-custody and prison, conditions of detention, abuse by security forces, terrorism

Article 3 of the European Convention on Human Rights, the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment and the European Convention for the prevention of torture and inhuman or degrading treatment or punishment set up the relevant international standards. All Member States of the European Community have ratified the European Convention for the prevention of torture and inhuman or degrading treatment or punishment. With its signature by Ireland in September 1992, all Member States of the European Community have now also signed the UN Convention against torture and other cruel, inhuman and degrading treatment

The conventions establish that nobody should be submitted to torture or other inhuman or degrading treatment or punishment. This, of course, applies to everybody within a state party to the Conventions. The European Court of Human Rights has moreover stated in the assessment of recent cases²⁰ that the decision to expel an asylum seeker, where substantial grounds have been shown for believing that he faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment may also give rise to an issue under Article 3 of the European Convention on Human Rights.

There are nonetheless numerous allegations of ill-treatment or even torture in police-custody in most of the EC countries²¹.

Ill-treatment is most likely to happen during the period immediately after arrest or during interrogation. In different Community Member States, the ill-treatment of detainees appears to be related to racist prejudice. Asylum-seekers, third country nationals or citizens from ethnic minorities are increasingly becoming victims of ill-treatment by police-officers, sometimes compounded by racist insults.

In some member countries, the situation seems to be particularly serious. Amnesty International has expressed its concern about the situation in Italy, where it considers that the problem of ill-treatment is not one of a few isolated incidents²². Also in Portugal the allegations of ill-treatment have been numerous and offenders are brought to justice only in exceptional cases.

¹⁹ Resolution adopting the Declaration of fundamental rights and freedoms of 12 April 1989 (OJ n° 120 of 16.05.1989, p. 51).

²⁰ Case of Cruz Varas, judgment of 20.3.1991; case of Vilvorajah and others, judgment of 30.10.1991

²¹ Compare "Amnesty International report 1993". Denmark p. 113, France p. 131, Germany p. 135, Greece p. 138, Italy p. 171, The Netherlands p. 221, Portugal p. 243, Spain p. 263, United Kingdom p. 297

²² AI, Italy, "An increase in alleged ill-treatment by prison guards, May 1993, p. 1.

The Committee against Torture, which was set up in the framework of the UN Convention, receives periodic reports by States party to the Convention. In April 1993, it expressed its concern about the increase in torture and long delays in investigating cases. It considered that Spain should adopt measures to ensure its compliance with the Convention.

States which are party to the UN Convention against torture and other cruel, inhuman or degrading treatment are obliged to investigate acts of torture and to bring perpetrators to justice. However, inquiries are frequently very slow, and convicted officers are not invariably removed from active police service.

The right to life and physical integrity is also threatened by armed terrorist groups, operating in EC member states. This is especially the case with regard to the I.R.A. and so-called 'loyalist' paramilitaries operating mainly in Northern Ireland, and with regard to ETA in Spain. There is no excuse in democratic EU member states such as the United Kingdom and Spain for terrorism which threatens the innocent public and the security forces legitimately fulfilling their function.

The conditions of detention in some prisons within the European Union have still not reached a desirable standard. There have been reports of overcrowding, poor sanitation and inadequate medical assistance. In Belgium, for instance, 1,400 more people are in prison than the capacity of the prison cells.

3. Freedom of expression

Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right of freedom of expression to everyone. The right to receive and impart information and ideas without interference on the part of public authorities and regardless of frontiers was explicitly included. Although the Convention also provides for limitations of the freedom of expression, these have to be applied very carefully.

Press freedom and the right to information have to be understood as integral parts of freedom of expression. States should not impose restrictions on freedom of expression, should, in particular, respect opposing democratic political opinions and their expression and should moreover provide for a variety of communication media and a plurality of information sources.

Freedom of expression can be endangered in different ways, such as judicial prosecution for expressing opposition opinions; a lack of pluralism due to an increasing concentration of communication media; as well as limitations on the access to information from public administrations.

Nevertheless, this freedom is not always fully guaranteed. In Greece, in particular, there have been recent cases, where people who peacefully exercised their right to express views opposing the government were made to face judicial prosecution.²³

During 1992 the Court of Human Rights found, that in an EC member country Art. 10 of the Convention had been violated. In Ireland, agencies were restrained from providing pregnant women with information concerning abortion facilities abroad.

4. Threats to the rule of law

²³ Compare Amnesty International Report, Greece, "Violations to the right to freedom of expression", 11/1992 and "Violations to the right to freedom of expression: further cases of concern", 1/1993

A. The Rapporteur takes the view that the level of crime in the territory of the European Union is at such a high level that the human rights of the majority who do not commit crimes are infringed by the minority who do commit crimes. The level of crime, especially violent crime, is so high that many people live in constant fear of crime.

B. If social and economic problems such as poverty, mass unemployment and the "drug culture" are tackled seriously by Member States Governments, then the level of crime could be expected to drop significantly. However, criminals who are convicted in fair trials of having made conscious decisions to commit crimes which cause harm or misery should be penalised in a manner proportionate to the severity of the crimes.

C. The European Forum for Victim Services brings together national organisations in Europe working for victims of crime, its objectives are to improve the situation of victims of crime in Europe by:

- (i) Promoting the development of effective services for victims of crime throughout Europe.
- (ii) Promoting fair and equal compensation for all victims of crime throughout Europe, regardless of the nationality of the victim concerned.
- (iii) Promoting the rights of victims of crime in Europe in their involvement with the criminal justice process and with other agencies.
- (iv) Exchanging experience and information between member countries in order to extend knowledge about the best possible provision for victims of crime.

The European Forum for Victim Services deserves financial and logistical support from the European Union Budget and Institutions.

5. Anti-semitism, racism, xenophobia and discrimination against ethnic minorities

A. Despite all the alarming reports²⁴ issued so far pointing to the increasing threats of racism, anti-semitism and xenophobia, there were no serious efforts on the part of the Community or the Member States, during the course of 1993, to take concrete and credible co-ordinated action to curb such a horrible menace whose destructive and murderous forces under fascist regimes remain still vivid in our memories.

A.1. In the February 1993 edition of its monthly newsletter, Amnesty International (AI) gives horrible examples of cases of alleged torture and ill-treatment committed by the police, "the very people who should be investigating and preventing racist violence". In all the cases mentioned, all the victims of police brutality except one - a white Portuguese student born in Angola who was beaten up by the Portuguese police - were foreigners or "non-white" European citizens. In publicising these cases, AI stresses that it "is not saying that such ill-treatment is systematic in any (European) country, or even that such cases form the majority of ill-treatment cases about which the organisation is informed in Western Europe". However, AI has noted that "in a significant number of cases of torture and ill-treatment there appears to be a racist element".

²⁴ See, in particular, the REPORT on the findings of the second Committee of Inquiry on Racism and Xenophobia of the European Parliament (Rapporteur: Mr Glyn FORD, 1991), and the report drawn up on behalf of the Committee on Civil Liberties and Internal Affairs on right-wing extremism in Europe and the rise of racism and xenophobia (Rapporteur: Mr Cesare DE PICCOLI), Doc. A3-0127/93 - OJ C 150 of 31.05.1993, p. 127).

A.2. Not all Member States provide statistics on crime when racism or xenophobia is the motive. The figures compiled by two countries which do so largely substantiate fears of the depth and scope of racism as a major threat to the respect for human rights. In Germany, a total of 1,322 attacks against foreigners were registered in 1993 (2,283 in 1992), including eight murders (17 in 1992)²⁵. In the UK, according to statistics from 42 of the 43 police forces in England and Wales, there was a total of 8,779 reported racial attacks in 1993, nearly 1,000 more than in 1992. In the London Metropolitan Area alone, 3,550 cases were reported in 1993, compared with 3,000 in 1992²⁶.

A.3. Courts have generally been reluctant to recognise the racist element in crimes, as well as admit the charge of attempted murder in cases of premeditated, well organised arson attacks. The perpetrators, quite often minors or youths in their early twenties, are sentenced to short periods in youth detention centres, or are given suspended prison sentences.

B. True enough, the Commission has put out an excellent report on the legal instruments to combat racism and xenophobia²⁷, and, for the first time ever, the Justice and/or Interior Ministers of the 12 meeting within the TREVI framework in Kolding, Denmark, on 6-7 May 1993, stressed the need for intergovernmental co-operation to combat racism and recognised that "combating racism in the Community requires not just action taken by national authorities but also co-operation between Member States". However, the proposal put forward and implemented by the ministers, namely "a survey by questionnaire concerning racism in individual countries", leaves very much to be desired, especially by the fast-expanding number of people victimised both physically and psychologically by the scourge of scapegoat hunting.

C. It is surely not enough for the Union and the Member States to express shock and condemnation everytime there is an incident like those in Hoyerswerda, Solingen, Rostock, or even Oberhof which, in October 1993, gained much national and foreign press coverage because the victims happened to be American athletes. Violence motivated by intolerance has spread its tentacles throughout the Union. Victims are increasingly people who fled torture and persecution in other countries only to be savagely beaten up or even murdered in Europe because of the colour of their skin. Is it not shameful that the Union managed to impose respect for human rights in the IV Lomé Convention while ethnic minorities living in some European cities are too fearful to walk in the streets at night. The fact that millions of people throughout the Union have a justified fear for their lives simply because they are different raises the question as to how far Article 3 (prohibiting degrading treatment) and Article 5 (guaranteeing liberty

²⁵ These are figures of the Federal Office for Internal Security (Bundesverfassungsschutz) whose figures for such attacks are much usually much lower than those compiled by the Federal Crime Bureau (BKA). (cf. Migration News Sheet, February, 1994).

²⁶ These UK figures do not, of course, imply that foreigners were, in 1993, more than 6 times more likely to be attacked than in Germany. The definition of what constitutes a racist attack varies greatly from one Member State to another. Moreover, despite the fact most racist attacks, mainly harassment, in the UK are not reported to the police, the tendency of victims to inform the police in Germany is even much less. The overwhelming majority of incidents reported in Germany are of a very violent nature. For example, the total number of reported racist attacks in 1993 included four attacks with explosives, 302 arson attacks and 690 cases of assault causing serious bodily harm (cf. Süddeutsche Zeitung, 14.01.1994).

²⁷ Commission of the EC: "Legal Instruments to Combat Racism and Xenophobia", December 1991, Doc. V/1733/93.

and security of person) of the European Human Rights Convention are being respected.

C.1. One rather positive development in Germany was the final approval, on 9 July 1993 by the Bundestag of a new law extending the possibility of compensation to victims of violence to non-EU nationals, and allowing for this law to come into force with retroactive effect as from 1st July 1990. Such a law should be in force throughout the European Union, and include other forms of aggression, not only physical ones.

D. The recent pledges by European Governments to take co-ordinated and concerted action against racism and intolerance, especially the Plan of Action adopted at the Council of Europe's Summit meeting in Vienna on 08-09 October 1993, as well as the series of measures to combat racism and xenophobia adopted by the first meeting of the Justice and Home Affairs' Council, do, in fact, constitute an unprecedented approach to such problems in so far as the Governments concerned really take the necessary steps to carry them out. However, the results of whatever meaningful and well-intended programme to root out intolerance will always be limited, if not swept away altogether, for as long as people with a certain prominent position in society are allowed to abuse the right to freedom of expression as enshrined in Article 10 of the Convention²⁸ and make inflammatory remarks against ethnic minorities, thereby inciting hatred and provoking violence. Those guilty include politicians, usually from the extreme-right, but sometimes from "respectable parties", who under the guise of nationalistic or even patriotic pretences incite their electorate against vulnerable ethnic minorities.

E. More than 25 years after signing the text on 21 March 1968, Ireland remains the only Member State of the Union which has still not ratified the 1966 UN Convention on the Elimination of All Forms of Racial Discrimination. Although this international convention constitutes a worthy instrument to combat discrimination, its effectiveness has been only marginal where the Union is concerned due especially to the limited competence of the supervisory body, the Committee on the Elimination of Racial Discrimination (CERD), set up under its Article 14 to consider communications from individuals or groups of individuals claiming to be victims of a violation by States parties to any of the rights set forth in the Convention. Of the 11 Member States of the Union which have ratified this Convention, only four - Denmark, France, Italy and the Netherlands - recognise the competence of the CERD.

F. In view of the forthcoming European Elections, the European Parliament has the duty to ensure, as far as possible, that the composition of its future hemicycle is free from merchants of intolerance. As a token of its concern over the rise of racism and to show that it is mindful that its future members are elected on a programme free of intolerance, the European Parliament should declare that racist campaign speeches, remarks or literature are unacceptable in democratic political debate and should result in exclusion from public office, including membership of the European Parliament.

6. Poverty, economic, social and cultural rights

As the De Gucht report states, "the problem of poverty in Europe is widespread and worsening". This state of affairs leads to more and more citizens of the European Union being unable to enjoy basic fundamental human rights. Such rights include, most obviously, a decent job with a reasonable level of pay and decent working conditions. Not only is this a basic right, but also the best pathway out of poverty for many people. However, this is not an option open to

²⁸ See Application N° 19459/92 to the European Commission on Human Rights in which the latter ruled, on 29 March 1993 that freedom of expression does not imply the right to make revisionist remarks.

many, either through lack of employment opportunity, family responsibilities, ill health or age. What is needed is an integrated approach to both combat and eliminate poverty.

It is not only desirable in itself to eliminate poverty, thus enhancing directly the lives of millions of Community citizens. Its elimination would also contribute greatly to a decrease in many other social ills. These include crime, drug abuse, disease and poor housing.

Poverty, it could be argued, is the biggest single human rights problem facing the EU.

On various occasions during 1993, Parliament has made known its views on the growing phenomenon of exclusion. It has advocated economic and social cohesion²⁹, voiced its opposition to social dumping and called for social achievements to be respected (whilst condemning any form of levelling down) and social rights to be promoted in all Member States, and, in so doing, it expressed the view that the social aspect should constitute an integral part of the creation of a peoples' Europe which is accessible to its citizens.³⁰

The seemingly inexorable rise in the numbers of unemployed or persons whose socio-economic situation is insecure is now resulting in the fragmentation of European societies. An ever larger group of people who are excluded from social protection (because they have no work and the social insurance system is inadequate) find themselves faced with insecurity both in legal terms (having no status) and physical. The severing of basic social links is producing a society in which the most deprived are left to fend for themselves.

The situation of immigrant workers is particularly difficult since, in addition to the problems described above, they may also face problems associated with integration and cultural co-existence. Expressing its views on cultural diversity and the problems with regard to schooling for the children of immigrants in the EU and in a resolution on the resurgence of racism and xenophobia in Europe and the risk of extreme right-wing violence, Parliament has on several occasions, stated its desire to see respect for cultural diversity and called for a statute to be created for legal residents, 'jus soli' to be applied when determining the nationality of the children of immigrants, and for changes to be made to school curricula so that they include the teaching of immigrants' mother tongues.

The fight against unemployment leads automatically to a fight against poverty and social exclusion. People who are heavily in debt, in poor housing conditions, or even homeless, often living in a twilight world in cities where living conditions have a dehumanising effect, are some examples of groups which have been cut off and excluded from mainstream society.

It is currently estimated that there are some 53 million 'poor' people in the Community, and unemployment which affects about 20 million people in the European Union in 1994³¹ is only one source of the new poverty and ensuing exclusion. Exclusion is particularly damaging, since it creates a vicious circle: the effects of long-term unemployment become entrenched, and people who

²⁹ OJ N° C 194 of 19.07.1993, p. 221, Resolution on economic and social cohesion of 24 June 1993.

³⁰ OJ N° C 176 of 28.06.1993, p. 159. Resolution on the Social Protocol agreed at Maastricht of 27 May 1993.

³¹ As the Service Network in Europe (Secours Catholique) points out, anyone receiving less than half the average income in the country concerned is considered to be poor. A table on the unemployment situation in the 12 Member States can be found in Annex 1.

have been unemployed for long periods find it increasingly difficult to re-enter the world of work. Safeguarding the economic and social rights of a significant number of people on the fringes of our society is becoming a major concern which transcends the individual cases of those affected. The sharp increase in numbers (from 44 million in 1985 to 53 million in 1993) demonstrates the inability of governments to give practical effect to the rights to work and social protection deriving from the welfare state. Social protection is proving inadequate in many cases and frequently takes the form of social assistance rather than social insurance (for the 13 million Europeans living in severe poverty). In addition to the powers conferred by the Treaty on European Union (Article 118), the full exercise of European citizenship requires a new approach, and in this light it is in the Community's interest to protect economic and social rights.

a) Children's Rights

A. In recent years, the European Parliament has addressed the issue of children's rights in its resolution of 13 December 1991 on the problems of children in the European Community³² and of 8 July 1992 on a European Charter of Rights of the Child³³. The Rapporteur believes that the Rights of Children must be seen as an integral part of Human Rights, and not as a marginal, separate issue. Every child should be able to develop its personality freely and with confidence.

B. Many children are still abused and exploited in the European Union. This is not only criminal, physical and mental abuse, which is universally condemned, but also much wider and deeper abuse in society. Corporal punishment is still practised in some schools in the Union; it should be banned.

C. Child labour is a scourge that is still with us in the mid 1990's. Many children, some very young, work long hours for very little pay often in very dangerous conditions. This must be eradicated both by European and national legislation and vigorous enforcement of that legislation.

D. Children's Ombudsmen would be expected "to safeguard the interests and rights of children, to deal with children's requests and complaints, to monitor the application of laws protecting children, and to inform and guide the public authorities in their work to uphold children's rights". (Bandres Molet Report).

E. Luxembourg and the Netherlands have not yet ratified the UN Convention on the Rights of the Child. Upon ratification, Belgium, Denmark, France, Germany, Spain and the United Kingdom had all made reservations or qualificatory declarations.

b) Rights of Physically Disabled People, People with Mental Handicap and people who are Mentally Ill

A. The physically disabled must be allowed the same rights and opportunities in the field of employment as the able-bodied. Indeed, they must be allowed to take a full and active part in society. Access is important, buildings must be designed with the physically disabled in mind.

B. Not only is it vital to promote legislation that safeguards the rights of people with mental impairments, society's attitude must be altered. Best practices from across the European Community must be encouraged and indeed enforced. The Schmidbauer Report highlighted the many issues facing mentally handicapped people.

³² OJ N°C 13 of 20.01.1992, p. 534.

³³ OJ N° 241 of 21.09.1992, p. 67.

C. Whether mental illness is a temporary or permanent condition, the extra resources to provide care and support must be provided. It is vital that those with mental illnesses should be able to live a life of dignity, integrated as much as possible into society.

c) Slavery, Forced Labour and Domestic Workers who are Third Country Nationals

It would be doubtless be useful to recall the exact definition of slavery and forced labour. Slavery is taken to be the state or condition of an individual to whom some or all of the attributes of property rights apply (a peonage, working off debts by bondage, is one form of slavery).

The report of the Committee of Experts on the application of conventions and recommendations of the International Labour Organisation is extremely informative as regards various states' respect for economic and social rights. Being party to the conventions of the Conference, European Governments are obliged to submit their observations to the Committee of Experts, which sets out clearly its own remarks and concerns. In 1993 France, Greece, the United Kingdom and Ireland merited particular attention in connection with the conventions on forced labour (No. 29) and the abolition of forced labour (No. 105). The international texts require an extremely narrow interpretation of the conditions under which forced labour may be used, whether in relation to prisoners or in an emergency. By way of example, attention might be drawn to the remarks on trade union freedom and the protection of trade union rights, for example in connection with the deployment of officials to replace striking state employees or public service workers (Germany and Greece). Some reservations were also expressed regarding Spanish legislation on medical examinations for young persons starting work (convention Nos. 77 and 78).

People living clandestinely, in fear of discovery and deportation, are all too often exploited in ways that amount to slavery.

Domestic servants whose continued residence in the Community depends on their work permit, are sometimes also exploited to the point of slavery.

d) Domestic Workers who are Third Country Nationals

In 1979, Britain's Immigration Law stopped granting work permits directly to persons entering the UK as domestic workers. However, a 1980 concession, which the Home Office admits is outside the Immigration Rules, continues to allow employers to bring their domestic workers into the country as persons accompanying a named employer. This means that they must work only for that employer - under no circumstances can they, or a prospective new employer, apply for them to do domestic work for someone else.

Thus on the point of entry, the domestic workers (the majority of whom are women) are given no independent immigration status as workers, although they are admitted into Britain to work. Instead, they are tied to the original employer and thereby effectively deprived of worker's rights, all of which ultimately depend on the right to change employers.

At the same time, their working conditions upon entry to Britain frequently deteriorate because the families they are accompanying usually travel with reduced staff, but rarely adjust their demands accordingly. It has become a sad and painful fact that overseas domestic workers in the UK are now so deprived of rights that they are in a situation of virtual slavery, in which they must endure abuses and exploitation far beyond any reasonable notion of contractual labour.

e) Rights to Associate Effectively in a Trade Union

A. Although not known for her commitment to trade union rights in the United Kingdom or to the Social Charter in the European Community, when UK Prime Minister Margaret Thatcher visited Gdansk on 3 November 1988, she told the Polish workers:

"Experience teaches us that you will only achieve higher growth, only release enterprise, only spur people to greater effort, only obtain their full-hearted commitment to reform, when people have the dignity and enjoyment of personal and political liberty; when they have freedom of expression, freedom of association, the right to form free and independent trade unions".

The Rapporteur agrees with this statement, but regrets the fact that Mrs Thatcher banned trade unions from GCHQ and imposed many restrictions on the freedom and independence of trade unions in Britain, measures which are still restricting effective trade unionism today. The United Kingdom stands out as the one Member State which seems to regard trade unions as "the enemy within".

B. In the United Kingdom:

(i) GCHQ

The ban preventing employees from maintaining membership of or joining trade unions at the Government Communications Headquarters in Cheltenham, after four decades in which trade unionists there had practised the rights to be trade union members, saw its tenth anniversary in January 1994. The Government has been criticised by the supervisory bodies of the International Labour Organisation nearly every year since 1984 for this flagrant breach of ILO Convention 87 which protects freedom of association and the right to organise. The Government dismissed employees who refused to give up their trade union membership. Those sacked trade unionists petitioned the European Parliament.

(ii) The Right to Strike

The ILO has said that in the UK the right to strike is limited by a narrow but unclear legal definition of trade disputes in pursuit of which legal strikes may be called. The ILO has held that unions should be able to call sympathy or solidarity action but that would lay unions open to financial penalties which could bankrupt the union. Strikers are not legally protected against dismissal without compensation. A union which does not disown an unofficial strike must either make it official by the required balloting procedures or lay itself open to massive fines. Any employee engaged in an unofficial strike can be sacked selectively and would have no right to complain to an industrial tribunal of unfair dismissal.

(iii) Indemnification of Union Members and Officials

Section 15 of the Trade Union and Labour Relations (Consolidation) 1992 Act (formerly Section 8 of the 1988 Employment Act) makes it unlawful for the property of any trade union to be applied so as to indemnify any individual for an offence or for contempt of court. This would prevent a trade union from paying a fine imposed upon an official who, for example, was instrumental in a secondary strike. Again, the ILO has ruled that the law is not compatible with Convention 87.

(iv) Discrimination at the Point of Recruitment

In May 1992 the ILO Governing Body upheld a complaint by the TUC against the British Government about blacklisting of trade unionists by organisations such as the Economic League. The TUC argued that the law and practice in Britain provided none of the guarantees, required in countries which have ratified ILO Convention 98 on the right to organise and bargain collectively, against anti-union discrimination at the point of recruitment. Working people have been denied employment in Britain because of their past trade union membership or activity. The ILO said that the Government was under an obligation to establish practical means to ensure that working people had protection against anti-union discrimination. The ILO asked the Government to extend explicit protection against blacklisting or other forms of discrimination based on trade union membership or past trade union activity, and concluded that all practices involving blacklisting of trade union members or officials were a serious threat to the exercise of trade union freedoms and governments should take stringent measures to combat such practices.

C. On 30 April 1993 a dockworker and a journalist won a verdict in the UK Court of Appeal. Their separate cases, taken together, arose from their being deprived of pay rises for refusing to sign personal contracts and give up union bargaining. The court ruled unanimously that it was unlawful for their employers to encourage financially workers to give up union representation, by giving pay rises only to those who signed the personal contracts. The Government immediately responded by amending the law to make such treatment lawful.

D. The UK trade union, MSF, published the details of thirteen typical cases of employment abuses at work, where basic employment and trade union rights have been infringed.³⁴ The terms of the Rapporteur's resolution would provide a legal framework for preventing these kinds of abuses.

E. The Rapporteur agrees with the European Metalworkers' Federation that "freedom of association and the right to strike are essential prerequisites for negotiations between employers and employees without which bargaining would be no more than a collective begging exercise".³⁵

7. Right of asylum, situation of refugees

A. The aggravating unemployment situation, already reaching levels not seen since the end of the second world war, and the spread of racist violence, including a resurgence of anti-semitism, have led virtually all governments of the Union to affirm, in one way or other, that the "boat is full". Not content with blaming immigrants for "stealing" jobs from the native population, populist extreme-right politicians join the chorus in denouncing that more than 90% of asylum-seekers are "economic refugees"³⁶. Never have we witnessed so many

³⁴ "Employment Abuses at Work. An MSF Dossier", September 1993.

³⁵ EMF Statement 20/1993.

³⁶ See the report by the Helsinki Watch ("Foreigners Out" - Xenophobia and Right-Wing Violence in Germany, October 1992) which blamed the racist riots in Rostock from 22 to 27 August 1992 on frequent press coverage of remarks made by some German politicians, linking the rise of racism and xenophobia to the increasing number of asylum-seekers. The new very restrictive asylum law, which came into effect on 1st July 1993, has not, in any way, reduced the level of racist violence. On the contrary, it may have encouraged extreme-right elements into believing that their violent tactics have paid off.

amendments to asylum legislation in the Member States of the Union, a clear indication of short-sightedness, and proof that such amendments have not been part and parcel of providing an overall humanitarian response to a growing refugee crisis.

B. It is apparently never superfluous to reiterate that the 1951 Geneva Convention on the Status of Refugees set the **very minimum** level of protection which Signatory States should grant to persons fleeing **direct individual persecution**. Just because an asylum-seeker does not satisfy this strict criteria covering very limited circumstances does in no way imply that s/he is a "liar", an "immigrant in disguise trying to get round immigration controls", trying to siphon off the benefits of social security. Excluded from the strict criteria are Tamils and other victims of ethnic conflicts or civil wars, members of certain persecuted African ethnic minorities, members of groups persecuted by Saddam Hussein of Iraq, war resisters, even those refusing to take part in conflicts condemned by the United Nations, etc. These are most of the people making up the 90% of applicants refused refugee status. By not explaining this to the misinformed public, governments have their share of responsibility in the public's antipathy, or in some cases hatred, of asylum-seekers.

C. It is therefore not enough for governments to simply affirm their obligations under the 1951 Geneva Convention, as amended by its 1967 Protocol. This in itself constitutes a tightening up of their practices since a generous interpretation of the Convention given in the sixties when Western Europe was confronted with a labour shortage. In view of Europe's humanitarian tradition and principles, it is not enough to simply say that yesterdays' bona fide refugees are, today, economic migrants who should be kept out. The very least the Union should do is offer temporary protection to other categories of asylum-seekers who do not qualify for Convention Status.

D. On the other hand, the hurdles, if not unsurmountable walls, placed in the way of asylum-seekers are resulting in the transfer of the Union's humanitarian responsibility to countries situated at its periphery, in particular, the former Communist countries in Eastern and Central Europe, but also North African ones, like Morocco and Tunisia. These countries are having to accept an increasing number of asylum-seekers on their territories because of visa restrictions and readmission agreements obliging them to take back all those who transited through their territories and were refused entry into the Union. The 1990 Dublin Convention, as well as the chapter on asylum-seekers of the 1990 Schengen Supplementary Agreement, coupled with readmission agreements and visa restrictions, have, instead of their avowed aim of putting an end to the phenomenon of "refugees-in-orbit", resulted in placing refugees "outside orbit" since most of the countries at the periphery of the Union simply do not have the necessary infrastructure, experience, expertise and financial possibilities to deal with large numbers of asylum-seekers.

E. Carrier liability laws, required for States that are party to the Schengen Agreement and/or the Dublin Convention³⁷, and the extension of entry visa requirements to all refugee-producing countries have obliged asylum-seekers to resort to the services of traffickers to flee their countries, resulting in the development of a lucrative business in this area. The general response of Member States has been to consider such behaviour on the part of asylum-seekers within

³⁷ See A. CRUZ (1991): "Carrier Sanctions in Four Community States: Incompatibilities between International Civil Aviation and Human Rights" in Journal of Refugee Studies, Oxford, Vol. 4:1, 1991.

a very negative light, treating their use of illegal means of flight as an element against their credibility.³⁸

F. As for those who manage to reach one Member State of the Union, their plight is far from over. Under the pretext of the Dublin Convention not yet being in force, Member States, in particular the UK, have sent back asylum-seekers to other Member States through which they transited, thus often ignoring another principle of the Dublin Convention that the application of an asylum-seeker should be examined in the country where s/he has family members.

G. The authorities are increasingly making use of so-called "international zones" to detain asylum-seekers while the admissibility of their applications are examined³⁹. Not only are such zones a juridical invention of Member States not wanting to consider asylum-seekers who land at their airports as being on their territory, but also the conditions of detention have been denounced by human rights agencies⁴⁰, and at least one Member State of the Union, namely Belgium, has been found guilty by its own judiciary of violating Article 3 of the European Human Rights Convention⁴¹. The detention of asylum-seekers as common criminals, and the increasing use of force and even violence to deport those rejected have already resulted in a number of suicides and deaths.⁴²

³⁸ One interesting exception to this tendency concerns the case of a Turkish journalist who used a false identity to flee to Germany. The decision to deport him for using false documents was quashed in November 1993 by the Federal Constitutional Court (BVerGe). (Az.: 2BvR 2451/93).

³⁹ See REPORT "on the arrival of asylum-seekers at European airports" of the Parliamentary Assembly of the Council of Europe (Rapporteur: Lord MACKIE OF BENSHE), Doc. 6490, 12 September 1991.

⁴⁰ See: "Frontières du droit, Frontières des droits - L'introuvable statut de la 'zone internationale'", report on a seminar on the legal status of the international zone which took place on 10-11 April 1992 in Paris. Published by L'Harmattan/ANAFE, Paris, 1993.

⁴¹ On 25 June, the tribunal de première instance of Brussels found the Belgian State guilty of violating Article 3 of the European Convention on Human Rights by subjecting 19 Somalian asylum-seekers to inhuman and degrading treatment in the transit area of Brussels international airport (see Migration News Sheet, July 1993). On 25 November 1993, the same court once again found the Belgian State guilty of maltreatment towards a Zairian woman asylum-seeker and her child in a new retention centre considered to be located in an "international zone". (see Migration News Sheet, January 1994).

⁴² On 14 January 1987, a Zairese national with refugee status in France died on board a flight from Brussels to Kinshasa, accompanied by 2 Belgian State Police officers. The cause of death given initially by the Belgian authorities was suicide by self-poisoning, but this was later excluded after an autopsy. On 25 August 1987, a Sri-Lankan asylum-seeker died as the French authorities were trying to forcibly put him on board a plane for the second time. The official cause of death was a heart attack. On 8 October 1991, a Zairese asylum-seeker, Omasase LUMUMBA, nephew of the only democratically-elected Zairese president who was assassinated in 1961, died in a London prison. An inquest verdict handed down on 27 July 1993, ruled, by 8 votes to one, that he had been "unlawfully killed" by prison officials. Despite this verdict, the Crown Prosecution Service decided on 9 December 1993 not to prosecute the prison officers alleged to have provoked his death on the grounds of insufficient evidence.

H. There have been, moreover, reports that the subsequent deportation of rejected asylum-seekers have, in some cases, resulted in their arrest upon arrival. As for so-called third safe-countries, it is very significant to underline that Germany's Federal Constitutional Court (Bundesverfassungsgericht) has, in at least 2 cases, issued a summary ruling according to which Greece could not be considered as a "third safe-country" for the asylum-seekers in question⁴³.

5. Rights of immigrants

A. Due to the escalation of violence and other forms of non-physical abuse against immigrants or those perceived as such (see above), one basic human right of security of person is constantly under threat. Despite assurances given by Member States to protect the rights of immigrants residing legally on their territories, restrictive measures taken aimed officially at combating clandestine immigration and abuse of immigration laws have resulted in the further erosion of the rights of immigrants. For example, immigrants or people perceived as such are subjected to more frequent identity checks, quite often resulting in them being humiliated in public, especially when such checks are systematic and without any real motive. Severe restrictions are being placed on their right to choose a spouse from their country of origin as well as on their right to be joined by family members.

B. Whilst welcoming the fact that a common Schengen visa (as well as a future Community one) will result in visa free travel within the Schengen area (as well as, in principle, the Union) for all persons with authorised residence, new severe conditions for obtaining entry visas have caused new hardships for those who have family members abroad. Other than the very high costs of such visas, there is a whole series of bureaucratic conditions to be fulfilled, thus making it impossible for family members, at short notice to visit immigrants or people of immigrant origin who are residing within the Union. This can be particularly distressful at important occasions, such as birth and marriage, and in tragic circumstances such as illness and death.

C. In absence of effective anti-racist legislation in a number of Member States, immigrants and those of immigrant origin find themselves in a de facto situation as second-class citizens, especially where jobs and housing are concerned. The aggravating economic crisis increases their vulnerability to all kinds of discriminatory action.

In April 1992, a pregnant Zairese asylum-seeker died allegedly as a consequence of insufficient medical attention by the Dutch authorities while in detention. That same month a Romanian asylum-seeker ended up with permanent brain damage allegedly as a result of force used in an abortive attempt to expel him.

⁴³ Two summary rulings of the Federal Constitutional Court (BVerfGe), one on 15 September 1993 (Az.: 2BvR 1938/93), and the other on 21 September (Az.: 2BvR 1953/93) quashed decisions of lower courts to send asylum-seekers back to Greece through which they transited on the grounds that, inter alia, there were no firm guarantees that the latter country would declare their asylum applications admissible. Under the new asylum law which came into force on 1st July 1993, asylum-seekers who transited through "safe third countries" are sent back to the latter without being given the possibility to have the merits of their case examined. For details, see Migration News Sheet, October 1993. A final ruling by the Federal Constitutional Court on whether the application of the "safe third country" rule is compatible with the Constitution is expected early in 1995.

D. Possible actions to grant them more protection, such as easing of citizenship criteria and dual nationality, and voting rights, are sensitive issues which governments of a number of Member States are reluctant to take up except to make such rights even more restrictive, apparently to satisfy perceived public opinion. One possible exception is Germany where the public's hostility to such rights has significantly lessened following the wave of violence against foreigners.⁴⁴ Hopefully, such levels of violence will not be necessary to change the minds of politicians of other Member States where such rights do not exist.

E. Residents from ethnic minorities, even those born within the Union, are frequently still considered, *de facto* and *de jure*, as "immigrants" and, as such, lack the necessary legal guarantees of their right of residence which they may lose for reasons such as being unemployed or having been convicted of a crime. The practice of expelling non-nationals after having served a prison sentence (the double jeopardy) has been considered on several occasions by the European Court of Human Rights as a violation of Article 8 of the European Human Rights Convention when it concerns people whose essential family ties are in the so-called country of reception⁴⁵. However, a number of Member States of the Union, namely France⁴⁶, Italy⁴⁷ and Portugal⁴⁸, have recently tightened their aliens' laws to render such expulsions mandatory.

F. As for foreigners without authorization of residence and/or employment, it must be stressed that the desire to work is not a crime and those doing so without permits should not be treated like dangerous criminals. Every effort should be made to ensure that their basic human rights and dignity are respected, and if they are to be deported, they should not be imprisoned in

⁴⁴ An opinion survey carried out by the Emnid Institute for "Der Spiegel" (23/1993) on 2-3 June 1993, suggested that a majority of Germans is in favour of granting foreigners the right to vote at local elections. 62% of respondents responded favourably whereas 28% were against. Even on the issue of dual citizenship, a majority of 53% supported it, compared with 38% who were against.

⁴⁵ The first most important case in which the practice of double jeopardy was condemned was the one of Moustaquim v. the Belgian State in which the latter was found guilty, on 18 February 1991, of violating Article 8. This was preceded by the Djeroud Case (amicable settlement reached with the French Government) of 23 January 1991 (Case n° 34/1990/225/289), and followed by the Beljoudi Case of 26 March 1992 (Case n° 55/1990/246/317) against France, and the Lamguindaz Case of 28 June 1993 (Case n° 48/1992/393/471) against the United Kingdom.

⁴⁶ The amendment to the penal code, adopted on 22 July 1992 and entered into force on 1st September 1993 allows judges to decide on other forms of sanctions other than imprisonment. Where convicted foreigners are concerned, such sanctions include banishment from French soil.

⁴⁷ On 13 April 1993, the decree number 107/93, aimed at improving the administration of prisons through the reduction of the number of those in jail, came into force. Article 8 of this decree authorises, simply upon request by the police or the penitentiary authorities and with the approval of the judiciary, the expulsion of foreign detainees, even those awaiting a judgement, either of an appeal or following an arrest.

⁴⁸ The new Portuguese Aliens Law, signed by the President on 29 December 1992, entered into force on 8 March 1993.

inhuman conditions⁴⁹ and should be given ample time to collect their belongings and arrange their return journey. The use of violent and coercive means, such as wide adhesive tapes placed around the mouth and a body belt composed of 2 pairs of handcuffs, one for the legs and the other for the wrists, allegedly led to the death, on 1st August 1993 in London, of a 40-year old Jamaican mother.

G. Where international instruments on the protection of the rights of migrant workers are concerned, most Member States of the Union are seriously lagging behind. So far, not one Member State has signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by the UN General Assembly in 1990.

H. The oldest legal instrument of the International Labour Organisation (ILO) in this field, ie. Convention n° 97 concerning migration for employment (1949) still requires the signature and/or ratification of Denmark, Greece, Ireland and Luxembourg. As for ILO Convention n° 111 concerning discrimination in employment and occupation (1958), it lacks the signature and/or ratification of Ireland, Luxembourg and the United Kingdom. A third ILO Convention, n° 143 concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers (1975) has only been signed by two Member States of the Union, Italy and Portugal.

I. As for conventions of the Council of Europe, all 12 Member States have signed and ratified the 1961 European Social Charter. On the other hand, another instrument that promotes the equality of treatment of migrant and national workers in the fields of recruitment, residence and work permits, family reunion, working conditions, housing, social security, schooling and vocational training, etc., viz. the 1977 European Convention on the Legal Status of Migrant Workers has only been signed and ratified by four Member States: France, the Netherlands, Portugal and Spain. Ratification is lacking in the case of Belgium, Germany, Greece, Italy and Luxembourg whereas Denmark, Ireland and the United Kingdom have not even signed the text.

9. Respect for privacy

On the basis of the European Convention on Human rights and the Declaration by the European Parliament, there must be freedom of thought⁵⁰, freedom of opinion and information⁵¹, and privacy⁵². "Everyone shall have right to respect and protection for their identity" and "respect for privacy and family life, reputation, the home and private correspondence shall be guaranteed"⁵³.

⁴⁹ See, for example, the complaint lodged with the Paris County Court (tribunal de grande instance de Paris) against the Paris Police for detaining foreigners awaiting expulsion in the basement and ground floor of the Paris court house under alleged inhuman and degrading conditions (cf. Migration News Sheet, December 1993).

⁵⁰ Article 4 of the Declaration.

⁵¹ Article 5 of the Declaration.

⁵² Article 6 of the Declaration.

⁵³ PV 50 II of 17.12.1993, p. 54, Resolution on providing legal protection against interference in peoples private lives (A3-0347/93).

III. Conclusion

The extent to which the Rapporteur could analyse respect for Human Rights within the European Union in 1993 (the second Annual Report) has been limited by the number of pages available for the Report. Therefore, it has not been possible or his intention to repeat all the points in the first Annual Report or in the 1989 Report on a European Community Declaration of Fundamental Rights and Freedoms. Both these previous Reports of Mr De Gucht laid the groundwork on which the Parliament must try and build.

However, Annual Reports must not be restricted to simply updating the points made in the 1989 Report and the previous Annual Reports on Respect for Human Rights in the European Union. Moreover, the existing European Convention of Human Rights of the Council of Europe, which is already ratified by the Member States, cannot be regarded as secondary to the European Parliament's 1989 Declaration with its draft of a European Community Human Rights Instrument.

The Reports of the European Parliament in this area of Human Rights are not legal or quasi-legal documents which need to be written in the language of lawyers.

Consequently, the Rapporteur has produced a political report. Due to the limited space, he has prioritised what he regards either as the worst or the most common infringements of Human Rights. He has introduced new areas for examination and made fresh emphases.

Within the Member States of the European Union the level of Human Rights is regarded as being amongst the highest in the world. However, a genuinely civilised society must be constantly vigilant in exposing human rights violations and in rectifying and improving the situation. Civil and political rights and justice within the law are very important Human Rights but they are not the only ones. Social rights and freedom from poverty and crime are human rights too!

- Petition No. 546/92, by Mr Edmond DE GUELLE (British), on activities of the 'Economic League' in the United Kingdom

The petitioner complains of the inaction of the British authorities following the discovery of a secret list being kept by the 'Economic League' in the United Kingdom concerning individuals who are considered subversive elements and therefore unsuitable for certain posts. The petitioner, who is a member of the NUPE and former member of the Young Socialists, has learned that his name is included on this blacklist. He has referred the matter to the Queen, the Prime Minister and the Home Secretary of the United Kingdom without success; this because the list in question is handwritten and does not fall under the provisions of the Data Protection Act. The petitioner requests the assistance of the European Parliament in upholding fundamental rights in the United Kingdom.

- Petition No. 677/92 by Mr Criostòir de Baròid (Irish) on behalf of the 'BETWEEN' organization on the discontinuation of EC funding for 'BETWEEN'

The petitioner protests at the arbitrary and high-handed manner in which Commission officials in 1990 stopped the financial aid which 'BETWEEN' was receiving from the Community as a non-governmental organization promoting reconciliation and human rights in northern Ireland, because of the organization's publication. The petitioner notes that recent statements by the Irish Ministry for Foreign Affairs and the International Fund for Ireland indicate a desire to restart talks on the matter which had resulted in deadlock in July 1991. The petitioner calls for the Community's financial assistance to be restored to its 1989 level and calls on the Commission to withdraw its slanderous insinuations about the activities of 'BETWEEN'.

- Petition No. 22/93 by Mr Carl Patrick Peltzer (British) on euthanasia in the Netherlands

The petitioner expresses his indignation at the decision by the authorities and doctors in the Netherlands to carry out euthanasia on his natural father without having asked his opinion or even informing him.

The petitioner, who had not met his natural father since childhood, came to the Netherlands in search for him. He encountered severe difficulties until finally he was informed that his father had undergone euthanasia. The petitioner wishes to initiate legal proceedings but does not have sufficient means and is not entitled to legal aid in the Netherlands.

- Petition No. 75/93 by Mr Joachim RECTOR (German) on a ban on National Socialist ideologies

The petitioner was arrested by the Gestapo in 1943 because he had refused to perform the Hitler salute or take the military oath. He remained in prison until 8 May 1945. In view of the neo-Nazi excesses of recent months in Germany he considers it necessary for the European Parliament to adopt a resolution to read as follows:

The European Parliament notes that those persecuted by the Nazi regime and the resistance fighters against Nazi barbarity have made a valuable contribution to the realization of human dignity and human rights in Germany and in Europe. It is the duty of all governments to honour their memory by continuing to ensure respect and protection of human values and of human rights in Germany and in Europe! In accordance with the UN Charter on the protection of human rights the European Parliament considers it to be its obligation to protect the legacy of all those persecuted by the Nazi regime by means of legislation and covenants

with all the Member States of the Council of Europe and to prevent any repeated seizure of power by the Nazi regime of terror and to prevent any occult neo-Nazi regime of terror from occurring in Germany and in Europe ever again! In order to avert further damage as a result of Nazi and neo-Nazi terror in Germany and Europe we call on all government bodies and educational institutions to take the strictest possible measures against every type of Nazi ideology and every type of Nazi terror movement!'

- Petition No. 105/93 by Mr Francisco IRIBARNE (Spanish) on a miscarriage of justice and arbitrary arrest

The petitioner, who was sentenced in the Principality of Andorra and transferred to a French prison on 17 December 1985, claims to have been arbitrarily arrested. He never received any answer to the letters he sent to the President of the French Republic and the French legal authorities. It was only after a memorandum forwarded by registered mail to the public prosecutor on 20 January 1990 that he was referred to the Andorra Courts since it had judged and sentenced him.

The petitioner complains that none of the legal requirements concerning interrogations and information to be given to detainees was met.

- Petition No. 421/93 by Mr Aristeidis SOTIROPOULOS (Greek) on problems of racism in Germany

The petitioner, who is married to a German national, with whom he has an 8-year old son, lives and works in the city of Augsburg in Germany. He and his family moved into an apartment from which they were evicted after neighbours' complaints about their behaviour.

The petitioner, however, maintains that for years both he and his wife and child suffered from the boorish and disparaging attitude of their neighbours because of the petitioner's nationality. The petitioner maintains that he and his wife received threats and that the accusations about their anti-social behaviour were motivated by malice.

- Petition No. 576/93 by the 'Villeurbanne Family Planning Association' bearing 19 signatures on sex tourism and child prostitution in third countries

The petitioners request the European Parliament to take urgent measures to put an end to the enslavement of poor children in third countries by our citizens.

Together with UNICEF the petitioners call for:

- '(1) a law prohibiting the advertising and organization of 'sex tours' by organizations in European countries;
- (2) severe criminal legislation against companies and organizations offering such services and the men who use them;
- (3) the establishment of links with the Third World, whose children are being destroyed by us, in order to track down and punish European organizations and individuals guilty of such practices outside their countries with the same penalties they would expect to face for such offences in their own countries.

.. The petitioners say No to a Europe which allows its nationals to prostitute children in the Third World.'

- Petition No. 590/93 by Mrs Vilma Maria FERNANDES-MAZGON (Italian) on behalf of 'VERITAS-Comité de Soutien', bearing 82 signatures, 'for an honest police force and a free and independent legal system in France'

The petitioner asks that her family, three of whose members are Pakistani, be restored their civic rights. She says that the members of her family, 'street pedlars', are constantly harassed and have suffered 'moral, physical and economic prejudice from certain French police officers and witnesses'. They have formed a support committee for a petition 'for an honest police force and a free and independent legal system in France' in order to make the 'French State publicly acknowledge its share of responsibility for (their) suffering...' and to call on the European Parliament and the UN Subcommittee on Human Rights to establish a 'European human rights police force'.

- Petition No. 600/93 by Mr E.M. ZIAZOPOULUS (Greek), on behalf of the 'Christian Union of Education Officials' on the inclusion of the holder's religious faith on new Greek identity cards

The petitioners believe that the Greek nation and Orthodoxy are historically almost identical concepts and therefore, wishing to keep their identity cards, they claim the right for religious faith to be entered on these documents.

- Petition No. 601/93 by the 'Young Mothers Union - the Apostle Paul' (Greece), bearing 1 600 signatures, on the inclusion of the holder's religious faith on new Greek identity cards

The petitioners believe that the European Parliament's opposition to the entry of religious faith on the new Greek identity cards is an infringement of a human right. They claim this right because they believe that religion is a part of their identity.

- Petition No. 622/93 by Mr Ignazio BARBUSCIA (Italian), on behalf of the International Association for Religious Freedom, bearing 194 signatures, on the Greek law on the statement of religion on identity cards

The petitioner calls on the European Parliament to make representations to the Greek Government urging it to repeal the law obliging Greek citizens to state their religion on their identity cards. 'This law does not comply either with the Universal Declaration of Human Rights or the Convention for the Protection of Human Rights and Fundamental Freedoms'.

O P I N I O N

(Rule 147 of the Rules of Procedure)

of the Committee on Culture, Youth, Education and the Media
for the Committee on Civil Liberties and Internal Affairs

Draftsman: Mr José Antonio ESCUDERO

At its meeting of 21 September 1993 the Committee on Culture, Youth, Education and the Media appointed Mr José Antonio Escudero draftsman.

At its meetings of 2 December 1993 and 14 November 1994 it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole unanimously.

The following took part in the vote: Castellina, chairman; Banotti, vice-chairman; Sanz Fernandez, vice-chairman; Cohn-Bendit, vice-chairman; Escudero, rapporteur; Aramburu del Rio, De Coene, Evans, Gröner, Guinebertière, Heinisch, Kerr (for Elliott), Kuhne, Mouskouri, Pack, Perry, Seiller, Todini and Vallvé (for André-Léonard).

I. INTRODUCTION

The drafting of an Annual Report on respect for human rights in the European Community is an important task which deserves the very greatest attention, both because a democratic society which fails to observe these rights is inconceivable, and because it would be a farce for the Community to demand that third countries respect the fundamental rights of the individual if its own position on the matter were not a scrupulous one.

It is possible to insist on respect for human rights as such, independent of any recognition of standards in national legislation or international treaties. However, the basic documents underpinning the Community make explicit reference to human rights, as one would expect. The ECSC Treaty banned all discrimination in remuneration and working conditions (Article 69(4)). The EEC Treaty prohibited all discrimination between the nationals of the Member States (37(1) and 48(2)). The same Treaty (Article 173) and the Euratom Treaty (Article 146) dealt with judicial safeguards for individuals; the former refers to the existence of a Court guaranteeing respect for the law, whilst the second defends the equal right of individuals to institute proceedings before a Court of Justice in respect of a decision which they consider to be in contravention of the law.

Later on, the Preamble to the Single Act dealt with the promotion of democracy on the basis of the recognition of fundamental rights. Finally, the Treaty on European Union has explicitly guaranteed a number of these rights: the right of citizens of the Union to move and reside freely within the Community (Article 8a), the political right to vote and stand as a candidate (8b), the development of education and professional training (Articles 126 and 127), protection of human health (130r), the fight against poverty (130u) and elections by universal suffrage (138(3)). To guarantee these and other rights, the Treaty entrusts the Court of Justice with reviewing the legality of acts (Article 173) and introduces the figure of the Ombudsman (Article 138e).

II. THE PROTECTION OF HUMAN RIGHTS IN THE COMMUNITY

In examining its own position on the issue of human rights, the European Community is faced by two major problems.

First problem: The actual definition and listing of these fundamental rights. In view of the variety of different declarations laying down standards and the very different status they enjoy (Universal Declaration of Human Rights, UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter, references in the EC Treaties themselves, etc) it seems appropriate to abide by a specific list of rules, since it is only on this basis that citizens may be able to protest against harmful acts. Above all, to confine ourselves to the topic under consideration here, it is only by examining this list of rights in full in all the EC Member States that the Annual Reports can be drawn up with proper guarantees. We shall return to this topic later.

In this connection, it is important to remember that the European Parliament has itself drawn up a Declaration of Fundamental Rights and Freedoms, whose 24 articles lay down the following rights: human dignity (Article 1), the right to life (Article 2), equality before the law (Article 3), freedom of thought (Article 4), freedom of opinion and information (Article 5), privacy (Article 6), protection of the family (Article 7), freedom of movement (Article 8), the right of ownership (Article 9), freedom of assembly (Article 10), freedom of association (Article 11), freedom to choose an occupation (Article 12), just working conditions (Article 13), collective social rights (Article 14), social welfare (Article 15), the right to education and freedom of education (Article 16), political democracy (Article 17), the right of access to information

(Article 18), the right of access to the courts (Article 19), the non bis in idem principle (Article 20), the non-retroactivity of criminal law (Article 21), the abolition of the death penalty (Article 22), the right to petition the European Parliament (Article 23) and the right to environmental protection (Article 24).

Second problem: As regards the protection of these fundamental rights, the Community must choose one of the following alternatives: either it can accede to the European Convention on Human Rights, which would require an institutional restructuring of the two courts concerned (the Court of Justice of the European Communities and the European Court of Human Rights), or it can introduce a protective instrument of its own (involving the political recognition of Parliament's Declaration and the possibility of referring cases to the Court of Justice of the European Communities), which would require the amendment of the Treaties.

Conclusion: Until such time as a definite list of recognized fundamental rights and a specific judicial institution to guarantee them are in place, the European Community's position on the matter is a precarious one.

III. MR NEWMAN'S WORKING DOCUMENT

As we pointed out last year in our opinion on Mr De Gucht's Annual Report, the rapporteur cannot simply be allowed to evaluate the extent to which particular rights are respected, while leaving others out of account. Parliament's annual reports should cover the list of rights laid down in Parliament's own Declaration, examining - as we have said - the observation of all fundamental rights in all the Member States.

At all events, Mr Newman's report covers a large proportion of these fundamental rights, with references to their observation in one or several countries. The following observations may be made in this context:

- (a) In invoking documents which enshrine human rights, Mr Newman has mingled references to the European Convention on Human Rights with references to Parliament's Declaration. We believe that it would have been preferable to adopt a single basic document, which, in a report drawn up for Parliament, ought properly to be the Declaration.
- (b) Whilst the particular attention devoted to the problems of anti-Semitism, racism, xenophobia and discrimination against ethnic minorities is laudable, the report confines itself to a few general remarks on these topics, failing to detail the most significant infringements of the right of all individuals to equal treatment and to describe the attitude of the courts in such cases.
- (c) It is confusing to include in a single paragraph (Paragraph 8) issues as diverse and heterogeneous as 'poverty, slavery, economic, social and cultural rights'. Moreover, it is confusing to use the term 'slavery', which has a very precise legal meaning, to denounce possible forms of exploitation of people at work or other situations where social protection is lacking.
- (d) The references to the physically disabled and mentally handicapped are important, as is that to children and the forms of violence they suffer (violence of a physical and moral nature - child pornography - and in the form of work). There may be further progress to be made here, in recognizing as a fundamental children's right the right to be recognized as an individual from the time of birth, a topic which is currently occupying a prominent European specialist.
- (e) Educational and cultural rights, which constitute this Committee's priorities, are dealt with most inadequately. Thus, it would seem to be

essential for the Report to evaluate observance of the rights to freedom of thought, conscience and religion, (Article 4 of Parliament's Declaration), the right to freedom of expression and information (Article 5 of the Declaration), the right to education and freedom of education (Article 16 of the Declaration) and the genuine exercise of the right of access to information (Article 18 of the Declaration), which is often jeopardized by state control of the public or pseudo-public media.

Finally, in accordance with this Committee's proposals in 1992 on the De Gucht report, it would be appropriate to refer to the observance of collective linguistic and cultural rights as well.

Letter of 5 December 1994 from Mr Carlo CASINI, Chairman of the Committee on Legal Affairs and Citizens' Rights to Mr VITORINO, Chairman of the Committee on Civil Liberties and Internal Affairs

Translation

Dear Mr Vitorino,

At its meeting of 1 and 2 December 1994 the Committee on Legal Affairs and Citizens' Rights held a wide-ranging exchange of views on Mr Newman's draft report on human rights in the European Union (1993) (PE 209.069).

The committee noted that the rapporteur, Mr Newman, has retabled the 1993 report that Parliament referred back to the committee responsible at the plenary sitting of 6 May 1994.

In the circumstances, the Committee on Legal Affairs and Citizens' Rights unanimously decided⁵⁴ to refuse to examine this document and the advise the committee responsible to do likewise.

(closing formula and signature)

⁵⁴ The following were present for the vote: Casini, chairman; Rothley and Palacio Vallelersundi, vice-chairmen; Janssen van Raay, rapporteur, Alber, Cot, Gebhardt, Mosiek-Urbahn and Varela (for Malangré).