

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
A5-0050/2000

29 February 2000

## ANNUAL REPORT

on respect for human rights in the European Union (1998-1999)  
(11350/1999 – C5-0265/1999 – 1999/2001(INI))

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

Rapporteur: Bertel Haarder



## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
MOTION FOR A RESOLUTION .....	6
EXPLANATORY STATEMENT .....	20
OPINION OF THE COMMITTEE ON PETITIONS .....	33

## PROCEDURAL PAGE

The Conference of Presidents authorised the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs to submit its annual report on respect for human rights in the European Union (1998-1999) (1999/2001 (INI)).

By letter of 8 November 1999, the Council forwarded to Parliament its annual report on human rights (1998-1999) (11350/1999).

At the sitting of 1 December 1999, the President of Parliament announced that she had referred this report to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Constitutional Affairs and the Committee on Petitions for their opinions (C5-0265/1999).

At its meeting of 13 September 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mr Bertel Haarder rapporteur.

It considered the draft report at its meetings of 12 October 1999 and 24 February 2000.

At the last meeting it adopted the motion for a resolution unopposed, with one abstention.

The following were present for the vote : Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Bertel Haarder, rapporteur; Maria Berger (for Olivier Duhamel), Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Patsy Sörensen), Rocco Buttiglione, Mogens Camre, Marco Cappato, Michael Cashman, Carmen Cerdeira Morterero (for Gerhard Schmid), Ozan Ceyhun, Luigi Cocilovo (for Hartmut Nassauer, pursuant to Rule 153(2)), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Carlo Fatuzzo (for Giuseppe Gargani, pursuant to Rule 153(2)), Giovanni Claudio Fava (for Martin Schulz), Vitalino Gemelli (for Mary Elizabeth Banotti, pursuant to Rule 153(2)), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Pernille Frahm), Giorgio Lisi (for Marcello Dell'Utri, pursuant to Rule 153(2)), Mario Mantovani (for Enrico Ferri, pursuant to Rule 153(2)), Elizabeth Montfort (for Roberta Angelilli, pursuant to Rule 153(2)), Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Sérgio Sousa Pinto), Lennart Sacrédeus (for Bernd Posselt, pursuant to Rule 153(2)), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke), Gianni Vattimo, Christian von Boetticher and Jan-Kees Wiebenga.

The opinion of the Committee on Petitions is attached.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Constitutional Affairs decided not to deliver opinions.

The report was tabled on 29 February 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

### Resolution of the European Parliament on respect for human rights in the European Union (1998-1999)

(11350/1999 – C5-0265/1999 – 1999/2001(INI))

*The European Parliament,*

- having regard to the European Union Annual Report on respect for human rights in the European Union (1998-1999) (11350/1999 – C5-0265/1999)
- having regard to the Universal Declaration of Human Rights and subsequent Conventions adopted in this field<sup>1</sup>,
- having regard to the fundamental human rights guaranteed by the Constitutions of the Member States and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the protocols thereto and the Conventions and Charters adopted subsequently in this field<sup>2</sup>,
- having regard to the Treaty of Amsterdam, in particular Articles 6, 7, 11, 29 and 49 of the TEU and Articles 13, 136 and 177 of the EC Treaty,
- having regard to the case law of the European Court of Human Rights in 1998-1999, particularly its main judgments on the exercise of civil and political rights<sup>3</sup>,
- having regard to the case law of the European Court of Justice during the same period<sup>4</sup>,
- having regard to its resolution of 12 April 1989 adopting the Declaration of Fundamental Rights and Freedoms and the successive resolutions adopted since then in this field<sup>5</sup>,
- having regard to its resolution of 16 September 1999 on the establishment of the Charter of Fundamental Rights<sup>6</sup>,
- having regard to the results of the public hearing of Commissioner Vitorino on 3 September 1999,

---

<sup>1</sup> See Annex Ia, p.31

<sup>2</sup> See Annex Ib, p.31

<sup>3</sup> See Annex II, p.31

<sup>4</sup> See Annex III, p.32

<sup>5</sup> OJ C120, 16.5.1989, p.51; OJ C240, 16.9.1991, p.45; OJ C94, 13.4.1992, p.277; OJ C241, 21.9.1992, p.67; OJ C115, 26.4.1993, p.178; OJ C44, 14.02.1994, p.103; OJ C61, 28.2.1994, p.40; OJ C126, 22.5.1995, p.75; OJ C32, 5.2.1996, p. 88; OJ C32, 5.2.1996, p.102; OJ C78, 18.3.1996, p. 31; OJ C152, 27.5.1996, p.57; OJ C152, 27.5.1996, p.62; OJ C320, 28.10.1996, p.36; OJ C320, 28.10.1996, p.268; OJ C20, 20.1.1997, p.170; OJ C132, 28.4.1997, p.31; OJ C115, 14.4.1997, p.92; OJ C304, 6.10.1997, p.55; OJ C358, 24.11.1997, p.37; see annex IV, p.32

<sup>6</sup> OJ C54, 25.2.2000, p.93

- having regard to its resolution of 27 October 1999 on the outcome of the European Council on 15/16 October in Tampere<sup>7</sup>,
- having regard to the outcome of the Human Rights Forum of 30 November and 1 December 1999,
- having regard to the first annual activity report (1988) of the European Monitoring Centre on Racism and Xenophobia,
- having regard to the annual report for 1998 of the European Ombudsman<sup>8</sup>,
- having regard to the petitions received in 1998 and 1999<sup>9</sup>,
- having regard to the work of the Council of Europe in this field and the contributions of the relevant non-governmental organisations,
- having regard to the resolutions on combating racism, xenophobia and anti-semitism in the candidate countries<sup>10</sup>, on human rights in the world and the European Union's human rights policy 1999<sup>11</sup>, on combating racism and xenophobia in the European Union<sup>12</sup> and on the Charter of Fundamental Rights of European Union<sup>13</sup>,
- having regard to Rule 163 of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Petitions (A5-0050/2000).

## **I. A new legal and political context**

1. Recalls that human rights are a set of universal and interdependent rights applicable to all human beings;
2. Points out that an assessment of the human rights situation in the European Union in 1998 and 1999 must be seen in the new legal context of the Treaty of Amsterdam, which entered into force on 1 May 1999;

---

<sup>7</sup> Minutes of the sitting of 27 October 1999, point 15

<sup>8</sup> in particular the decision following own-initiative inquiry 626/97/BB concerning combating discrimination on grounds of age in the recruitment of staff for the Community institutions, pursuant to the provisions concerning the protection of human rights; Report for 1998, p. 268 et seq

<sup>9</sup> See Annex V, p.33

<sup>10</sup> report by Mr. Belder on the agenda of 15 March 2000

<sup>11</sup> report by Mrs Malmström on the agenda of 15 March 2000

<sup>12</sup> report by Mrs Ludford on the agenda of 15 March 2000

<sup>13</sup> report by Mr Duff and Mr Voggenhuber on the agenda of 14 March 2000

3. Notes that the new Treaty formally establishes that the European Union is founded on respect for human rights, fundamental freedoms and the rule of law (Article 6 of the TEU) which is a requirement for membership of (Article 7 of the TEU) and accession to (Article 49 of the TEU) the Union;
4. Notes that respect for human rights, fundamental freedoms and the rule of law should also therefore be a guiding principle for the Union's policies such as the implementation of an area of freedom, security and justice and the social, foreign and development policies (Article 11 of the TEU and Articles 136 and 177 of the EC Treaty) as well as for the functioning of its institutions;
5. Points out also that the new Treaty explicitly acknowledges that human rights include economic and social rights, as set out in the 1961 European Social Charter, revised in 1996, and the 1989 Community Charter of the Fundamental Social Rights of Workers (Article 136 of the EC Treaty);
6. Notes also that the new Treaty lays down the principle of equal rights for citizens and that there should be no 'discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation' (Article 13 of the EC Treaty);
7. Notes, finally, that the new Treaty recognises citizens' right of access to Community documents and to the protection of personal data (Articles 255 and 286 of the EC Treaty);
8. Reaffirms, therefore, that all these rights, which correspond to ideas expressed in national Constitutions as well as in the ECHR, form the very foundation of the European Union and should be included in a European Charter of Fundamental Rights;
9. Considers it essential that such fundamental rights be uniformly applied and readily understood in the European Union, particularly in the light of the future Charter of Fundamental Rights which is being drafted;
10. Approves the Council's presentation of the first European Union annual report on human rights which constitutes a first step, but regrets the disappointing nature of the report's content which is merely a statement of fact;
11. Sincerely hopes that the next Council report will contain a country-by-country detailed analysis of developments in the human rights situation in the EU and proposes that monitoring systems and strategies be introduced in the future to improve respect for such rights pursuant to Articles 6 and 7 of the TEU;
12. Approves also the holding of the first Human Rights Forum on 30 November and 1 December 1999 and calls for the Council, the Commission and the European Parliament to be closely involved in the next forum in 2000, with due recognition for the leading role which the European Parliament should play in this field;



13. Welcomes the fact that the protection of human rights in the Council of Europe has been strengthened in institutional terms with the establishment on 1 November 1998 of a single and permanent human rights court to which any plaintiff may have direct access;
14. Hopes, however, that the new Court of Human Rights, which has experienced a significant increase in the number of applications in 1998 and 1999 and is currently faced with the task of processing more than 6000 applications, will succeed in resolving this problem and speeding up its proceedings;
15. Welcomes the establishment of a Council of Europe Commissioner for Human Rights, with non-judicial responsibility for promoting human rights education and awareness in the framework of the European Convention (ECHR), and the appointment to this post of Mr Alvaro Gil-Robles;
16. Deplores the fact that yet again eleven of the fifteen Member States of the European Union are listed in Amnesty International's Yearbook for 1999 on account of serious and less serious human rights abuses;

## **II. Human rights developments in the European Union**

### **The exercise of civil and political rights**

17. Calls on the Member States to abolish penal measures which are liable to restrict or prohibit the peaceful exercise of freedom of opinion, organisation and political activity;
  - Extension of the right to vote and to stand for election
18. Expresses the wish that, in accordance with the EU's founding democratic principles, Member States will adapt their legislation without delay to extend the right to vote and to stand in municipal and European elections to all non-Community citizens resident for more than five years on their territory;
  - Protection of National Minorities
19. Urges Belgium and France to sign and Greece, the Netherlands, Luxembourg, Portugal and Sweden to ratify the 1995 European Framework Convention for the protection of national minorities without delay;
20. Urges Belgium, Greece, Ireland, Italy, Portugal, Sweden and the United Kingdom to sign and Austria, Denmark, France, Luxembourg and Spain to ratify the 1998 European Charter for Regional and Minority Languages without delay;
21. Reaffirms in general terms the duty of Member States and of the EU to promote the economic, social and cultural development of national minorities;

- Respect for private life
- 22. Recalls that the right to respect for private life, the home and protection of personal data must be legally protected; therefore is concerned about the proliferation of databases;
- Freedom of religion and belief
- 23. Observes that it is not possible for people belonging to the new minorities in the Union (who, on account of immigration, now constitute a substantial population group within European societies) to practise their religion in all Member States and calls on Member States to guarantee the same social and institutional recognition of all these new religious communities within the Union;
- 24. Calls for the protection of freedom of conscience and the right of conscientious objection to military service;
- 25. Calls on Greece to implement fully and rapidly its legislation recognising the right to conscientious objection, which should come under the sole jurisdiction of civilian courts and should not be turned into a punitive form of civilian service, in accordance with the recommendations of the Council of Europe; asks the Greek Government to exempt, fully or partially, from non-military service those conscientious objectors who were imprisoned or sanctioned in any way, in the period prior to this new legislation;

#### **Violations committed by public authorities**

- Violence perpetrated by police and prison personnel
- 26. Reiterates its condemnation of acts of torture and cruel, inhuman and degrading treatment or punishment inflicted on persons arrested or detained by law-enforcement officials or prison staff;
- 27. Notes that both the United Nations Committee Against Torture and the Council of Europe's Committee for the Prevention of Torture as well as several NGO's once again in their 1998-1999 reports refer to inhuman and degrading treatment on the part of law-enforcement officials in certain EU Member States;
- 28. Calls on Ireland to ratify the UN Convention against Torture and Belgium, Ireland and the United Kingdom to make the necessary declaration under Article 22 of the Convention recognising the United Nations Committee Against Torture as being competent to receive and examine individual complaints;
- Treatment of refugees and immigrants

29. Expresses concern about the all-too-common and unacceptable problems relating to the situation of asylum seekers, including the random barring of access to lawful asylum procedures and about the quasi-systematic practice of detaining of asylum seekers in some Member States, often in intolerable conditions, and the brutal treatment inflicted on them during enforced expulsion, in some cases leading to death;
30. Calls for the strict application by the Member States of the 1951 Geneva Convention on the Status of Refugees, the 1967 Protocol to it and the principles drawn up by the UNHCR Executive Committee;
31. Calls on Member States to recognise gender persecution; recalls that the Geneva Convention on the Status of Refugees does not distinguish among victims of persecution, whether perpetrated by State bodies or by anybody else;
32. Regrets that the European Council meeting in Tampere merely decided on a common approach to asylum procedures at European level instead of opting for a single asylum procedure, and therefore awaits the Commission's proposal for a single asylum procedure and a uniform status for all who have been granted asylum within the European Union;
33. Calls on Member States, in developing a common asylum system, to move beyond minimum levels of harmonisation by adopting high protection standards as the basis for future asylum instruments;
34. Emphasises that, in the absence of harmonisation in the short term, any common approach to asylum procedures in the EU should guarantee respect for the following essential principles:
  - all asylum seekers should have access to a procedure;
  - they should have a right to a fair hearing and a suspensive appeal, except in cases in which this is clearly unfounded;
  - before expelling an asylum seeker towards 'a safe third country', Member States should ensure that he or she will be admitted and will not subsequently be expelled;
35. Stresses the need to create a legal basis and provide adequate budgetary resources for the European Fund for Refugees set up at the initiative of the European Parliament, to ensure that the expense is genuinely shared among the Member States of the European Union; calls on Member States to ensure that funds are used in a balanced manner for reception, integration and return measures, to the benefit of refugees, asylum-seekers and persons benefiting from complementary protection as well as temporary protection;
  - Shortcomings of judicial services
36. Is alarmed at the frequent violations of human rights and fundamental freedoms by Member States in the field of criminal justice, as pointed out by the European Court of Human Rights; urges, therefore, the Member States, and in particular Italy, to take all the necessary measures to limit pre-trial detention as far as possible by speeding up

investigations and judicial proceedings and ensuring that each citizen can count on justice being delivered as promptly and fairly as possible; calls on the Member States and the Commission, in the context of judicial cooperation, to seek the adoption of a number of European minimum rules on the subject;

37. Considers that, in the cases of detainees or persons under arrest accused of having committed offences outside their own country, the right to prepare their own defence before a court, to submit evidence and call witnesses and to authorise translators and interpreters to act in their defence, are rights which must be guaranteed in Member States;
38. Calls on Member States to guarantee the impartiality of judges by separating the careers of judges responsible for giving rulings and investigating magistrates, and requiring magistrates having exercised a political or other representative function within the judiciary to abstain when called on to deal with cases relating to political figures;

#### Fight against terrorism

39. Insists once again on the violation of human rights represented by the terrorist mark and underlines the importance of cooperation between the Member States in combating it;
40. Requests the Council to develop the legislative measures necessary to achieve the maximum coordination in the fight against terrorism and an effective level of protection of the citizens; also urges the Council to approve in the shortest time possible the measures for an appropriate indemnity for the victims of crimes, and in particular the victims of terrorism, in conformity with the guidelines of the Commission communication concerning the victims of crime in the European Union and Parliament's resolution in that respect;

#### Constitutional violations

41. Recalls the provisions of Article 3 of Protocol No.4 to the 'Convention For The Protection of Human Rights and Fundamental Freedoms' (1950) as amended by Protocol No. 11 'requiring that no-one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national' and that 'no-one shall be deprived of the right to enter the territory of the State of which he is a national' and of the incorporation of those rights under Article 6 of the Common Provisions of the Treaty of Amsterdam, and points out that under the terms of that Treaty there is no basis for discrimination against individual families;
42. Considers, therefore, that the exile in perpetuity of male descendants is a 'cruel and unusual punishment' with no place in a modern Europe, and having regard to the provisions of Articles 39 and 43 of Title III of the Consolidated Version of The Treaty Establishing the European Community dealing respectively with the free movement of persons, services and capital and the right of establishment, calls upon the Governments of Austria and Italy to honour their treaty commitments by restoring unconditionally to all members of the former royal houses of their respective countries full civil rights,

including the right to enter freely without let or hindrance their countries of origin, without any further delay; calls upon the Commission to investigate these violations for a period not exceeding six months with a view to referring these matters to the European Court of Justice if by the end of this period the relevant discriminatory provisions in the Austrian and Italian Constitutions remain;

## **Action against social violence**

### Children's rights

43. Notes that, as we celebrate the tenth anniversary of the Convention on the Rights of the Child, 20% of children in the EU still suffer from social exclusion, according to a report by Save the Children; and that children's rights are insufficiently embodied in the laws of the Member States and Community legislation and action programmes;
44. Calls for Member States to make the four general principles on which the Convention is based (i.e. serving the best interests of the child, the child's development, non-discrimination and the child's participation in the life of society) the driving force in improving Children's Rights;
45. Calls on the Member States to strengthen their legislation with a view to improving the protection of children against sexual abuse, physical and psychological violence and any kind of discrimination, and urges them not to imprison child offenders except as a last resort;
46. Calls on Member States to give extra-territorial jurisdiction to their penal codes protecting children against sexual abuse;
47. Calls on the Intergovernmental Conference explicitly to incorporate the specific rights of children in the future Charter of Fundamental Rights;

### Equal rights for men and women

48. Notes that, although policies on the subject have been pursued at European level for many years, there are still fundamental disparities in the employment conditions of men and women, to the detriment of the latter, particularly as regards indirect discrimination; calls on the Commission to take resolute action to produce a European strategy aimed at eliminating the inequality which still persists, which should be done in accordance with Article 141 of the EC Treaty; calls on the Commission to concentrate explicitly on the implementation of the existing directives concerning equal treatment and the approach to exceptions to the principle of equality;
49. Calls on the Commission to monitor more precisely the national implementation of the equal-treatment directives and, where appropriate, to start infringement procedures based on Article 226 of the TEC;

50. Stresses, as a general rule, that equal rights for men and women should be applied in all areas in accordance with the principle of mainstreaming laid down in Article 3(2) of the EC Treaty;
51. Calls on the Member States to step up action to combat forced prostitution and trafficking in human beings aimed at sexual exploitation;

#### Life styles and types of relationship

52. Reminds Member States that equality between men and women rests upon the full control of one's sexual and reproductive health and rights, free of coercion, discrimination and violence, and with the concomitant access to information and services that this requires;
53. Calls on Member States to guarantee one-parent families, unmarried couples and same-sex couples rights equal to those enjoyed by traditional couples and families, particularly as regards tax law, pecuniary rights and social rights;
54. Notes with satisfaction that, in a very large number of Member States, there is growing legal recognition for extramarital cohabitation, irrespective of gender; calls on the Member States – if they have not already done so – to amend their legislation recognising registered partnerships of persons of the same sex and assigning them the same rights and obligations as exist for registered partnerships between men and women; calls on those States which have not yet granted legal recognition to amend their legislation to grant legal recognition of extramarital cohabitation, irrespective of gender; considers, therefore, that rapid progress should be made with mutual recognition of the different legally recognised non-marital modes of cohabitation and legal marriages between persons of the same sex in the EU;
55. Notes, however, that European citizens continue to suffer discrimination and disadvantages in their personal and professional life as a result of their sexual orientation; calls therefore on the Member States and the EU institutions concerned to remedy such situations urgently;
56. Deplores the fact that some Member States still have a discriminatory age-of-consent provision for homosexual relations in their criminal codes as well as other forms of discrimination, in particular within the army, although various competent human rights bodies and the European Parliament have condemned these provisions, and repeats its demand for such clauses to be repealed;

#### Bioethics and protection of human dignity

57. Considers it essential for ethical standards to be established on the basis of respect for the dignity of each human being with regard to biological and medical applications;

58. Recalls that, according to the European Convention on Human Rights and Biomedicine and the additional protocol, every individual has a right to his genetic identity and that human cloning is and must remain prohibited; also reiterates its call for a European Union ethics committee to be set up to guarantee respect for human dignity with regard to genetic engineering applications;
59. Calls on the Member States to ratify the Convention and the additional protocol as soon as possible;
60. Considers that the right to freedom from discrimination (in health care, insurance, employment or otherwise) on the grounds of an individual's genetic inheritance or predisposition is paramount and that an individual's genetic data should only be transmitted to a third party with the prior, informed and written consent of that individual;

### **Protection of economic, social and cultural rights**

61. Insists that social and economic rights should be explicitly included among the fundamental rights laid down by the future Charter of Fundamental Rights, including the rights of trade unions as well as the rights of individuals vis-à-vis trade unions; calls for priority to be assigned to promoting literacy, as this is an important element in combating exclusion; this should apply both to children and to adults without distinction, as the right to education is a fundamental right;
62. Is concerned about the widespread phenomenon of violence in the workplace, ranging from harassment and unwelcome intimate approaches to serious physical violence;
63. Notes that there are still 15.5 million unemployed persons in the EU in 1999, accounting for 9% of the working population, and approximately 40 million people living under the poverty line, and that poverty and the resulting exclusion are unworthy of a democratic and developed society; calls for recognition of the right of the poorest sections of the population to assist and form associations with one another; considers that those who take part in voluntary work through an association should not be penalised financially, as happens in certain Member States where militancy through membership of associations is subject to authorisation or is penalised;
64. Calls, therefore, for the right to a decent standard of living (i.e. to adequate social protection – and hence safeguards against serious financial poverty - housing, adequate health care and proper education) to be explicitly included in the Charter of Fundamental Rights;
65. Urges the Member States to implement a proactive strategy against extreme poverty which affects in particular unemployed persons, women, the homeless and shelterless and illegal immigrants and is a discredit to our societies; this strategy must be based on

effective access for all to all fundamental rights and should be planned, implemented and assessed in cooperation with the population groups concerned;

### **Human rights situation in the applicant countries**

66. Recalls that the Copenhagen European Council clearly indicated that ‘membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’;
67. Welcomes the fact that, according to the latest report drawn up by the Commission (October 1999), the efforts made by candidate countries in the field of human rights are considered, on the whole, to be positive, that in particular the human rights situation in Slovakia, especially the position of the Hungarian minority, has improved and that the death penalty has been abolished in several more countries;
68. Regrets, however, the report’s findings that :
- despite some progress, respect for human rights and minority rights in Turkey is still extremely unsatisfactory,
  - in Romania, the government has not yet succeeded in providing adequate assistance to the over 100 000 orphans in childcare institutions,
  - in many applicant countries as many as 80% of the Roma people, who continue to suffer social and economic discrimination, are unemployed, their children being isolated in specific educational systems if they are not out in the streets;
69. Considers that the next Commission reports on progress by the applicant countries with regard to human rights ought to devote greater and more systematic attention to :
- the rights of women, as there are many indications that in the absence of an adequate compensatory policy the current reforms are disproportionately placing women at a disadvantage;
  - the lack, in many applicant countries, of adequate legislation or policy to tackle the sexual abuse and violence to which many children are subjected;
  - the rights of conscientious objectors in the applicant countries;
70. Calls for the protection of human rights and respect for minorities in applicant countries not only to continue to be screened but also to be seen as a genuine priority during the negotiations currently taking place with candidate countries and, if necessary, to be made a strict precondition for the continuation of existing financial programmes for those countries;
71. Notes that Turkey has acquired the status of a candidate country, but stresses that accession negotiations cannot take place until the Copenhagen criteria concerning human rights have been fulfilled;
72. Calls on candidate countries to ratify all the Council of Europe Conventions on human rights;



73. States that the European Union will reject the accession of any applicant country which, either in its legislation or in its practice, fails to guarantee respect for human rights;

### **III. Means of strengthening protection of human rights in the EU**

#### **1. A European human rights policy**

74. Stresses, in view of the above remarks and the progress required to improve the human rights situation in the EU, that the EU's very credibility in this area vis-à-vis the international community as a whole is dependent on proper respect for human rights and the rule of law within the Union and its institutions;
75. Hopes that the concrete measures mentioned in part IV of the Vienna Declaration of 10 December 1998 aimed at closer co-ordination between member states' human rights policies may also apply within the Union;
76. Reaffirms its commitment to drawing up a European Charter of Fundamental Rights, based on the constitutional traditions of the Member States and the fundamental rights guaranteed by the 1950 European Convention, as well as by later Conventions and the case law of the European Court of Human Rights and various other sources;
77. Considers it essential that the future Charter of Fundamental Rights be made legally binding and enforceable with a view to its effective application; believes that this Charter will fulfil its task well if it establishes a level of protection of citizens' rights greater than that provided for by the United Nations Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms;
78. Considers that, in view of the new legal context resulting from the Treaty of Amsterdam, the forthcoming prospect of a European Charter of Fundamental Rights and the establishment of a European area of freedom, security and justice, the EU's approach to human rights should not be limited to reporting and applying sanctions on a case-by-case basis but should form part of a genuine European human rights policy, applicable to all European Union Member States;
79. Welcomes, in this connection, the Commission's proposals for anti-discrimination legislation under Article 13 to combat various forms of discrimination in everyday life and at work, including its proposals to tackle discrimination on grounds of race or ethnic origin; hopes that the Council and Parliament will not alter their substance;
80. Calls for the setting up of a European independent supervisory body responsible for monitoring effectively the protection of personal data and the right to private life as envisaged in Article 286 of the EC Treaty;

81. Considers it therefore essential that the Commission be provided with appropriate budgetary resources to establish the European area of freedom, security and justice within the next five years;
82. Stresses the importance of involving NGOs in the protection of human rights, which depends on proper financing and well-functioning cooperation with the Commission and, as far as the candidate countries are concerned, with the Council of Europe, the UN and the OSCE;

## **2. Effective 'justiciability' of human rights**

83. Underlines the need to establish a clear hierarchy of legal rules and a proper definition and delimitation of the powers of the Court of Justice of the European Communities, the Court of Human Rights and the national courts, in order to prevent different legal standards from being applied;
84. Urges Member States to allow the EU to obtain legal personality in order for it to accede to the ECHR;
85. Stresses the importance of strengthening judicial cooperation and calls on the Member States to adopt appropriate provisions to 'communitise' previous judicial cooperation agreements, in particular with regard to notification and recognition of judicial and extrajudicial acts, in order to guarantee that European citizens can rely on a properly functioning judicial system in the Union;
86. Urges the Member States which do not fully participate in this to do so in order to secure the same rights for their citizens;
87. Underlines the important role played by the Committee on Petitions in upholding citizens' rights and in contributing to the implementation of Community law over a period of many years and calls on the Council to attend and participate fully in all its meetings where citizens' petitions are considered, especially in cases of serious infringements of Community law by Member States;
88. Considers that the role of the Council's annual report on human rights should be specified and should hold a European analysis of human rights developments, including rights for national minorities, in the various Member States and a definition of strategies to enable national and European policies in this field to evolve with a view to improving their coherence;
89. Urges the Member States to ratify the Convention establishing an International Criminal Court as soon as possible and to take all the necessary measures to ensure that, in the near future, perpetrators of crimes against humanity can under no circumstances benefit from impunity within the EU;

90. Believes that the European Union should consider establishing an independent European Human Rights Agency, as was suggested at the European Council meeting in Cologne; calls, however, on the Commission to consider the feasibility of actually establishing such an agency or extending the scope of the existing European Monitoring Centre on Racism and Xenophobia;
91. Suggests that such an agency would carry out a systematic monitoring of the human rights situation within the Union as well as evaluating the mainstreaming of human rights into all areas of EU policy;

### **3. Education and information**

92. Emphasises the unique role of education in promoting a spirit of tolerance and calls on the Member States and the European Union to promote projects aimed at improving the teaching of civics;
93. Welcomes the important contributions made by NGOs in the fields of tolerance and international understanding through intercultural activities, educational exchange programmes etc.;
94. Urges the Member States to step up the training of law-enforcement officials and prison personnel in respect for human rights and conflict management and proposes that the future European Police Academy, which the Tampere European Council decided to set up, be responsible for this major aspect of training;

### **4. The Wider Context**

95. Stresses that improving the human rights situation, securing the rights of minorities, eliminating discrimination and combating violence, exclusion and poverty should be seen in the much wider context of the European objectives of economic and social cohesion and promotion of sustainable growth, as set out in Article 2 of the EC Treaty;
96. Hopes that the next European Parliament report will be based on uncontentious and objectively verifiable criteria, such as the exact state of , and arrangements for, enforcement of rights recognised in each country's national legislation as enforceable at law, failures to respect these rights as indicated by judgments handed down by the courts of each country, and a breakdown Member State by Member State, of any adverse judgments given by the European Court of Human Rights in Strasbourg; this report should be based also on the work of UN bodies supervising international human rights conventions;

\* \* \*

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

## EXPLANATORY STATEMENT

### The situation of human rights within the European Union 1998 and 1999

The declaration of the European Union on the occasion of the 50th anniversary of the Universal Declaration of Human Rights in 1998 stated that ‘the universality and indivisibility of human rights and the responsibility for their protection and promotion, together with the promotion of pluralistic democracy and effective guarantees for the rule of law, constitute essential objectives for the European Union as a union of shared values and serve as a fundamental basis for our action’<sup>14</sup>. This confirms the role of the EU within the human rights field:

- The universality of human rights is beyond question. Human rights are a set of basic rights inherent in all individuals and independent of national, cultural or religious considerations.
- The promotion and protection of human rights should be at the core of all the Union’s policies.

This forms the basis for one of the Copenhagen criteria, as well as for human rights clauses contained in the agreements signed between the Union and its partners.

However, if the promotion of human rights outside the Union is to be credible, we must begin by examining the human rights situation at home. Numerous reports remind us that there is not always complete congruence between the ideals as they are printed in international Conventions and national Constitutions vis-à-vis the situation experienced by citizens and residents in Member States<sup>15</sup>. The EU cannot act in the name of human rights in Kosovo or elsewhere, if we do not respect these rights within our own borders. We should remind ourselves that societies always stand their test when dealing with the weak or with outcasts.

The purpose of this report is to take stock of the human rights situation within the Union, as it applies to all human beings residing there, and to emphasise again the ideal against which the human rights situation in the Member States should be measured. After all, the purpose of the report is to lay bare present weaknesses, thereby contributing to our common goal: the creation of an area of freedom, security and justice as set out in the Amsterdam Treaty.

The report will give special attention to the question of national minorities. The reason for this is threefold. First, the Council of Europe has adopted a Convention for the Protection of National Minorities, which came into effect on 1 February 1998. Secondly, national minority issues are sensitive in many of the candidate countries, many of which are cited in NGO reports as having violated the rights of national minorities. Third, the question of national minority rights remains a problem within several Member States.

---

<sup>14</sup> Vienna Declaration of 10 December 1998

<sup>15</sup> See Annex I

## The concept of human rights within the EU

The main legal sources mentioning human rights applicable to the EU are the national Constitutions of the Member States, the EU Treaties, the European Convention on Human Rights with attached protocols and a dozen other European Conventions as well as the United Nations Universal Declaration of Human Rights.

All these sources proclaim the universality and indivisibility of human rights. What has traditionally been referred to as social rights supplement the classical political rights. The rights to education, health, social security, etc. are indispensable. At the same time, all historic experience tells us that the actual realisation and preservation of these rights can only be secured in societies where fundamental political freedoms prevail, that is, in open societies with free public debate, freedom to associate, etc. Fulfilment of one human right should never be accepted as an excuse to violate another.

There seems to be some confusion – also in previous reports in this Parliament – as to what we mean precisely by the different concepts of human rights, fundamental rights, fundamental freedoms, civil rights, etc. The confusion stems partly from the treaty texts. The Amsterdam Treaty's Art. 6(1) talks about “human rights, fundamental freedoms and the rule of law”. Art. 6(2) talks about “fundamental rights as guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

We normally use the term “Human Rights” as the overall concept, which is why this report as its predecessors is named the report on “human rights”. However, if we were to follow the treaty text, it should be named the report on “fundamental rights”, since it naturally deals also with fundamental freedoms and the rule of law.

The rapporteur is of the opinion that we have to live with this slight confusion. In daily talk human rights are the natural overall concept, known by all, embracing fundamental freedoms as well as the rule of law. The court in Strasbourg is called the “Human Rights Court” although it also deals with fundamental freedoms and the rule of law. Therefore, in this report the overall concept of fundamental rights, as in ordinary language, will be called human rights unless there is a need to underline the different categories of rights.

Fundamental freedoms are also called “civil” or “civic” rights. These freedoms as well as the rule of law apply to all citizens and – as far as possible, but not all together - to all residents irrespective of citizenship within the territory of a given state or union. In this sense they to some extent exceed the fundamental rights (human rights) that are universal to all.

The Treaties of the Union provide some civil or civic rights for the citizens of the Union. They concern the Union's citizens in the pursuance of economic and social activities: for instance non-discrimination on grounds of nationality, freedom of movement for workers, freedom of establishment and freedom to provide services. The TEU also includes the right to vote and stand as a candidate in the elections to the European Parliament, as well as the right to vote in

municipal elections in the Member State of residence. Furthermore, the Court of Justice has continuously included human rights considerations in its verdicts.

## **I. The new legal and political context of human rights in the EU**

Since the adoption of the European Parliament's last report on the human rights situation in 1997 within the Union, the legal as well as the political situation has changed on a number of points:

Firstly, with the entry into force of the Amsterdam Treaty in May 1999, the legal position of human rights within the Union has been enhanced<sup>16</sup>.

In addition, it was decided at the European Council meeting in Cologne in June 1999 that a Charter of Fundamental Rights should be drawn up. The Tampere Summit confirmed this decision, and decided upon the method of work as well as the composition of the body that will draft the Charter.

Furthermore, in connection with the 50th celebration of the Universal Charter of Human Rights, it was decided that the Council would submit an annual report on human rights. This report was presented for the first time to Parliament on 1 December 1999. The report wishes to enhance the transparency and consistency of the Union's human rights policies and open a dialogue with an interested public as well as public authorities within and outside the Union.

However, the rapporteur is of the opinion that the Council should have put more emphasis on describing the goals of the policies within the Union. The only reference to human rights within the Union comes under the theme of racism. Furthermore, the value added by the Council report would have been greater, if it contained some suggestions as to how the Union's policies within the field of human rights could become more transparent and consistent.

The Council and the Commission ought to consider the creation of an independent monitoring instrument for human rights, which could, for instance, be part of or linked to the European Monitoring Centre on Racism and Xenophobia in Vienna to cover all types of human rights violations.

Finally, the European Framework Convention for the Protection of National Minorities entered into force in February 1998 (but has not yet been ratified by Greece, the Netherlands, Luxembourg, Portugal and Sweden nor even signed by France and Belgium). Also entering into force in March 1998 was the European Charter for Regional or Minority Languages (which has not been ratified by Austria, Denmark, France, Luxembourg, Spain, nor even signed by Belgium, Greece, Ireland, Italy, Portugal, Sweden and the United Kingdom).

## **II. Description of the human rights situation in the Union in 1998 and 1999**

### **The right to exercise civil and political rights**

---

<sup>16</sup> See Articles 2, 6, 7, 11, 13, 46 and 49 of the Amsterdam Treaty.

## *National minorities within the European Union*

Recent European history unfortunately contains a disturbingly large number of examples of conflicts between national majorities and minorities not being a thing of the past. Globalisation seems to be prompting human beings to cling even more to their national roots and inherited enmities.

There is nothing wrong with people preserving their roots and their love of their home country and its culture. On the contrary, this is a valuable asset and is the very foundation of European cooperation. The problem is the enmities, the one-sided interpretations of history and the unwillingness to grant the opposing party the same freedom which one wishes for oneself.

National minorities ought to be respected on an equal footing with the majority. They ought as far as possible to have the same opportunities as the majority to use their language in everyday life, in educational establishments, in the courts, etc. They ought to receive support for this from the host country on an equal footing with the support provided to the majority. This is the essence of the two abovementioned European Conventions on the protection of national minorities and on minority languages that entered into force in 1998. The Conventions require the signatory countries not only 'to respect the ethnic, cultural, linguistic and religious identity' of national minorities but 'also to create appropriate conditions enabling them to express, preserve and develop' their identities.

It is incorrect to describe minority rights as 'collective rights' that replace individual human rights. Were this the case, it could transform minority rights into a shield for inhuman relics in national cultures such as, for example, circumcision and corporal punishment. Minority rights do not confer on the community rights over the individual but afford protection for the individual rights that can be exercised only jointly with others, e.g. the use of one's own language.

In view of the fact that minority problems have a huge potential for conflict and war, not least in some of the applicant countries, it would be appropriate to propose that the Council and Commission make these problems the subject of annual assessment and reporting seen against the ideals enshrined in the above Conventions. Thought can also be given to establishing a centre for minority problems - see the Danish-German minority centre in Flensburg. The EU institutions ought to be required to take action on the basis of the Conventions' objective of effective protection of minorities, which ought to be an integral part of the Union's fight against discrimination. At the same time, it will become easier to make the necessary demands on those applicant countries with potential minority problems.

The EU's association agreements with the applicant countries specifically requires the latter to respect 'the rule of law and human rights, including the rights of persons belonging to minorities'. Yet the Union cannot of course make demands on the applicant countries that are not met by its own Member States. The first step must therefore naturally be for the Conventions on minorities to be rapidly signed and ratified by the many Member States that have not yet done so. Otherwise, the Union will be unable to speak with any kind of authority to the applicant countries that do not live up to their obligations.

For all these reasons the future EU charter of fundamental rights must as a matter of course include binding protection of minorities and their languages etc.

#### *Right to vote and to stand for election*

Many Member States still have not implemented legislation which allows for third-country nationals to vote in municipal and European elections as is required by the TEU.

#### *Right to freedom of opinion and expression*

In 1998 Greece passed a law recognising the right to conscientious objection to military service. This is a great step forward in a situation which has often been criticised both by Parliament and NGOs. However, the law passed is somewhat punitive in character and there are problems in its enforcement.

### **Citizens' rights and the authorities**

#### *Police violence*

The European Court of Human Rights has on several occasions emphasised that physical force may only be used in cases where it is absolutely required. However, verdicts from 1998 and 1999 reflect that violence and degrading treatment by the authorities in Member States still take place<sup>17</sup>. In general, ill treatment by law enforcement officers and other authorities in Member States has been reported by NGOs as the most widespread type of human rights violation in the EU.

#### *Asylum-seekers*

The existing differences in the asylum policies of the Member States result in major administrative burdens and also contribute both to the trafficking in human beings and the disappointments of the many who are shopping around between countries to find the best route to their chosen asylum. Only those trafficking in human beings derive benefit from the disparities and existing lack of transparency in asylum rules and this in turn triggers a race to tighten up rules between Member States for fear of becoming 'magnets for refugees'.

According to reports from NGOs there are unfortunately far too many examples of refugees being subjected to humiliating and unreasonable treatment. A common asylum policy and increased judicial cooperation would increase transparency and improve the legal certainty for asylum-seekers arriving in the EU.

A common asylum system in the Union should, of course, be in total compliance with international law. It should be supplemented with burden-sharing, common action to help more

---

<sup>17</sup> See for instance the Selmouni v. France case.



refugees who stay close to their homeland as well as policies to facilitate the return of rejected asylum-seekers to their home country as envisaged in the Tampere conclusions.

### *Justice insufficiencies*

A recurring problem in Member States with regard to justice insufficiencies is lengthy trials. According to international Conventions, everyone has the right to have a case against him resolved within a reasonable time. In the course of 1998 and 1999 the European Court of Human Rights on several occasions ruled against Member States on this issue<sup>18</sup>. Another insufficiency is lengthy isolation of detainees in connection with the investigation of criminal matters. In some Member States, the amount of time a person can be held in isolation is almost or completely without a time limit; such is the case in Denmark.

### *Right to a fair trial*

The principle of equality before the law is found in the Constitutions of all Member States. A growing problem in connection with the increased movement of people within the Union is the possibility of a fair trial as outlined in the ECHR Art. 6a-e. In particular, language differences pose problems, because of lack of access to interpreters and translation of evidence.

## **3. The struggle against discrimination**

### *Children's rights*

1996 saw the adoption of the European Convention on the Exercise of Children's Rights. This provides children with a series of legal guarantees and establishes a standing committee to monitor them.

The appalling abuse of a number of Belgian children in the early 1990s focused particular attention on sexual attacks on children. In 1996 the World Congress against the Commercial Sexual Exploitation of Children in Stockholm adopted a comprehensive declaration based on the UN Convention on Children. The 130 participating countries and a series of NGOs highlighted, among other things, the widespread and tragic abuse of children in developing countries who are often sold into prostitution by poverty-stricken parents. In the Far East alone half a million children are concerned, perhaps many more.

In Europe, child prostitution apparently occurs in certain applicant countries, yet citizens of the Union are also involved as purchasers and customers. The World Congress therefore adopted in August 1996 a powerful appeal to criminalise acts by nationals committed against children in the country to which the national has travelled and to tighten up legislation and law enforcement.

In September 1996 Parliament adopted an appeal to the Member States to 'treat pimping and the abuse of minors by their citizens abroad (sex tourism) as criminal offences, on a par with such acts perpetrated in their own countries.'

---

<sup>18</sup> See for instance the Laino v. Italy case.

It has to be said that not all countries have followed this appeal since they insist on the 'dual criminality rule', i.e. the requirement that the act must also be a criminal offence in the country where it is committed. On the same grounds it is also difficult to prosecute in the courts the disabling practice of female circumcision which is carried out during visits to certain third countries. The demands from 1996 should therefore be reiterated and the Commission should be asked to explain what action it has taken to follow up the initiatives by the then Commissioner, Anita Gradin.

### *Women's rights*

According to an EU-wide survey by Eurostat, the average EU woman has a long way to go before achieving equal pay with the average man<sup>19</sup>. The underlying social and economic disparities between men and women that these data reflect exist in all Member States: women are still subject to discrimination, and legal instruments for equal opportunities are not always being implemented. Women play a less significant role in the political decision-making process. Women's rights to freedom from bodily harm and freedom to decide over their own bodies are also being violated.

### *Sexual minorities*

Sexual orientation discrimination persists throughout the Union. It exists both in the form of sexual offences law<sup>20</sup>, employment discrimination and homophobic violence. Same-sex couples are, for instance, disadvantaged as far as inheritance law, tax declarations and housing rules are concerned. The situation for these couples in Member States also varies considerably. This creates problems related to mutual recognition of same-sex couples and their rights in different Member States and discriminates against and impedes free movement within the Union.

### *Racism*

One of the firmly held beliefs on which the EU is built is the respect for cultural and ethnic diversity. Racism, xenophobia and intolerance, often leading to discrimination, have been documented in several Member States, and are said to be rising<sup>21</sup>. In its first Annual Report, the European Monitoring Centre on Racism and Xenophobia concludes that racism/xenophobia are often hidden and diffuse, integrated into behaviour and accepted by the majority<sup>22</sup>.

## **4. Bioethics and protection of human dignity**

---

<sup>19</sup> Eurostat Press Release No 4899 – 8 June 1999.

<sup>20</sup> The age of consent laws in both Austria and the UK have been condemned by international human rights tribunals. See for instance: concluding observations of the United Nations Human Rights Committee: Austria, 19/11/98 and Sutherland v. United Kingdom, European Court of Human Rights.

<sup>21</sup> 'Looking Reality in the Face' Annual Report from the European Monitoring Centre on Racism and Xenophobia, p. 85.

<sup>22</sup> The issue of racism in the EU will be dealt with more thoroughly in a forthcoming report from the LIBE Committee.

Medical science opens up promising perspectives for categories of the sick and disabled and for people predisposed to hereditary illnesses, etc. Yet there is also a risk that these new tools can be misused, e.g. to discriminate against people on the grounds of their genetic features (DNA tests) or to clone or modify hereditary characteristics.

This is the background for the adoption of a European Convention in 1997 on the protection of human rights and dignity of the human being with regard to the application of biology and medicine and the accompanying protocol from 1998. According to this Convention the new technology should be used only for the purposes of prevention, diagnosis or therapy, and artificial insemination techniques and medical intervention during pregnancy must not be used to choose gender unless this has a bearing on genetic diseases. Adequate protection of human embryos is required in countries where research may actually be carried out on them. The creation of embryos for research purposes is prohibited and there is a total ban on the cloning of human beings.

If complied with, the Convention is a sound basis for creating a safe climate around the use of this promising branch of research and development.

## **5. The protection of social and economic rights**

The social wellbeing of the individual citizen is one of the principal objectives of the creation and development of the European Union. The aim is to create a framework containing the best possible conditions for the citizens, including freedom from poverty and exclusion, the right to education and medical treatment and a reasonable standard of living, housing, etc.

## **6. The human rights situation in applicant countries**

The TEU (Art. 49) together with the Copenhagen criteria spell out that accession to the Union is open only to states which have committed themselves to the protection of human rights<sup>23</sup>.

In its *Regular Reports* presented in October 1999, the Commission writes that the main conclusion to be drawn from the regular reports is that all applicant countries now live up to the political criteria. Examples of the efforts made by candidate states in living up to the Copenhagen criteria is the removal of the “wall of shame” in the Czech town of Usti-nad-Labem and the abolition of the death penalty in several candidate countries.

However, some candidate countries have neglected residents’ basic civil and political rights or have exercised discrimination towards, in particular, national minorities. This is the case of the large Russian minorities in Estonia and Latvia that have been denied full citizenship, and the

---

<sup>23</sup> Also among the populations of the EU Member States there exists a widespread consensus that new countries can only join the Union if they respect human rights and the principles of democracy (95%), Eurobarometer, report 51, July 1999.

general treatment of the Roma population in some candidate countries. Another example is the exclusion of minorities by some governments of the candidate states from EU programmes.

The European Parliament has a substantial role to play in the enlargement process, since it must give its assent to any enlargement of the Union (Art. 49). The candidate countries must be encouraged and assisted in their endeavours to promote human rights but should also, in line with Member States, be exposed to criticism when they do not.

### Turkey as an applicant country

At the Helsinki Summit in December 1999, Turkey was approved as an applicant country by the European Council. By granting Turkey status as a candidate country, the EU confirmed that every country within Europe can become a member of the Union, if they live up to Art. 49 and the Copenhagen criteria.

Turkey is, however, still cited in many reports for gross violations of human rights. These violations include torture, including torture of children, deaths in custody, extra-judicial executions, denial of a fair and independent tribunal<sup>24</sup>, denial of free speech and freedom of religion and the death sentence on Abdullah Öcalan.

It should be strongly voiced that, before any negotiations with Turkey concerning EU membership are begun, Turkey must solve its problems within the field of human rights. This means not only ratifying the Council of Europe Conventions, including the Convention for the Protection of National Minorities, but also implementing and ensuring that the provisions of the Convention articles are carried out.

### **III. Means of enforcing the protection of human rights within the Union**

Existing instruments for the protection of human rights in the Union can be divided into prevention, promotional activities and sanctions, with an emphasis on the former. Preventive and promotional activities include education programmes, information, exchange of good practices, the Monitoring Centre in Vienna, etc. Sanctions are primarily to be found in the new Art. 7 and in court rulings:

#### **The European Human Rights Court and its rulings**

Though not an EU instrument, the Human Rights Court and its rulings are accepted and respected in all Member States and by the EU institutions. A recent example is the Court's ruling in two cases<sup>25</sup> against the United Kingdom's policy of banning lesbians and gays from the Armed Forces. Here the Court found that the policy violated Article 8 of the ECHR. Following the verdict, the UK suspended actions against lesbian and gay members of the Armed Forces.

---

<sup>24</sup> See for instance verdict by the European Court of Human Rights in *Incal v. Turkey* 1998

<sup>25</sup> *Lustig-Prean & Beckett v. United Kingdom* and *Smith & Grady v. United Kingdom*, September 1999.

## **The role of the ECJ and its rulings**

The case law of the European Court of Justice has confirmed that the obligation to respect fundamental rights applies both to EU institutions and Member States by referring to the Constitutions of Member States and international treaties signed by them<sup>26</sup>. Individuals and institutions alike can bring matters pertaining to Community law before the Court and the rulings are binding. However, the case-law system has limitations as there is no transparency because the case-by-case approach gives rise to varying interpretations.

## **Future instruments**

In order to enhance the protection of human rights within the Union, it is essential to continue the process of implementing an area of justice, security and freedom begun in Tampere.

Furthermore, the envisioned Charter of Fundamental Rights could serve as a yardstick for infringements of human rights in the future. The Charter should seek to gather from different sources, national as well as international, fundamental rights, which are recognised in all Member States<sup>27</sup>. The Charter would, contrary to the present situation, give the citizens prior knowledge of the nature and scope of the rights which they enjoy in respect to the EU institutions. In addition to the existing rights, the Charter should, of course, add some additional rights and guarantees to be applied to EU citizens and residents respectively. The Charter should be legally binding and ensure third-country nationals basic rights.

This Charter should not, however, be seen as creating a rival system to that of the ECHR in safeguarding human rights and fundamental freedoms. The Charter must be fully compatible with the ECHR. If the EU Charter leaves too much room for different interpretations, then individual states may claim a right to have their own interpretation as well. To avoid confusion, the EU should acquire legal personality and accede to the ECHR<sup>28</sup>.

---

<sup>26</sup> Council Annual Report on Human Rights, section 3.3.

<sup>27</sup> See opinion by Mme Paciotti, 16 November 1999, PE 232.272

<sup>28</sup> According to the opinion by the European Court of Justice, 23 March 1996, this requires a treaty amendment.

## **ANNEX I: Principal United Nations and Council of Europe Conventions and Charters**

### **(a) United Nations**

- UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the protocols thereto,
- UN Convention on the elimination of all forms of racial discrimination,
- UN Convention on the elimination of all forms of discrimination against women,
- 1951 Geneva Convention relating to the status of refugees, the 1967 Protocol thereto and the UNHCR recommendations,
- Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers (Geneva, 1975),
- UN Convention on the Rights of the Child (New York, 1989),
- Universal Declaration on the human genome and human rights.

### **(b) Council of Europe**

- 1987 European Convention on the prevention of torture and inhuman and degrading treatment or punishment,
- 1992 European Charter for minority or regional languages,
- 1998 European Convention for the protection of national minorities,
- Community Charter of fundamental social rights.

## **ANNEX II : Petitions received in 1998 and 1999**

- United Communist Party of Turkey/Turkey of 30 January 1998 (on pluralism, a precondition for democracy);
- Lehideux & Isorni/France of 23 September 1998 (on freedom of expression and tolerance, conditions for a democratic society);
- Lustig Préaux & Beckett/United Kingdom of 27 September 1998 (on sexual orientation and respect for private life);
- Wille/Liechtenstein of 28 October 1999 (on dismissal from public employment on grounds contrary to freedom of opinion);
- Matthews/United Kingdom of 18 February 1999 (right of citizens of Gibraltar to vote and to stand as a candidate in European elections);
- Chassagnon/France of 29 April 1999 (on freedom of association and the Verdeille law on hunting);
- Sehmouni/France of 28 July 1999 (the Court upheld the accusation of torture).

## **ANNEX III**

As in previous years, both the Court of Justice and the Court of First Instance of the European Communities have administered justice with the aim of enforcing the general principles of

Community law and the principles embodied in the ECHR and in the constitutional traditions common to the Member States.

These concern:

- the economic field

Above all the important dispute concerning the application of competition law and the regulation of quotas and levies; cf. in particular the judgment of 10 March 1998 (case C 122/95), in which the Court found discrimination to have occurred

(respect for property, freedom to pursue economic activities, the principle of non-discrimination, the presumption of innocence, the rights of the defence and fair process, etc.)

- the social field

effective respect for equality between men and women. See in particular:

1. case C 185/97 of 22/09/1998 on the right to effective judicial protection, i.e. even after the cessation of an employment relationship pursuant both to Article 6 of the ECHR and Article 6 of Directive 76/207/EEC on equal treatment of men and women (refusal by an employer to provide references to enable the applicant to seek new employment, by way of reprisal)

2. case C 285/98 of 11/01/2000 declaring contrary to the principle of equal treatment of men and women the general ban on the employment of women in the German army

- compliance with the Staff Regulations of European officials.

#### **ANNEX IV : Principal EP resolutions**

- Resolution of 9 July 1991 on human rights (OJ C 240, 16.9.1991, p. 45),
- Resolution of 12 March 1992 on the death penalty (OJ C 94, 13.4.1992, p. 277),
- Resolution of 18 July 1992 on a European Charter of Rights of the Child (OJ C 241, 21.9.1992, p. 67),
- Resolution of 11 March 1993 on respect for human rights in the European Community (OJ C 115, 26.4.1993, p. 178),
- Resolution of 19 January 1994 on conscientious objection in the Member States of the Community (OJ C 44, 14.2.1994, p. 103),
- Resolution of 8 February 1994 on equal rights for homosexuals and lesbians in the European Community (OJ C 61, 28.2.1994, p. 40),
- Resolution of 27 April 1995 on racism, xenophobia and anti-Semitism (OJ C 126, 22.5.1995, p. 75),
- Resolution of 18 January 1996 on trafficking in human beings (OJ C 32, 5.2.1996, p. 88),
- Resolution of 18 January 1996 on poor conditions of detention in prisons in the European Union (OJ C 32, 5.2.1996, p. 102),
- Resolution of 29 February 1996 on cults in Europe (OJ C 78, 18.3.1996, p. 31),
- Resolution of 29 May 1996 on the communication from the Commission on racism, xenophobia and anti-Semitism (OJ C 152, 27.5.1996, p. 57),
- Opinion of 9 May 1996 on the proposal for a Council decision designating 1997 as European Year Against Racism (OJ C 152, 27.5.1996, p. 62),
- Resolution of 17 September 1996 on respect for human rights in the European Union (1994) (OJ C 320, 28.10.1996, p. 36),

- Resolution on the protection of human rights and human dignity with regard to biological and medical applications (OJ C 320, 28.10.1996, p. 268),
- Resolution of 12 December 1996 on measures to protect minors in the European Union (OJ C 20, 20.1.1997, p. 170),
- Resolution of 8 April 1997 on respect for human rights in the European Union (1995) (OJ C 132, 28.4.1997, p. 31),
- Resolution of 12 March 1997 on cloning (OJ C 115, 14.4.1997, p. 92),
- Resolution of 16 September 1997 on the need to establish a European Union-wide campaign for zero tolerance of violence against women (OJ C 304, 6.10.1997, p. 55),
- Resolution of 6 November 1997 on combating child sex tourism and reinforcing the prevention of sexual abuse and exploitation of children (OJ C 358, 24.11.1997, p. 37),
- Resolution of 3 December 1998 on respect for human rights in the European Union (1997).

#### **ANNEX V : Petitions received in 1998-1999 concerning the protection of human rights**

- Petition No 131/98 by Mr Giovanni RENAZZI (Italian) and four co-signatories concerning conscientious objectors
- Petition No 562/98 by Mr Georgios KRIPPAS (Greek) concerning the European Parliament resolution referring to conscientious objection in Greece
- Petition No 611/98 by Mr H.B. (Tunisian) concerning the right of asylum
- Petition No 35/99 by Mr David BLOYSE (British) on behalf of Amnesty International UK and 280 co-signatories concerning the infringement of human rights in Egypt
- Petition No 92/99 by Mr Jan BOEYKENS (Belgian) on behalf of the Morkhoven Working Party, concerning a child pornography network and the tracing of missing children
- Petition No 96/99 by Mrs Eleftheria SAPOUNA (Greek) on behalf of the Palaion Phaliron II Upper Secondary School and 482 co-signatories concerning the exploitation of small children by gangs of illegal immigrants in Greece
- Petition No 102/99 by Mr Thorsten GECKS (German) with one co-signatory concerning measures to prevent a police state
- Petition No 113/99 by Mr Leo Klein LEBBINK (Dutch) and one co-signatory concerning recognition of the rights of homosexual staff in the European Parliament
- Petition No 156/99 by Mr Hans-Leopold MÜLLER (German) concerning an immediate halt to deportation and repatriations to Turkey.



31 January 2000

## **OPINION OF THE COMMITTEE ON PETITIONS**

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

on the annual report on respect for human rights in the European Union (1998 and 1999)  
(11350/1999 – C5-0265/1999 – 1999/2001(INI))

Draftsman: María Sornosa Martínez

### **PROCEDURE**

The Committee on Petitions appointed Mrs María Sornosa Martínez draftsman at its meeting of 14 October 1999.

It considered the draft opinion at its meeting of 25 January 2000.

At the latter meeting it adopted the conclusions below unanimously.

The following were present for the vote: Vitalino Gemelli, chairman; Proinsias De Rossa, vice-chairman; María Sornosa Martínez, draftsman; Janelly Fourtou, Laura González Álvarez, Jean Lambert, Hans-Peter Mayer and Eurig Wyn.

### **SHORT JUSTIFICATION**

Throughout its history and in all its political activity the European Parliament has always been concerned with respect for and protection of human rights. It is worth remembering that the Treaties establishing the Communities made no mention of human rights nor of the right of petition. After the first direct elections, the European Parliament's Rules of Procedure formally recognised the right of citizens to submit petitions in May 1981. It was not until 1989, however, with the signing of the interinstitutional agreement by the Presidents of Parliament, the Council and the Commission, that the European Parliament's right to receive and consider petitions was recognised.

Following the signing of this interinstitutional agreement, exercising the right of petition and considering petitions submitted became easier, as the Commission undertook to assist in the consideration of petitions. On 12 April 1989, the European Parliament adopted a resolution on the adoption of a declaration of fundamental rights and freedoms, in which it recognised the right of any person to submit a petition as one of the fundamental rights.

The European Parliament's unfailing support for the right of petition bore fruit for the first time in the Treaty of Maastricht, a development that was confirmed in the Treaty of Amsterdam, Article 21 of which stipulates that every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194 of the EC Treaty. This substantial improvement in the legislative status of the right of petition, together with the requirement making both Member States and Community institutions subject to the Court of Justice as regards the interpretation and application of Community law, has in a number of cases resulted in a situation where the submission of a petition has gone all the way to the Court of Justice, following the opening of infringement proceedings against a Member State by the Commission.

Following the Treaty of Amsterdam, which came into force on 1 May 1999, Article 6(1) of the EU Treaty stipulates that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. This recognition of the need for human rights to be respected, included in the cornerstone of the Community edifice and as the core of all EU policies, should ensure more effective guarantees and greater protection of human rights both within and outside the Union.

In parallel with the development of the European Union, a complex international network of promotion and protection of human rights has become institutionalised, starting as long ago as 1948 with the publication of the Universal Declaration of Human Rights by the United Nations. Special mention should be made of the Council of Europe and all the bodies and instruments deriving from it. It is also worth pointing out that, although the European Union has preferred to develop its own system for the protection of human rights, it is inadequately represented within Council of Europe bodies. In addition, the Convention on the setting up of an international criminal tribunal is an important step which will ensure that the authors of crimes against humanity do not go unpunished; that is why ratification of this Convention should be a priority for the Member States.

The Committee on Petitions, which throughout its existence has dealt with the complaints and concerns of countless European citizens, shares the opinion that human rights are universal, indivisible and interdependent and believes that the European Union should establish a high level of protection of citizens' rights in the Charter of fundamental rights of the European Union which it undertook to draw up in a decision adopted by the European Council in Cologne on 3 and 4 June 1999.

The Committee on Petitions, which receives in the region of 1000 petitions per year, is aware that the petitions it receives on the most varied subjects of concern to Community citizens cannot be seen as representative of the degree to which citizens' rights are respected in the European Union. Nevertheless, the Committee on Petitions does wish to stress the fact that it provides an outlet for participation by citizens and can serve as a political discussion forum where citizens enjoy direct contact and where social actors and non-governmental organisations can express their views and put forward their concerns directly.

Furthermore, the Committee on Petitions does not wish to be merely a political discussion forum, but rather a fundamental body working to defend and protect the rights enjoyed by citizens under Community law and it considers that the new legal framework of the Treaty of

Amsterdam, together with the necessary cooperation with the Council and Commission, could enable the European Parliament to improve the way it deals with the human rights of citizens exercising the right of petition and uphold them more effectively. To date, the task of considering the countless petitions concerning alleged violations of fundamental rights has had to be confined to recording the complaint and passing it on to the appropriate European Parliament committee. However, these petitions seem to indicate that there exists in the European Union a group of less-privileged citizens, usually those least familiar with the option of appealing to the European Parliament to protect their rights and those most vulnerable to violations of these rights, such as cultural minorities, immigrants, women, particularly those suffering abuse, and children.

The drawing up by the Council of the first annual report of the European Union on human rights is a first step towards making EU human rights policies more effective. Yet, if it is really to be a powerful instrument enabling the dialogue on these rights to move forward and involving everyone in the undertaking to defend human rights, the European Parliament must be more closely associated with the process. Furthermore, the report must contain an accurate analysis and detailed description of the situation and of the extent to which fundamental rights are being observed, rather than simply giving an overall picture.

## CONCLUSIONS

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

1. Welcomes the new legal framework provided by the Treaty of Amsterdam, which, as the Committee on Citizens' Rights and Freedoms, Justice and Home Affairs rightly points out, formally enshrines the fact that the European Union is based on respect for human rights and fundamental freedoms.
2. Believes therefore that respect for human rights and fundamental freedoms should inspire and inform all Union objectives, particularly those laid down in Article 2, including the common foreign and security policy and the development of an area of freedom, security and justice in which the free movement of persons is guaranteed, along with a strengthening of citizens' rights.
3. Welcomes the fact that the Council has drawn up and submitted a first annual report of the European Union on human rights and that it wants the report to help lay the foundations for a debate on how European Union human rights policies can be made more effective and satisfactory.
4. Notes that in its report the Council has confined itself to describing the situation, mainly outside the Union, and that, despite the intention stated at the beginning of the report of moving towards an open dialogue with the social partners and the public authorities in the European Union, the report contains no genuine political debate.

5. Regrets that the Council's report has overlooked the important role played by the Committee on Petitions in upholding citizens' rights and in contribution to the implementation of Community law over a period of many years, even before the right of petition was included in the Treaties.
6. Calls on the Council to attend and participate fully in all its meetings where citizens' petitions are considered, especially in cases of serious infringements of Community law by Member States;
7. Reaffirms its belief that democracy and the protection and promotion of human rights are tasks for which everyone must take responsibility and, with this in view, calls on all citizens, social actors, non-governmental organisations and communications media to continue their involvement and to keep submitting petitions.
8. Requests that the next annual report of the European Union on human rights should not be confined to describing the institutions, instruments and agents of the Union's human rights policies, but should include an analysis and accurate assessment of the human rights situation both within and outside the European Union. Within the Union, special attention should be paid to the situation of the least-favoured groups such as cultural minorities, immigrants, women, particularly those suffering abuse, and children.
9. Shares the opinion expressed by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs that the Commission and, in particular the European Parliament, should be more closely associated with the next annual report. With this in view, highly appreciates the way in which the Commissioners-designate presented their programmes to the European Parliament and believes that the same kind of democratic exercise could be applied to the submission of the next annual report.
10. Welcomes the planned Charter of fundamental rights of the European Union, in line with the decisions taken at the Cologne European Council of 3 and 4 June 1999, and believes that this Charter will fulfil its task well if it establishes a level of protection of citizens' rights greater than that provided for by the United Nations Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
11. Considers that these rights should be legally binding, both for the Member States and for the Union institutions, applicable to all citizens resident in the Union and actionable before the Court of Justice in the event of alleged violations of these rights.