

A EUROPE OF RIGHTS: *history of the* EU CHARTER



ARCHIVE AND DOCUMENTATION CENTRE (CARDOC)
DIRECTORATE-GENERAL FOR THE PRESIDENCY
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EN

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Charter of Fundamental Rights of the European Union

FOREWORD

by the President of the European Parliament

The European Union is a fascinating project for peace, progress, democracy and freedom, with the protection and promotion of human rights at its very heart.

The European Union has achieved significant progress in the defense of, and respect for, fundamental rights over the past fifty years. The drafting and adoption of the Charter of Fundamental Rights marked an important milestone in the European Union's history and an important development for its constitutional legitimacy.

The Charter, solemnly proclaimed by the Presidents of the Parliament, Commission and Council in Nice on 7 December 2000, became legally binding in December 2009 when the Lisbon Treaty came into force. It is the first EU «Bill of Rights» and one of the most modern and up-to-date codifications of all values, including civil, political, economic and social rights. It constitutes a formidable tool in bringing the European Union closer to its people and creating a citizens' Europe.

Today, the protection of fundamental rights is more important than ever, even if this issue is far from being a recent phenomenon. In this long process, the European Parliament, as the only directly elected EU Institution, has always played a central role in defending and promoting the fundamental democratic values of the European Union.

As early as 1977, the European Parliament issued a Declaration of political principle on the definition of fundamental rights. Since then, it has repeatedly adopted resolutions and remained on the front line in the fight for the respect of human rights. Back in February 1984, the European Parliament adopted a draft Treaty establishing the European Union, in which its rapporteur, the celebrated Italian MEP Altiero Spinelli, had for the first time spoken of human rights in the context of a European constitution. Subsequent developments vindicated this ambition.

With this comprehensive study, 'A Europe of rights: history of the EU Charter', published exactly five years after the Charter was proclaimed, readers will discover the milestones along this long road and will better understand the crucial role played by the European Parliament as a defender of its citizens' fundamental rights and freedoms.



CHAPTER I

1. FUNDAMENTAL RIGHTS:

THE FIRST EUROPEAN PARLIAMENT RESOLUTIONS (1957-1979)

1.1 *From the birth of the European Economic Community until the 1960s*

The 1957 Treaty establishing the European Economic Community (EEC) made no reference to the protection of fundamental rights within the legal order of the Community. The omission of a reference to fundamental rights in both the ECSC and EEC Treaties was due to the fact that, in the opinion of their authors, these were economic treaties, with no implications for the protection of human rights¹. On the other hand, the Council of Europe placed fundamental rights centre-stage, in particular through the adoption in 1950 of the European Convention on Human Rights (ECHR), which remained one of the most important documents for many European countries². In this way, fundamental rights were not considered to come within the EEC's remit, and this was also expressed in the early case law of the European Court of Justice (ECJ), which resisted attempts by parties to invoke fundamental rights and was unwilling to treat them as part of the Community legal order. It was considered that dealing with infringements of national constitutional principles was not a Community competence. The European Parliament (EP), initially called the Common Assembly, began to express its views on the supremacy of Community law, which was seen as a fundamental step to be taken before addressing the issue of fundamental rights.

For example, the opinion drawn up by Fernand Dehousse³ on behalf of the Assembly's Legal Affairs Committee contained the following observations: *'The Legal Committee hopes that when national law is replaced by Community law the Commission will ensure that the risk of any encroachment on citizens' rights is excluded from the start'*⁴. In the 1960s the EP frequently emphasised the need to recognise the supremacy of Community law

1 For an overview, see *Treaty establishing the European Coal and Steel Community*, Luxembourg: ECSC, 1951; M. Dedman, *The origins and development of the European Union 1945-2008: a history of European integration*, London: Routledge, 2009. These treaties also contained a small number of provisions which had a direct bearing on the protection of fundamental rights even if they were not adequate to protect the rights of individuals. For example, in the EEC Treaty, Articles 7 (general prohibition on discrimination on grounds of nationality), 48 (freedom of movement for workers), 52 (freedom to provide services), 117 (improved working conditions and an improved standard of living for workers), 119 (equal pay for men and women) and 220 (protection of persons and protection of rights) may be considered to have a such bearing.

2 See *Storia dell'integrazione europea* (ed. R.H. Rainero), Roma: Marzorati, 1997; E. Greppi, 'Il Consiglio d'Europa: l'istituzionalizzazione della cooperazione politica tra stati sovrani', *Storia dell'integrazione europea*, vol. I, Roma: Marzorati, 1997, pp. 87-116; J.E.S. Fawcett, *The Application of the European Convention on Human Rights*, Oxford: Clarendon Press, 1987; M. Merle, 'La convention européenne des droits de l'homme et des libertés fondamentales', *Revue du droit public et de la science politique en France et à l'étranger*, Vol. 57, 1951, No 3, pp. 703-725; G.G. Nonnenmacher, 'La Convention de sauvegarde des droits de l'homme et des libertés fondamentales', *Notre Europe*, 1953, No 20, pp. 20-33; L.E. Pettiti et al, *La Convention européenne des droits de l'homme: commentaire article par article*, Paris: Economica, 1995; P.H. Teitgen, *Aux sources de la Cour et de la Convention européennes des droits de l'homme*, Confluences, 2000.

3 Fernand Dehousse was a Member (Socialist Group) of the ECSC Common Assembly, then the European Parliamentary Assembly (now European Parliament) from 10 September 1952 to 2 August 1965 and again from 9 May 1966 to 11 March 1971.

4 EP report A0-0110/66 on the Ninth General Report of the Commission of the EEC. Text adopted: resolution of 19 October 1966 on same subject, OJ of 5.11.1966, p. 3462.

over the national laws of Member States⁵. In Parliament's view, the supremacy of Community law was essential because its observance ensured uniformity and this was a prerequisite for its consistency and authority. This principle means that no national court or tribunal can refuse to apply a Community ruling on the grounds that the latter would encroach on the freedoms enshrined in the national constitution. Thus, already in the 1960s, the EP showed itself to be forward-looking. As human rights were still not a key concern for the European Community in its early stages, it was possible for Parliament to place them within its own sphere of competence, considering such matters to be an essential Union activity. However, the lack of specific and exhaustive provision for the protection of fundamental rights did not mean that they had no legal protection.



Fernand Dehousse (1960). The Belgian delegate Fernand Dehousse was one of the first members of the Assembly to emphasise individual rights in Community legislation.

(© European Union, 1960)

1.2 *EP activities in the field of fundamental rights in the 1970s*

At the beginning of the 1970s the European Court of Justice changed its position after several constitutional courts had conditioned the supremacy of EC law by arguing they would check whether EC law infringed the fundamental rights enshrined in

⁵ Dehousse report A0-0043/65 on the Paramountcy of Community law over the laws of Member States. Text adopted: resolution of 22 October 1965 on same subject, OJ of 9.11.1965, p. 2923. See also Dehousse report A0-0038/67 on the application of Community law by Member States. Text adopted: resolution of 10 May 1967 on same subject, OJ of 2.6.1967, p. 2054.

their national constitutions. Finding itself in a defensive position, the ECJ argued that Community law did respect fundamental rights and that – in the absence of a bill of rights – it would ensure this by applying general principles of Community law, based on common national traditions and on international texts agreed to by the Member States⁶.

While the legal debate on fundamental rights developed as a dialogue between constitutional courts and the ECJ, the European Parliament started to become more active in the field of human rights. Safeguarding fundamental rights in the Community was a political issue which the EP could address. Parliament had already had occasion to stress solemnly that '*confidence in the legality*' of the steps taken by the Community institutions was an essential prerequisite for the emergence of a common political awareness in the Community⁷. When the 1971 Lautenschlager report on a number of proposals for directives was presented to the plenary sitting, the rapporteur drew Parliament's attention to the fact that the parliamentary committees to which the proposed directives had been referred had wondered how far it was possible to encourage Member States (pursuant to Article 100 of the EEC Treaty) to adjust their national legislation in a manner liable to restrict more severely than was warranted by public health requirements certain fundamental rights embodied in the constitution⁸.

The first important debate on fundamental rights started officially on 4 April 1973. On this occasion, the rapporteur, Léon Jozeau-Marigné, outlined his report on the protection of the fundamental rights of Member States' citizens. In Mr Jozeau-Marigné's opinion, although the topic of fundamental rights might seem rather abstract, it was of capital importance in the daily lives of citizens. At that time, not many people were acquainted with or could define the concept of fundamental rights. Moreover, while fundamental rights formed a clearly defined legal category in German constitutional law, this did not seem to be the case in the law of other countries, such as France. In his report, Mr Jozeau-Marigné defined fundamental rights as follows: '*The term "fundamental rights" is applied to rights and freedoms underpinned by positive guarantees; these rights and freedoms may be set forth in the written provisions contained in the constitution or form part of a continuing constitutional tradition kept alive by the lawgiver or case law*'.⁹ It was important to find a way of ensuring observance of the rights of Member States' citizens whenever the prerogatives of the individual might be adversely affected by the process of economic integration. Mr Jozeau-Marigné indicated two kinds of solutions: formal and pragmatic solutions. As regards formal solutions, it was important to bear in mind that none of the three Treaties contained a declaration of fundamental rights. This did not mean that the Community authorities wished to evade the great principles which inspired the constitutions of the Member States. The pragmatic solution was to ask for an opportunity to be found for the European Court of Justice to recognise the rights of individual citizens and thereby acquire an increasingly strong position in this area¹⁰. The EP also invited '*the Commission to submit to it a report as to how it intends,*

6 E. Guild, G. Lesieur, *The European Court of Justice on the European Convention on Human Rights: who said what, when?*, London: Kluwer Law International, 1998.

7 EP resolution of 10 May 1967 on the legal protection of private individuals in the European Community, OJ of 2.6.1967, p. 2055, adopted on the basis of report A0-0039/67 by A. Deringer.

8 EP debates, 20 April 1971, p. 39.

9 EP debates, 4 April 1973, p. 17-18.

10 EP resolution of 4 April 1973 concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted, OJ C 26 of 30.4.1973, p. 7 (based on report A0-0297/72 by L. Jozeau-Marigné, on behalf of the Legal Affairs

*in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States*¹¹.

In the context of European Communities, Parliament insisted, through its reports and resolutions on plugging a gap inherited from the Treaties even though it had no real powers at the time¹². On 29 December 1975, Leo Tindemans¹³ highlighted in his famous report that it was very important to take concrete steps to bring citizens closer to the European institutions. One of these measures was to protect fundamental rights. However, this was difficult to put into practice at the time¹⁴. Mr Tindemans made the following remarks about fundamental rights: *'I propose that the European Council should instruct the Institutions to propose how best to set about this recognition and protection [...]'*. In his opinion all individuals had the right of direct appeal to the Court of Justice against an act of an institution in violation of these fundamental rights¹⁵. In his report, Mr Tindemans stressed that the European Commission wanted fundamental rights eventually to become an essential element of the legal Community and to be included in the Treaty¹⁶. In the 1970s, European political institutions made very little reference to fundamental rights, as this was not an easy matter at the time. The terrible economic crisis of that period undermined the atmosphere of good intentions that had been created. However, in the same years, a series of non-binding political documents appeared, such as the Declaration on European Identity (Copenhagen European Summit, 14-15 December 1973)¹⁷, in which the principles of democracy, the rule of law, social justice and respect for human rights were considered a cornerstone of European international identity. Another important event regarding the specific issue of the accession of the Communities to the European Convention on Human Rights was the Round Table which took place in Florence on 'Special rights and a charter of the rights of the citizens of the European Community'¹⁸. One of the most important documents was a Joint Declaration on Fundamental Rights, adopted by the European Parliament, the Council and the Commission in 1977, which stressed *'the prime importance they attach to the protection of fundamental rights'*, as derived from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental

Committee, on the motion for a resolution (doc. 103/71) tabled by H. Lautenschlager, on behalf of the Socialist Group, on same subject).

- 11 Paragraph 2 of the aforementioned resolution of 4 April 1973. See also, on the supremacy of EC law, Notice to members PE 39.765, Legal Affairs Committee, 14 February 1975 and report A0-0390/75 on the primacy of Community law and the protection of fundamental rights, rapporteur H. Rivierez. Text adopted: resolution on same subject, OJ C 159, 12.7.1976, p. 13.
- 12 EP debate on protection of fundamental rights of 12 October 1976; report A0-0321/76) of 4 October 1976 on the report of the Commission of the European Communities on the protection of fundamental rights, rapporteur L. Jozeau-Marigné. Text adopted in OJ C 259, 4.11.1976, p. 17.
- 13 Leo Tindemans is a Belgian politician. In 1976 he was elected as first Chair of the European People's Party in Brussels, a role which gave him the important tasks of harmonising and finding consensus between the different leaders and member parties of the EPP and of leading the party during the first direct elections to the European Parliament in 1979.
- 14 B. Olivi, *L'Europa difficile, Storia e politica dell'integrazione europea (1948-2000)*, Bologna: Il Mulino, 2001, pp. 177-178.
- 15 *European Union*, Report by Mr. Leo Tindemans, Prime Minister of Belgium, to the European Council, Memo from Belgium, "Views and Surveys" No 171, 1976, p. 40.
- 16 In particular, from 1977 the Jenkins Commission sought to launch a new political revival and the European Union project, following a period of economic crisis; see B. Olivi, pp. 178-179.
- 17 See Declaration on European Identity (Copenhagen 1973) on <http://www.cvce.eu/>.
- 18 Event organised by the EP in Florence from 26 to 28 October 1978 and attended by many Members of Parliament and university lecturers. See Proceedings of the Round Table, published by the European Parliament's Directorate-General for Research and Documentation, September 1979. After this Round Table, the EP adopted a resolution (27 April 1979) specifically 'on the accession of the European Community to the European Convention on Human Rights' and drawn up by M. Scelba who was in favour of the accession of the European Community to the ECHR (see OJ C 127, 21.5.1979, p. 69).

Freedoms¹⁹. The Declaration can be read as a political confirmation of the case law on this subject and a defensive statement that EC law does respect fundamental rights rather than a strong commitment to playing a proactive role as a guardian of such rights²⁰.

The impetus behind the present favourable attitude to the incorporation into the Community legal order of the provisions of the European Convention on Human Rights was provided by an EP resolution drawn up on the initiative of Mario Scelba. This resolution (16 November 1977) expressed the hope that the European Convention on Human Rights of 1950 and subsequent protocols thereto would be considered as integral parts of the Treaties establishing the Communities²¹. Similarly, respect for human rights and the maintenance of democracy were declared to be the political basis of EC membership. In 1978, the European Council solemnly declared that *'respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities'*²². The European Parliament's adoption of a resolution on 22 April 1979 on the accession of European Community to the European Convention on Human Rights, on the basis of a report drawn up by Mario Scelba, marked a decisive step towards this accession. The resolution stated expressly that Parliament was in favour of the accession of the European Community to the European Convention on Human Rights. The EP called on the Council and the Commission to work in close cooperation with it in order to make immediate preparations for the EC's accession to the ECHR. This political statement provided a clear indication of Parliament's position on the matter²³.

At that point, all that remained to do was to consider the legal and procedural aspects of accession. In its memorandum of 2 May 1979 the Commission explained how the accession of the European Communities to the Conventions for the Protection of Human Rights and Fundamental freedoms should take place²⁴. In support of accession, the Commission put forward a number of important arguments, including the fact that this would improve Europe's image as an area of freedom and democracy and strengthen the protection of fundamental rights in the Community and its institutions²⁵. In the opinion of the EP, and especially of its Political Affairs Committee, which was completely in favour of the accession of European Communities to the Convention, the protection of fundamental rights had positive effects on the general requirements of democracy and on the growth of the participation of individuals in actions of common

19 OJ C 103, 27.04.1977, p. 1. See also Draft Joint Declaration by the European Parliament, the Council and the Commission concerning respect for human rights, PE 47.729, December 1976. Another important EP resolution on the draft joint declaration was adopted on 10 February 1977, based on report A0-0557/76 drawn up by L. Jozeau-Marigné, on behalf of the Legal Affairs Committee (OJ C 57, 7.3.1977, p. 54).

20 Written question E-0128/77 by M. Dondelinger to the Council about fundamental rights. The Council answered that the declaration was a political commitment.

21 Resolution on the granting of special rights to the citizens of the European Community, in compliance with the decision of the Paris Summit of December 1974 (point 11 of the final communiqué). See OJ C 299, 12.12.1977, p. 26.

22 Declaration on Democracy, Copenhagen European Council, 8 April 1978, Bulletin EC3-1978, pp. 5-6.

23 OJ C 127, 21.5.1979, p. 69.

24 Commission Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms (doc. 160/79 – COM(79)210), 2 May 1979.

25 The Commission also stated in its memorandum that Article 235 of the Treaty establishing the European Economic Community should provide the legal basis for the accession of the Communities to the European Convention. Article 235 provides as follows: *'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures'*.

interest. The activities of the Community institutions in observing the principle of the equality of all individuals and regarding it as a positive political and social attribute and not as a mere formal legal acknowledgement were therefore an essential prerequisite for any progress towards European Union²⁶.

²⁶ See report A1-0547/82, drawn up by G. Gonella on behalf of the Legal Affairs Committee, on the Memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms (doc. 160/79 – COM(79)0210). Text adopted: resolution of 29 October 1982 on same subject, OJ C 304, 22.11.1982, p. 253.

2. THE EP'S ROLE IN THE FIELD OF HUMAN RIGHTS AND THE ABOLITION OF THE DEATH PENALTY AFTER THE FIRST DIRECT ELECTIONS (1979-1997)

2.1 *The EP and the death penalty after the first direct elections (1979-1991)*

As a result of the first direct elections in 1979, the European Parliament became the only democratically elected Community institution. This strong democratic legitimacy enabled Parliament to give added emphasis to its role as the citizens' voice, defending their interests. From 1980 onwards, it delivered opinions on the institutional development of the Communities²⁷, and it began to play an important role²⁸ in the debate on fundamental rights. From 1981 the Political Affairs Committee was authorised to draw up an annual report on human rights in the world and the Committee on Development and Cooperation could draw up an opinion on the subject²⁹. In the 1980s the EP also became a driving force in the campaign against the death penalty and was the first EC institution to engage with the issue. On 21 November 1980 it adopted its first resolution, with request for urgent debate, inviting the Member States to abolish capital punishment totally³⁰. The issue arose because three persons had been sentenced to death in France in 1980. It was clear that the EP must address the problem and should make its opinion known on the capital punishment issue. In the debate on capital punishment in France the EP's political groups held different positions. The Socialist Group tabled the motion for a resolution against the death penalty. In Roger-Gérard Schwarzenberg's view, Europe was not only a common market but also a common civilisation, based on common values and above all on respect for human life and dignity³¹. The European Democratic Group (ED group) took a different view, namely that the EP was not ready to involve itself in such a matter in the way in which the resolution suggested. Poul Møller pointed out that the EP did not have the legal authority to set penalties for France. Only the National Assembly of France could take such a decision³². The Radical Group agreed with the Socialist Group, stating that it was perfectly possible for the EP to express the wish that executions in France be postponed. Parliament took a stance on this matter in its resolution on the abolition of

27 Between 17 April 1980 and 18 February 1982, the EP adopted 8 resolutions providing a synopsis of its view on institutional matters, cf. OJ C 234, 14.9.1981; OJ C 66, 15.3.1982 and OJ C 11, 18.1.1982. European Parliament, Committee on Institutional Affairs, Working Documents on the draft Treaty establishing the European Union, draftsmen Prof. Capotorti, Prof. Hilf, Prof. Jacobs, Prof. Jacqué, 19 March 1985.

28 Re. the first EP election, see *Towards direct elections to the European Parliament*, Cardoc Journals, March 2009; *Ten years that changed Europe: 1979-1989*, European Parliament Directorate-General for Information and Public Relations, Luxembourg: European Parliament, 1989. P. Alston, *L'Union Européenne et les Droits de l'Homme*, Bruxelles: Bruylant, , 2001, pp. 43-44.

29 See for example the report for 1983-1984, drawn up by Lord Bethell on behalf of the Political Affairs Committee, on human rights in the world and Community policy on human rights (doc. A1-0068/84). Text adopted: resolution of 22 May 1984 on same subject, OJ C 172, 2.7.1984, p. 36. Second report, drawn up by I. van den Heuvel on behalf of the Political Affairs Committee, on human rights in the world for the year 1984 and Community policy on human rights (doc. A2-0121/85). Text adopted: resolution of 22 October 1985, OJ C 343, 31.12.1985, p. 29.

30 OJ C 327, 15.12.1980, p. 95; see also motion for a resolution B1-0589/80 of 17 November 1980.

31 EP debate of 21 November 1980 on the abolition of the death penalty in the European Community, p. 209, statement by R.-G. Schwarzenberg (Socialist Group).

32 Ibidem, pp. 292-293, statements by E. Forth and P. Møller.

the death penalty in the European Community, adopted on 18 June 1981 on the basis of a report drawn up by Marie-Claude Vayssade (Socialist Group)³³. Further EP debates on this topic took place in subsequent years³⁴.

In that resolution the EP expressed its strong desire *‘that the death penalty should be abolished throughout the Community’* and invited *‘the Member States to amend their legal provisions, where necessary, and to take active steps within the Committee of Ministers of the Council of Europe to ensure that the European Convention on Human Rights is amended accordingly’*. For many Member States the death penalty became one of the most important human rights issues because they considered it no longer to be a sovereign issue of criminal justice. In 1986 only six of the twelve Member States – the Federal Republic of Germany, Denmark, France, Luxembourg, the Netherlands and Portugal – had abolished the death penalty for all categories of offence. Three other states had abolished it only partially: the United Kingdom and Italy had abolished the death penalty for offences laid down in their ordinary criminal legislation, and Spain had extended the abolition to all offences committed in peacetime.

In 1986 the EP adopted another report by Marie-Claude Vayssade on accession to the Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms³⁵. The report was adopted by a large majority and with the agreement of the major political groups. This Sixth Protocol provided for the abolition of the death penalty in peacetime for all member states of the Council of Europe. There was no provision for any derogation from the protocol. It must be stressed that this was the first time under international law that an instrument laid down the abolition of the death penalty as a moral obligation for the contracting parties³⁶. Mrs Vayssade considered that all Member States should ratify the protocol and adapt themselves to one of the most important human rights concepts, which requires that the right to live be respected and guaranteed for all³⁷. The death penalty was not acceptable and this became a significant norm in Western Europe. Curiously, in 1986, two Member States – the UK and Ireland – had still not signed the Sixth Protocol on the abolition of the death penalty, while Belgium and Greece retained the death penalty in their legislation although they had signed the protocol. The EP worked towards the abolition of the death penalty throughout the 80s and 90s, not to mention other issues such as the strengthening of its powers and fundamental rights. The EP’s fight against the death penalty was motivated by the historical context from 1988 to 1991, namely the fall of the Berlin Wall, leading to the collapse of the Soviet Union and the attendant breakdown of Comecon (Council for Mutual Economic Assistance)³⁸. This was an enormous change, which could have had extremely dire consequences. The end of the Cold War provided

33 OJ C 172, 13.7.1981, pp. 72-73, and doc. A1-0065/81.

34 At its sitting of 8 May 1985 Parliament referred the motion for a resolution tabled by G.M. de Vries on the abolition of the death penalty (doc. B2-0220/85) to its Legal Affairs Committee as committee responsible and to its Political Affairs Committee for an opinion.

35 Report drawn up by M.-C. Vayssade on behalf of the Committee on Legal Affairs and Citizens’ Rights (doc. A2-0167/85). Text adopted: resolution of 17 January 1986 on the abolition of the death penalty and the accession to the Sixth protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, OJ C 36, 17.2.1986, p. 214.

36 Protocol No 6 was opened for signature on 28 April 1983, see <http://conventions.coe.int/Treaty/en/Treaties/Html/114.htm>. It entered into force in 1985, with five ratifications. It was only six years later that the UN sought to follow this lead by adopting the 1989 Second Optional Protocol (OPT 2) to the International Covenant on Civil and Political rights, aiming at the abolition of the death penalty.

37 EP debate on abolition of the death penalty of 17 January 1986, p. 300.

38 An association of Soviet-oriented Communist nations, founded in 1949 to coordinate economic development, etc.; it was disbanded in 1991 when free-market policies were adopted by its members.

the impetus for rethinking what it meant to be democratic. Great hope was spawned by the spread of the ideas of freedom that had begun with the fall of the Wall.

2.2 *The draft Treaty establishing the European Union and the debate about fundamental rights in the 1980s*

On 14 February 1984, the European Parliament adopted a draft Treaty establishing the European Union. This went beyond institutional reform and entailed a qualitative improvement in the process of European integration³⁹.

In 1982, the Italian MEP Altiero Spinelli⁴⁰ already foresaw in his famous report on the draft Treaty establishing the European Union that the EU would protect fundamental rights. Spinelli included the following provision in his draft: *'The Union shall protect the dignity of the individual and grant every person coming within its jurisdiction the fundamental rights and freedoms derived in particular from the common principles of the Constitutions of the Member States and from the European Convention for the Protection of Human Rights and Fundamental freedoms'*⁴¹. The draft Treaty also stipulated that 'within a period of five years' the Union would take a decision on its accession to the ECHR⁴². It was necessary, in Spinelli's view, to give people a growing sense that their own country, with its institutions, laws and customs, should form part of a union of democratic European nations committed to respect for democratic freedoms and human rights for all nations⁴³. However, this draft Treaty project failed, as it was adopted only by the EP, under the impetus of Altiero Spinelli, but was not accepted by the Council, which had other priorities at the time⁴⁴.

39 See report drawn up by A. Spinelli on behalf of the Committee on Institutional Affairs on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union (doc. A1-0305/82/A and doc. A1-0305/82/B). Text adopted: resolution of 6 July 1982 on same subject, OJ C 238, 13.9.1982, p. 25. See also *Verso l'Unione Europea*, Firenze: Istituto Universitario Europeo, 1983.

40 Altiero Spinelli was an Italian political theorist and a European federalist. He decided to run in the first direct elections to the European Parliament in 1979. He did so as an independent candidate on the list of the Italian Communist Party, which by then had become a Eurocommunist party.

41 Preliminary Draft Treaty establishing the European Union, Article 4, paragraph 1 (doc. A1-1200/83/A).

42 OJ C 277, 17.10.1983, p. 95 and report on the substance of the preliminary draft Treaty establishing the European Union (doc. A1-0575/83/A), coordinating rapporteur A. Spinelli. See also *White Paper on the European Community's contribution to supporting and safeguarding the fundamental rights and freedoms of European citizens* by K. De Gucht, Committee on Institutional Affairs, 1988 (doc. PE 115.274/fin.); *Dossier Parlamento e diritti dell'uomo*, ed. L. Vido, Gruppo del partito popolare europeo del Parlamento europeo, 1989.

43 See working document on the European Parliament's guidelines for the reform of the Treaties, 10 February 1982, draftsman A. Spinelli. Rapporteurs K. De Gucht, J. Moureau, G. Pfenning, D. Prag, H.-J. Seeler, O. Zecchino. See also resolution of 14 February 1984 on the draft treaty establishing the European Union, OJ C 77, 19.3.1984, p. 53 (report A1-1200/83, 30 January 1984, coordinating rapporteur A. Spinelli).

44 Re. the draft treaty, see B. Olivi, pp. 238-252; *Towards the European Union*, Florence: European University Institute, 1983; *Battling for the Union: Altiero Spinelli, 1979-1986*, Luxembourg: OPOCE, 1987.



Altiero Spinelli (1984), an Italian member of the European Parliament and author of the 1983 report containing the Draft Treaty Establishing the European Union.

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The EC was going through a bad time, owing to the difficult problem of budgetary imbalances and other issues. At the beginning of the 1980s the Community was in the darkest days of Euro-pessimism, and it was very difficult to put Europe on the right track again by offering the citizens of Europe alternative solutions. Although the Single European Act appeared to be a step forward, stating that the Community was determined to work together to promote democracy on the basis of fundamental rights, this reference was only made in the preamble, without providing for any substantial Treaty change. By contrast, when it came to founding a political community, the issue of fundamental rights returned to the forefront⁴⁵. It was only with the adoption of the resolution based on the De Gucht report in 1989 that the European Parliament was able to make some real progress towards the Charter of Fundamental Rights⁴⁶. In his report, Karel De Gucht showed that, in discussions on fundamental rights and their recognition, there were three different approaches. The first was the Praetorian solution, *'whereby the Court of Justice would ensure respect for fundamental rights, drawing its inspiration from the common constitutional principles of the Member States and the appropriate international*

⁴⁵ On the position of the European Parliament on the Single Act approved by the Intergovernmental Conference on 16 and 17 December 1985, see report A2-0199/85 of 13 January 1986 (rapporteur A. Spinelli) and resolution of 16 January 1986 in OJ C 36, 17.2.1986, p. 144.

⁴⁶ Report on the Declaration of fundamental rights and freedoms (doc. A2-0003/89) of 20 March 1989, general rapporteur K. De Gucht. Text adopted: resolution of 12 April 1989 on same subject, OJ C 120, 16.5.1989, p. 51.

and European instruments, in particular the *European Convention on the Protection of Human Rights and Fundamental Freedoms*'. However, the problem was that it was 'not the task of the Court to define what constitutes the very essence of a pluralist democracy, i.e. the fundamental rights which must be protected'⁴⁷. The second advocated the European Community's accession to the European Convention for the Protection of Human Rights and Fundamental freedoms. Such accession would equip the Community with a catalogue of human rights which it would require in the application of Community law. On the other hand, this kind of accession had been held up by a number of technical and political difficulties⁴⁸. The third approach highlighted the role of the EP: elected by direct universal suffrage, Parliament had become a constitutional legislator. On this basis, it could draw up a Declaration of fundamental rights and freedoms and it was only natural that this subject should periodically be brought up for discussion.

2.3 *The EP and the Declaration of fundamental rights and freedoms (1989)*

After the discussions around the draft Treaty establishing the European Union, in which Spinelli had for the first time spoken of human rights in the context of a European constitution, it was felt that the EP should without hesitation adopt a declaration with a strong symbolic value to demonstrate unequivocally that it attached prime importance to the protection of the individual⁴⁹. On 12 April 1989 the European Parliament proclaimed the Declaration of fundamental rights and freedoms⁵⁰, in line with its undertaking in the draft Treaty of European Union. This declaration was a catalogue of fundamental rights to be respected by the Community institutions. In it, the EP established a series of fundamental rights. While some of them had already been acquired, others were not expressly recognised by the constitutions of Member States. For example, the declaration gave special consideration to the environment and consumer protection (Article 24). It in fact invited the Community to adopt a policy providing for environmental and consumer protection⁵¹.

In December of the same year, during the European Council meeting in Strasbourg, 11 Member States (not including the UK) adopted the Charter of Fundamental Social Rights. This text was inspired by the European Social Charter and certain International Labour Organisation conventions. On 22 November 1989 Parliament deplored the fact that it had not been associated with the preparatory work and regretted that the Charter was still not binding⁵².

47 See report A2-0003/89/Part B, p. 7.

48 Ibidem, p. 8: Others objected that the European Convention did not contain the principles of law which were crucial to the Community and the European Union. In De Gucht's opinion, the Convention only constituted a minimum standard and accession to it would confer a very specific legitimacy on the system for protecting fundamental rights and freedoms in the Community even if other principles specific to Community law needed to be defined.

49 Ibidem, pp. 11-12. On this topic, see also the Public Hearing on Fundamental Rights in the European Union, Florence: EUI, 25-27 May 1988.

50 EP resolution of 12 April 1989 on the Declaration of Fundamental Rights and Freedoms, OJ C 120, 16.5.1989, p. 51, on the basis of the report of the Committee on Institutional Affairs (doc. A2-0003/89 cit.).

51 Proceedings of the conference: 'Human rights and the European Community to 1992 and beyond', Strasbourg, 20-21 November 1989.

52 Report on the Community Charter of Fundamental Social Rights of 9 November 1989 (doc. A3-0069/89), rapporteur M. Buron. Text adopted: resolution of 22 November 1989 on same subject, OJ C 323, 27.12.1989, p. 44.

2.4 *The debate on fundamental rights at the Maastricht European Council meeting (1991)*

An important objective on the EEC agenda was to build greater economic and political integration by the end of 1991. The debate on this important issue started in Rome in December 1990 and reached its conclusion at the Maastricht European Council meeting at the end of 1991⁵³. The Intergovernmental Conference which resulted in the Treaty of Maastricht, signed on 7 February 1992⁵⁴, was another key opportunity to address the issue of the Charter of Fundamental Rights. During this important event, Parliament did everything possible to persuade the governments to make the Declaration of Fundamental Rights and Freedoms binding⁵⁵. It was unsuccessful and the declaration thus remained a European Parliament resolution with only moral value. In the Maastricht Treaty fundamental rights became foundational principles of the European Union. Article 6(1) TEU states that '*the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law*'⁵⁶. The statement that the Union was founded on these principles gave the impression that they had always formed the foundation of the European Communities. However, the Maastricht Treaty did not provide the EU with any powers in relation to fundamental rights in the Member States, nor did it give it the legal capacity to develop a genuinely coherent human rights policy. The Maastricht Treaty strengthened the EP's powers⁵⁷, but Parliament's mandate in the field of human rights could not be separated from that of the EU as a whole. Although the TEU did not explicitly grant the EP the power directly to take action in relation to the promotion of human rights, the EP did not stop working on this topic.

2.5 *Fundamental rights and moves towards a European Constitution (1994)*

Following the conclusion of the Treaty on European Union, Parliament decided that it would continue to consider the drafting of a constitution for the European Union in order to establish satisfactorily the goals of European integration and to meet the requirements of transparency, democracy and values. For example, the Herman Report⁵⁸, on a draft constitution of the European Union, contained a list of human rights under Title VIII and also set out the fundamental freedoms of EU citizens⁵⁹. In the Herman report, human rights were considered as a broader concept than in the 1989 De Gucht report. In the preamble to his draft constitution, Mr Herman highlighted the fact that membership of the European Union was based on values shared by its

53 B. Olivi, pp. 354-360.

54 OJ C 125, 18.5.1992, p. 81; see also, re. its ratification, OJ C 299, 16.11.1992, p. 8. The Maastricht Treaty entered into force on 1 November 1993. *Maastricht: the Treaty on European Union: the position of the European Parliament*, Luxembourg: OPOCE, 1992.

55 Report on the Intergovernmental Conference in the context of Parliament's strategy for European Union (doc. A3-0047/90), rapporteur D. Martin, p. 16. Text adopted: resolution of 14 March 1990 on same subject, OJ C 96, 17.4.1990, p. 114, see paragraph 4(d). See also report on the European Parliament's guidelines for a draft constitution for the European Union of 9 July 1990 (doc. A3-0165/90), rapporteur E. Colombo. Text adopted: resolution of 11 July 1990, OJ C 231, 17.9.1990, p. 91. Report on the Intergovernmental Conference in the context of Parliament's strategy for European Union (doc. A3-0166/90) of 25 June 1990, rapporteur D. Martin, paragraph 16. Text adopted: resolution of 11 July 1990, OJ C 231, 17.9.1990, p. 97.

56 Treaty on European Union, OJ C 191, 29.7.1992, Article A.

57 The Treaty of Maastricht brought a number of increases in the powers of the EP. For example, it introduced a new procedure, known as the codecision procedure. For further details, see R. Corbett. et al, *The European Parliament*, London: Cartermill Publishing, 1995.

58 Report of the Committee on Institutional Affairs on the Constitution of the European Union of 27 January 1994 (doc. A3-0031/94), rapporteur F. Herman.

59 See EP resolution of 10 February 1994 on the Constitution of the European Union, OJ C 61, 28.2.1994, p. 155.

peoples, in particular *'freedom, equality, solidarity, human dignity, democracy, respect for human rights and the rule of the law'*. In his opinion it was important that the Member States and the European Parliament adopt this Constitution of the European Union in order to establish a legal guarantee for human rights and fundamental freedoms.⁶⁰

2.6 *The post-Maastricht period: new challenges for the European Union*

The period from 1992 to 1997 was characterised by a crisis of confidence in the EU and provided an opportunity for EU institutions and Member States to reflect on how best to revitalise the Union in order to recover from the 'post-Maastricht blues'. One route was to try to strengthen the EU's commitment to human rights through the EC acceding to the ECHR. In its resolutions relating to the IGC, the EP continued to emphasise the need to establish a list of human rights at Community level. It also maintained its strong position in the run-up to the 1996 IGC by adopting a resolution which contained a section entitled *'More rights for EU citizens and improved protection of the fundamental rights of all EU residents'*⁶¹. At the same time the EP advocated accession to the ECHR. In its resolution of 18 January 1994⁶², it stated that the Commission should be authorised by the Council 'to negotiate with the Council of Europe on accession arrangements'. However, in March 1996 this path was blocked by a European Court of Justice ruling that the Community was not competent *'to adopt rules or conclude international agreements on human rights'*.

2.7 *Further progress for fundamental rights with the Treaty of Amsterdam*

The Treaty of Amsterdam was signed on 2 October 1997 but came into force on 1 May 1999. Article 6 included the general principle of respect for human rights and fundamental freedoms. It made provision for penalties in the event of a serious and persistent breach of these principles by a Member State and stipulated that candidate countries must respect such principles if they wished to join the EU. The Treaty of Amsterdam sought to strengthen the principle of non-discrimination by adding two provisions to the Treaty establishing the European Community. Under Article 13, the Council could, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take appropriate action⁶³. In fact, new Article 13 supplemented Article 12, which referred to discrimination based on nationality. The new article provided that the Council could take measures to combat discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

However, the Treaty of Amsterdam did not promote accession to the ECHR. This is why, in paragraph 12 of its resolution of 19 November 1997 on the Amsterdam Treaty, the EP called [...] for *'a specific charter of fundamental rights of the Union to be drawn up'*⁶⁴.

60 *The European Parliament and Human Rights*, European Parliament Directorate-General for Research, Luxembourg: OPOCE, 1994.

61 EP resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference – Implementation and development of the Union, based on the report by D. Martin and J.L. Bourlanges (doc. A4-0102/95); OJ C 151, 19.6.1995, p. 56.

62 OJ C 44, 14.2.1994, p. 32.

63 For the Treaty of Amsterdam, see OJ C 340, 10.11.1997.

64 See Méndez de Vigo and Tsatsos report (doc. A4-0347/97) of 19 November 1997 and OJ C 371, 8.12.1997, p. 99.

Following Amsterdam, the EU was in a stronger position to pursue the abolition of the death penalty as a broader international policy initiative. This coincided with momentum building within the EP for greater respect for human rights, including a European declaration of fundamental rights and the abolition of the death penalty by Member States. In June 1997 Parliament adopted a resolution on the abolition of the death penalty, which called on all European states to ratify the 1989 Second Optional Protocol (OPT 2) to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty⁶⁵. In addition, Parliament suggested that the EU should table a resolution at the UN General Assembly on a universal moratorium on executions⁶⁶.

CONCLUSIONS ABOUT EP ACTIVITIES SINCE THE MID-1990S

Since the mid-1990s, the EP has adopted more than 30 resolutions on the death penalty around the world. By the end of 1997, it was clear that the EU had changed direction on the question of human rights, providing a treaty basis for the first time and taking a route away from the ECHR and towards the independent pursuit of a universal moratorium. This change was summed up in the declaration annexed to the Presidency's conclusions following the Luxembourg European Council meeting in December 1997 regarding the celebrations to mark the 50th anniversary of the Universal Declaration of Human Rights that were to be held in 1998. For the European Union, 1998 was 'human rights year', and after this important year the EU's abolitionist policy became more overt through the extensive use of declaratory measures. In June 1998 the 15 EU Foreign Ministers stated that human rights were important elements of European Union policy and abolition of the death penalty was a requirement for EU membership.

⁶⁵ EP debates of 12 June 1997 on abolition of the death penalty, pp. 264-265.

⁶⁶ EP resolution of 20 February 1997 on the 53rd session of the UN Commission on Human Rights, OJ C 85, 17.3.1997, p. 143. See also resolution of 6 May 1999 on the issue of the death penalty and a universal moratorium on capital punishment, OJ C 279, 1.10.1999, p. 421.

3. THE CHARTER OF FUNDAMENTAL RIGHTS: FROM COLOGNE TO LISBON (1999-2007)

3.1 *The important decision of the European Council in Cologne and the role played by the EP*

In June 1999, the European Council, meeting in Cologne, moved up a gear by deciding, at Parliament's request and under the impetus of the German Presidency, to set up a working party to draw up a Charter of Fundamental rights of the European Union. At this meeting, the Heads of State or Government decided that *'the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident'*⁶⁷.

There were a number of reasons to consider strengthening the role of human rights in the policies of the European Union. Firstly, the system of protection of fundamental rights that we know today was not at that time immediately visible to citizens. This lack of transparency and predictability was particularly disturbing to the Union that had seen its powers gradually expand thanks to the revision of the original treaties. It therefore seemed necessary to make the system of protection of fundamental rights more transparent for ordinary citizens. Secondly, the imminence of a further enlargement of the EU to include countries which, in many cases, had a non-democratic background, reinforced fears about respect for human rights. In this context, before any new enlargement took place, it seemed prudent to obtain an explicit commitment to fundamental rights, which were the foundation of European culture and the European political system⁶⁸. The Union's relations with third countries were based on agreements, each agreement being the expression of an overall approach to their political, social and economic development. The aim of systematically incorporating in the agreements a clause defining human rights as an essential component was to create a framework for improved cooperation and further consolidation of the rule of law, the judicial system, freedom of expression and the protection of vulnerable groups (in the following chapter we will analyse the case of Croatia). In fact, under the Amsterdam Treaty, the procedure for the admission of new Member States laid down, in particular, political criteria and not only economic ones. At the European Council meeting in Luxembourg on 12 and 13 December 1997 and then in Helsinki on 15 and 16 December 1999, it was decided to lay down new political criteria for opening accession negotiations and to assess the economic criteria and the ability to assume the obligations stemming from accession in a dynamic perspective⁶⁹.

The decision to draw up a Charter of Fundamentals Rights of the European Union, which was annexed to the Presidency Conclusions of the Cologne summit, fulfilled one of Parliament's earliest aspirations as it saw the adoption of such a charter as one of its constitutional priorities. The Cologne summit provided guidelines for the content of the charter and the composition of a 'convention' entrusted with the task of drafting the

⁶⁷ European Council decision on the drawing up of a Charter of Fundamental Rights of the European Union, Presidency Conclusions (Annex IV), Cologne European Council meeting of 3 and 4 June 1999. See <http://www.europarl.europa.eu/summits/previous.htm>.

⁶⁸ See Written Question E-0457/99 by C. Ferrer (EPP) to the Commission, 5 March 1999, on the democratic clause in agreements with third countries.

⁶⁹ R. Basso, 'La procedura per l'accesso di nuovi stati membri: l'Unione europea alla ricerca della propria identità', in *Rivista di diritto pubblico comunitario*, 2003, p. 539.

charter. This new body was to be composed of representatives of the Heads of State or Government and the President of the European Commission, as well as Members of the European Parliament and national parliaments. Representatives of the European Court of Justice were to participate as observers. Representatives of the Economic and Social Committee and the Committee of the Regions and social groups and experts were to be invited to express their opinions⁷⁰. The charter was to be drafted by the end of 2000 for the Nice European Council meeting. The European Parliament endorsed the Cologne European Council's decision, subject to a number of demands on the composition and work organisation of the 'Convention'⁷¹, the main one being that Parliament should be properly represented, i.e. by a number of members equal to that of the national governments⁷². In paragraph 4 of its resolution, the EP called: *'for the number of the Members of the European Parliament to be equal to the number of the representatives of Member-State Heads of State and Government, in order to confer an equally high public profile on each side and to provide for adequate representation of the different political tendencies and sensitivities represented in the European Parliament'*. In the same resolution, which was the first on the Charter, Parliament stressed that the Charter required an open and innovative approach, and must not at the outset be reduced to describing existing legal provisions. The new Charter had to surpass the ECHR (1950) and to be a contemporary statement of the relationship between the individual citizen and the new supranational and transnational system of government that prevailed in Europe. MEPs played an important role in the new Body to draw up the Charter. For the first time in the process of reforming the treaties, MEPs, national MPs, the Commission and personal representatives of the Heads of State worked together to move the EU forward. It was also the first time that the EP was fully associated with a process that might lead to a decision with constitutional implications. It was unanimously agreed that Parliament's delegation, chaired by Iñigo Méndez de Vigo, played a decisive role in the Body's work. Parliamentary views had a decisive influence on fundamental points such as protection of social entitlements, gender equality, family law etc. However, even before Cologne, Parliament had, in a number of resolutions over several years, repeatedly called for a European Constitution⁷³.

70 Annex IV to the Presidency Conclusions of the Cologne European Council meeting.

71 Andrew Duff, a British Liberal Democrat MEP, and Johannes Voggenhuber, of the Green Group, said at a news conference (15 December 1999) that they preferred the term 'Convention', because of its revolutionary connotations and, at the same time, its 'constitutionalising' nature.

72 EP resolution of 16 September 1999 on the establishment of the Charter of Fundamental Rights (doc. B5-0110/1999), OJ C 54, 25.2.2000, p. 93.

73 EP resolution of 11 July 1990 on the European Parliament's guidelines for a draft constitution for the European Union (OJ C 231, 17.9.1990, p. 91) following the interim report of the Committee on Institutional Affairs, doc. A3-0165/90, rapporteur E. Colombo; EP resolution of 22 November 1990 on the Intergovernmental Conferences in the framework of the European Parliament's strategy for the European Union (OJ C 324, 24.12.1990, p. 219) following the third interim report of the Committee on Institutional Affairs, doc. A3-0270/90, rapporteur D. Martin; EP resolution of 10 February 1994 on the Constitution of the European Union (OJ C 61, 28.2.1994, p. 155) following the second report of the Committee on Institutional Affairs, doc. A3-0064/94, rapporteur F. Herman.



Iñigo Méndez de Vigo, a Spanish member of the European Parliament and chair of the EP delegation to the Convention that drafted the Charter of Fundamental Rights (1999-2000).

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3.2 *Tampere: a further step towards the Charter*

The Cologne European Council launched the Charter initiative, but the next decisive step was made at the special meeting of the European Council on the creation of an area of freedom, security and justice, held in Tampere in October 1999⁷⁴. The Tampere European Council defined the composition and specific working methods of a 'Body' comprising national and Community representatives, whose task was to draw up a text establishing a catalogue of fundamental rights. The composition of the Convention was innovative. For the first time, a European text of this nature was written by a body composed of representatives of both legislative and executive branches and at European level. This Convention included 15 representatives of the Heads of State and Government of the Member States, a representative of the European Commission President, 16 Members of the European Parliament and 30 members of national parliaments (two from each, as several Member States have a bicameral system) designated by the respective national parliaments. The European Parliament welcomed the Tampere decisions. At the Tampere special summit, the EP President, Nicole Fontaine, stressed in her speech that the positive dimension of the project should be enhanced by adopting a charter of fundamental rights. In Nicole Fontaine's opinion, formulating these rights had to be more than 'a rhetorical exercise', but should go hand in hand with the establishment

⁷⁴ Tampere European Council of 15 and 16 October 1999, Presidency Conclusions.
See http://www.europarl.europa.eu/summits/tam_en.htm.

of the area of freedom, security and justice needed for the fight against crime⁷⁵. The EP expressed a favourable opinion on the outcome of the Tampere European Council in a resolution⁷⁶. Parliament welcomed by a large majority the composition and method of work agreed upon for the body set up to draw up a draft EU Charter of Fundamental Rights. It was very keen to participate wholeheartedly in this task. However, it also realised the complexity of the task in hand and the seriousness of its implications for the future of the European Union. A working document drawn up by Parliament's Constitutional Affairs Committee⁷⁷ outlined some of the issues which needed to be addressed by Parliament's delegation to the Body established to draft the Charter. One of the most important issues concerned the decision-making procedure. The EP stressed the need to ensure parity of representation between the European Council and Parliament, the open election by the Body of its president and the openness to the public of the meetings and documentation. Another important issue was the legal character of the Charter. After the Tampere Council, Parliament said that it would be desirable for the Charter to be binding on '*Community bodies under EU law*' with '*direct effect for the EU citizen*'. In the last resolution it adopted on the IGC, the EP stated that the Charter was an '*integral part*' of a '*constitutional process that will entrench the rights of the Member States and citizenship of the European Union*'⁷⁸.

3.3 The composition of the drafting body and the EP's involvement

The Tampere conclusions also provided for the establishment of a drafting committee composed of a President, Roman Herzog, former President of the Federal Republic of Germany⁷⁹, and two Vice-Presidents, Iñigo Méndez de Vigo,⁸⁰ representing the EP, and Gunnar Jansson⁸¹, representing the national parliaments, as well as Pedro Bacelar de Vasconcelos and Guy Braibant, on behalf of the representatives of the Heads of State and Government, and Antonio Vitorino⁸², representing the Commission, assisted by the General Secretariat of the Council⁸³. This '*Grand Committee*' for the drawing up of a draft charter of fundamental rights was required to establish the various categories of rights and to submit them to the Body, which then reviewed the proposals in the form of a working group. Three working groups were established – one on civil and political rights, one on economic and social rights and one on the rights linked with European citizenship – and drew up initial lists of rights⁸⁴. Depending on the outcome of discussions and proposals submitted by members of the '*Convention*', the Grand

75 Speech by N. Fontaine, President of the European Parliament, at the Special Meeting of the European Council in Tampere on 15 October 1999, see http://www.europarl.europa.eu/summits/tam-pres_en.htm.

76 EP resolution of 27 October 1999 (OJ C 154, 5.6.2000, p. 63).

77 Working document 'Towards the Charter of Fundamental Rights' (co-rapporteurs A. Duff and J. Voggenhuber).

78 See report A5-0058/1999 of 10 November 1999 on the preparation of the reform of the Treaties and the next Intergovernmental Conference (C5-0143/1999 - 1999/2135(COS)) (rapporteurs G. Dimitrakopoulos and J. Leinen). Text adopted: resolution of 18 November 1999 on same subject, OJ C 189, 7.7.2000, p. 222. See also 'Nicole Fontaine milite pour une Constitution de l'UE' in *La Croix* of 1 October 1999.

79 Roman Herzog was President of the Federal Republic of Germany from 1994 to 1999.

80 Iñigo Méndez de Vigo was a member of the EPP Group in the European Parliament.

81 Finnish politician.

82 Commissioner Vitorino, representative of the President of the European Commission Romano Prodi.

83 Charte 4105/00, Record of the first meeting of the Body to draw up a draft Charter of Fundamental Rights of the European Union (held in Brussels, 17 December 1999).

84 Minutes of the Meeting of 14 December 1999 of the European Parliament delegation to the body responsible for drafting the European Union's Charter of Fundamental Rights.

Committee changed its proposal and finalised the draft of each section of the charter. Each section was then presented again to the Convention meeting in plenary session.

Alongside the full members, there were four observers: two representatives of the Court of Justice of the European Communities designated by the Court, and two representatives of the Council of Europe, including a representative of the Court of European Human Rights. Several other European bodies were invited to express their views on the charter, including the European Economic and Social Committee, the Committee of the Regions and the Ombudsman⁸⁵. An innovative composition was used for the Body drafting this European text. Thus several NGOs and scientists praised the method used to draft the charter, as opposed to what they considered to be the obscure and undemocratic methods of the Intergovernmental Conference convened to revise the treaties. *'We are not an IGC, our aim is not to modify the powers of the Union, and our mandate is to elaborate a list of rights in the context of the European Union that only commits the latter'*, said Paavo Nikula, who opened proceedings on behalf of the Finnish Presidency⁸⁶. In this connection, the involvement of the national parliaments in the process should be emphasised. Their participation in the drafting of the charter substantially increased the legitimacy of the resulting document in the eyes of the general public, *'which often takes a critical view of complex European decision-making mechanisms'*⁸⁷.

On 17 December 1999, the Body held its constituent meeting, attended by its 62 representative members. The EP was represented at this first important event not only by Iñigo Méndez de Vigo (EPP-ED), its main representative and the EP delegation chairman, but also by a delegation comprising 16 MEPs from all the political groups: Pervenche Berès (PSE), Georges Berthu (UEN), Jens-Peter Bonde (EDD), Charlotte Cederschiöld (EPP-ED), Thierry Cornillet (EPP-ED), Andrew Duff (ELDR), Ingo Friedrich (EPP-ED), Sylvia-Yvonne Kaufmann (GUE/NGL), Timothy Kirkhope (EPP-ED), Hanja Maij-Weggen (EPP-ED), David Martin (PSE), Hans-Peter Martin (PSE), Elena Paciotti (PSE), Martin Schulz (PSE) and Johannes Voggenhuber (Verts/ALE)⁸⁸. According to Iñigo Méndez de Vigo, the EP had to defend the binding nature of the charter and its future incorporation into the Treaty, based on the revised 'Spinelli Project' (draft Treaty establishing the European Union of February 1984). It was important for this charter to provide citizens with added value and not to create *'legal confusion or duplication'*, said the member of the 'Partido Popular'⁸⁹.

3.4 The work of the drafting body and the EP (January-March 2000)

3.4.1 Organisation of work

The first meeting of the Body, on 17 January 2000, was used for the preparation of the necessary organisational decisions. At this meeting the Body came to an agreement on the organisation of the plenary meetings and their dates, scheduling five further,

⁸⁵ See for example the public hearing of 2 February 2000 on the draft Charter of Fundamental rights of the European Union, preliminary remarks by the European Ombudsman, Jacob Söderman.

⁸⁶ Agence Europe, 20.12.1999.

⁸⁷ This remark was made by Commissioner Antonio Vitorino, in his first speech to the Convention.

⁸⁸ Substitute members: Teresa Almeida Garrett (EPP-ED), Ieke van den Burg (PSE), Kathalijne Maria Buitenweg (Verts/ALE), Rocco Buttiglione (EPP-ED), Rijk van Dam (EDD), Jean-Maurice Dehousse (PSE), Pernille Frahm (GUE/NGL), Konstantinos Hatzidakis (EPP-ED), Marie-Thérèse Hermange (EPP-ED), Ulpu Iivari (PSE), Catherine Lalumière (PSE), Peter Michael Mombaur (EPP-ED), Mauro Nobilia (UEN), Reinhard Rack (EPP-ED), Graham Watson (ELDR) and Phillip Whitehead (PSE).

⁸⁹ Agence Europe, 20.12.1999.

namely on 1-2 February, 20-21 March, 5-6 June, 10-11 September, and 18-19 October 2000. The 'Praesidium' suggested that members assign to the plenary all the work required. It was therefore necessary to establish a second schedule of meetings and a very structured work programme⁹⁰. The 'Convention' decided to finally adopt the draft at its sixth plenary meeting on 18 and 19 October 2000, in time for it to be taken into consideration by the European Council at its Nice meeting (7-8 December 2000). This would enable the EP to vote on the draft document at the November 2000 part-session on the basis of the assent procedure⁹¹. The Body decided that it was very important for this kind of work to be transparent and that debates and preparatory documents would therefore be made public and published on the internet. Discussions were open to the public, and the President Herzog decided to work by consensus to ensure that the text was acceptable to all Member States. In the opinion of Andrew Duff, EP co-rapporteur on the charter, working by consensus was not very easy because a single vote against could cause negotiations to fail. He therefore considered two-thirds majority voting to be preferable⁹².



Andrew Duff, a UK Member of the European Parliament and co-author with Austrian Member Johannes Voggenhuber of the EP resolution on the Charter of Fundamental Rights.

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⁹⁰ CHARTE 4107/00 Brussels, 18 January 2000, First meeting of the Praesidium, Outcome of proceedings.

⁹¹ General Secretariat Task Force on the Charter of Fundamental Rights, Progress of the Convention proceedings, Note to N. Fontaine, President of the European Parliament, Luxembourg, 7 February 2000.

⁹² Agence Europe, 29 January 2000, p. 4.

3.4.2 *The Convention and the challenges before it*

The Convention had many challenges before it. The first of these concerned the differences between national legal systems, in particular the opposition between the Latin countries' attachment to the written law and the British system's civil law. Similarly, 'rights' were interpreted differently by the different legal systems in the EU Member States⁹³. It was necessary to develop a clear legal system, accessible to citizens, and to establish a list of fundamental rights, taking account of the Community Treaties, international human rights conventions, national constitutions, the various EU texts and EP declarations⁹⁴. This list included the rights granted to individuals, legal and natural persons, so that they fell within the Union's competence and the rights could be presented as EU policy objectives⁹⁵. The list drawn up was used as a basis for discussion in various meetings. However, there were also other issues forming part of a more detailed examination of outstanding problems, such as the binding nature of the Charter, its insertion into the Treaty, jurisdictional control and links with the Council of Europe Convention. However, the work could progress in accordance with the timetable laid down. The list was presented at an important meeting on 1 and 2 February 2000 in Brussels. This was not an easy issue to deal with. The debate within the Convention highlighted the gulf between those who were in favour of making the Charter legally binding and those who wanted it to be merely a political declaration. The British Government's representative, Lord Goldsmith, submitted a document stressing the need to adopt a simple text to make a maximum impact on the general public. Ernst Hirsch Ballin, a Christian Democrat from the Dutch Parliament, on the other hand, said that: *'We are not here to produce a brochure for the promotion of Europe but to draft a legal text transposable in law'*⁹⁶. However, at this meeting, it was decided to hold further 12 informal meetings. The first of these took place at the European Parliament on 24 and 25 February 2000⁹⁷.

3.4.3 *The role of the EP*

The EP took part in this important process of drafting the Charter of Fundamental Rights and often hosted Convention meetings at its headquarters. It expressed its point of view on the drafting of a Charter in the usual form, i.e. in a resolution⁹⁸. The EP warmly welcomed the drafting of a European Union Charter of Fundamental Rights, which would contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries. The EP intended to vote in plenary on the adoption of the Charter at the appropriate time and deemed it

93 See, for example the German interpretation, under which a right is amenable to the law, i.e. an individual can apply to a court to enforce it, or the French approach, which distinguishes between the general principle of 'a right to', with no specific obligation, and rights that are actually enforceable. CHARTE 4111/00, Brussels, 20 January 2000, Draft Charter of Fundamental Rights of the European Union, Horizontal questions, paragraph IV.

94 CHARTE 4112/2/00 REV 2, Brussels, 27 January 2000, Draft list of fundamental rights. The Convention considered the EP Declaration of fundamental rights and freedoms, adopted on 12 April 1989.

95 See also CHARTE 4101/00 Brussels, 16 January 2000, position paper by the International Federation of Human Rights Leagues (FIDH).

96 Agence Europe, 3 February 2000, p. 7.

97 CHARTE 4137/00, Brussels, 24 February 2000, Draft Charter of Fundamental Rights of the European Union, proposals for Articles 10 to 19. CHARTE 4140/00, Brussels, 28 February 2000, Comparative table.

98 EP resolution of 16 March 2000 on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 - 1999/2064(COS)); OJ C 377, 29.12.2000, p. 329; report A5-0064/2000 drawn up by A. Duff and J. Voggenhuber).

advisable to publish in advance its objectives regarding the Charter of Fundamental Rights (paragraph 6). Parliament called on its delegation to the Convention drafting the charter vigorously to defend the position set out in the resolution (paragraph 5). In the same resolution, it underlined the importance of ensuring that the Charter had fully binding legal status by being incorporated into the Treaty on European Union (paragraph 7(a)). It also listed the points that the Charter could include, e.g. such fundamental rights as the right of association in trade unions and the right to strike (paragraph 7(e)). This resolution acknowledged the innovative nature of steps to give legal protection to the peoples of the European Union in respect of new threats to fundamental rights, e.g. from the fields of information technology and biotechnologies, and confirmed, as an integral part of fundamental rights, and especially women's rights, the general non-discrimination clause and environmental protection (paragraph 7(h)). The EP called for drafting body to recognise that fundamental rights were indivisible by making the charter applicable to all the European Union's institutions and bodies and all its policies.

3.5 *The main stages of the Convention's proceedings (March-June 2000)*

In March 2000, the Convention continued its analysis of the fundamental rights of the individual, considering the various elements involved. In the course of this review, a consensus seemed to emerge on the following basis: the civil and political rights set out in the Charter should essentially include the rights enshrined in the European Convention on Human Rights⁹⁹. At each meeting, a discussion took place to seek a compromise between different proposals on the articles and on the structure of the charter.

At the Convention meeting of 27 March 2000 a text was drawn up containing an initial set of social rights, such as equality between men and women, freedom to choose an occupation, parental leave, and equal remuneration for equal work¹⁰⁰. This list was then submitted to the next meeting of the Convention, which was held in April¹⁰¹. On 3 and 4 April the Convention Bureau confirmed that an amendment procedure for the text as a whole would be implemented by 12 May, with a view to establishing a provisional preliminary draft charter by 5-6 June 2000. On the same occasion, the Convention examined a list of 15 social rights¹⁰², each of which it then discussed. A number of personal representatives of Heads of State and Government stressed the need for the charter to have a social dimension¹⁰³. Several speakers drew attention to the fact that the establishment of the internal market and the creation of large European industrial groups could not go without a clear statement of fundamental social rights of the EU. Others, however, pointed to the limited competences of the Union in certain social areas (wages, right to strike, etc.), and the need to preserve the Member States'

99 CHARTE 4149/00 of 8 March 2000, New proposal for Articles 1 to 12. Working document on the Charter of Fundamental Rights, PE 288.593.

100 CHARTE 4192/00, CONVENT 18, 27 March 2000, Brussels, Proposals for social rights.

101 General Secretariat Task Force on the Charter of Fundamental Rights, Luxembourg, 29 March 2000, Note to N. Fontaine, President of the European Parliament; progress of the Convention proceedings, meeting of 27-28 March 2000.

102 Economic and social rights (CONVENT 18 and 19, Articles I to XV), comments and amendments, 3 April 2000.

103 In particular, Mr Braibant (France), Mr Rodotà (Italy) and Mr O' Kennedy (Ireland).

and social partners' sphere of action¹⁰⁴. In the same month, the Convention held its hearing of representatives of civil society to reflect the views and interests of European citizens in the drafting of the charter. In all, more than 70 associations of all kinds attended the hearing held on 27 April 2000¹⁰⁵. Civil society and the general public (through the media) showed a growing interest in the issue of the charter. This interest was fuelled by the open and transparent nature of the deliberations, and the open day held at the European Parliament on the Charter on 6 June 2000¹⁰⁶ would maintain that interest. In the EU Member States, the political debates on the charter were increasing, particularly in the national Parliaments. While their tone was largely positive, some questions were raised. Many doubts came from the UK, above all on such topics as the nature of the charter, the principle of subsidiarity, the risk of increased EU competences, and competition with the ECHR system. Furthermore, the Convention maintained its contacts with the observers from the Court of Justice and the European Court of Human Rights in order to gain a better understanding of what the legal and institutional implications of the charter were¹⁰⁷.

Further progress was made during the Convention's plenary meeting on 5 and 6 June at the seat of Parliament in Brussels. This formal meeting was very important because the Convention adopted the provisional list of civil, political and citizens' rights¹⁰⁸ after careful consideration of amendments¹⁰⁹. At the European Council meeting in Santa Maria da Feira on 19 and 20 June, Ignacio Méndez de Vigo, Vice-Chair of the Convention, spoke about the drawing up of a draft Charter of Fundamental Rights of the European Union.¹¹⁰ He said that a draft Charter was to be submitted at the Biarritz European Council meeting, in October 2000¹¹¹. At its meeting in Santa Maria da Feira, the European Council also urged the Convention to continue its work in accordance with the timetable laid down in the mandate from the Cologne European Council¹¹². During the Feira Council, Nicole Fontaine, President of the European Parliament, stressed once again that the Charter of Fundamental Rights represented one of the EP's top priorities, only after the prospect of providing the Union with a Constitution. Nicole Fontaine highlighted that the EP had actively participated in the work conducted by

104 General Secretariat Task Force on the Charter of Fundamental Rights, Luxembourg, 5 April 2000, Note to N. Fontaine, President of the European Parliament, Progress of Convention proceedings, meeting of 3 and 4 April 2000. The list of social and economic rights was as follows: equality between men and women, freedom to choose an occupation, right to information and consultation of workers, right of association, collective bargaining and action, safety and healthy working, protection of children and adolescents, right to social security, right to access to care, etc.

105 General Secretariat Task Force on the Charter of Fundamental Rights, Luxembourg, 2 May 2000, Note to N. Fontaine, President of the European Parliament; progress of Convention proceedings, Convention meeting of 27 and 28 April 2000. See *Le Monde*, 28 April 2000: '*Le débat s'engage sur la Charte des droits européens*'.

106 General Secretariat Task Force on the Charter of Fundamental Rights, Luxembourg, 5 April 2000, Note to N. Rieffel, Director-General of DG VI, H. Vering, Director-General of DG III, Stavros Gavril, Chair of COM_ART on the Convention's open day on the EP's premises.

107 General Secretariat Task Force on the Charter of Fundamental Rights, Luxembourg, 15 May 2000, Note to N. Fontaine, President of the European Parliament, Progress of Convention proceedings, Convention meeting of 3 and 4 May and 11 and 12 May.

108 The reference document for the discussion held on June 5 is CHARTE 4316/00 CONVENT 34, Brussels, 16 May 2000, New proposal for the Articles on economic and social rights and for the horizontal clauses, for the meeting held on 6 June; and, on amendments on civil and political rights, see CHARTE 4284/00 CONVENT 28, Brussels, 11 May 2000, New proposal for Articles 1 to 30 (civil and political rights and citizens' rights).

109 List of amendments received on doc. CHARTE 4284/00 CONVENT 28 (Articles 1 to 30). See also General Secretariat Task Force on the Charter of Fundamental Rights, Strasbourg, 13 June 2000, Note to I. Méndez de Vigo, Economic and social rights and horizontal clauses (CONVENT 34), Praesidium meeting of 14 June 2000.

110 European Council meeting in Santa Maria da Feira, Presidency conclusions, point B.

111 Summary of the Santa Maria da Feira European Council, 19 June 2000.

112 European Council of 19 June 2000, Santa Maria de Feira, Presidency conclusions.

the Convention and strongly expressed its point of view. In her view, every possible effort should be made to ensure that the charter was incorporated into the Treaties, thereby giving it legal force, an important move in view of the forthcoming EU enlargement, which would be unprecedented in scale. According to Nicole Fontaine the charter confirmed that the Union was founded on shared values and it stressed the importance of European citizenship. It was essential that every citizen possess rights in order to create a sense of community and to enable citizens to take part in the process of European construction¹¹³.

3.6 *Final stages before the Nice Council (July-October 2000)*

It was only at its meetings of 17, 18 and 19 July that the Convention was able to complete the third reading of the draft charter. This draft included a preamble, 50 articles, and an explanatory document¹¹⁴. On 28 July 2000 the Praesidium published the draft¹¹⁵. On 11 and 13 September, the three groups represented within the Convention (EP representatives, representatives of national governments and representatives of national parliaments) held parallel meetings to discuss the draft charter¹¹⁶. The EP delegation to the Convention had tabled several amendments, almost all of which were included in the Convention's compromise text. For example, the EP delegation was able to put that the Article 22 of the Charter on equality between men and women was based on the exact terms of the amendment tabled by all the women members of the Convention¹¹⁷. The text advocated by the 15 women members of parliament stated that: *'Equality between men and women must be ensured in all fields, including employment, work and remuneration'*¹¹⁸. More generally, the social provisions of the draft charter were supported mainly by the EP delegation, as were the 12 articles in the chapter on 'Solidarity'. Some of the provisions were rather innovative, e.g. access to social security, access to social services in health and prevention services of general economic interest (Articles 33, 34 and 35). The positions of the three colleges were forwarded to the Praesidium, which drafted a new text on 14 September 2000¹¹⁹ with a view to achieving a consensus in time for the meeting on September 25 and 26, during which members of the Convention adopted the charter. Finally, on 2 October 2000, the draft charter was proclaimed officially by the Convention. The EP endorsed the European Union Charter of Fundamental Rights in a resolution, in which it emphasised that the charter must be incorporated into the Treaties¹²⁰. Parliament's clear position on this point was very important because many Member States still seemed to be against the incorporation of the charter into the Treaty. The scope of the charter was a subject of controversy and

113 Speech by N. Fontaine, President of the European Parliament, European Council meeting of 19 June 2000, Santa Maria de Feira.

114 CHARTE SN/3667/00, draft preamble, 13 July 2000.

115 CHARTE 4422/00 CONVENT 45, complete text of the Charter proposed by the Praesidium, 28 July 2000.

116 EP delegation to the Convention, Meeting of 6 September 2000, comments submitted by the members of the European Parliament delegation on the preliminary draft charter 'Convent 45'.

117 General Secretariat Task Force on the Charter of Fundamental Rights, Luxembourg, 15 September 2000, Note to N. Fontaine, President of the European Parliament; progress of Convention proceedings.

118 The 15 women members of parliament pointed out in their explanation that in the Treaties (particularly in Articles 2 and 3 of the EC Treaty) the terms 'equal opportunity' and 'equal treatment' were not used in the same way as in the Praesidium text.

119 CHARTE 4470/00 CONVENT 47, complete text of the Charter proposed by the Praesidium following the meeting of 11-13 September 2000 on the basis of document CHARTE 4422/00 CONVENT 45, 14 September 2000, Brussels.

120 EP resolution of 3 October 2000 on the draft European Union Charter of Fundamental Rights, OJ C 178, 22.6.2001, p. 65 (doc. B5-0767/2000).

ongoing debate, with some fearing that the charter might provide the EU with new powers and impose new obligations on Member States. The draft text presented to the Biarritz European Council (13-14 October 2000) was unanimously approved and forwarded to the European Parliament and the Commission¹²¹.

3.7 *A key issue: whether to make the Charter binding and whether to incorporate it into the Treaties (November 2000)*

The EP expressed its satisfaction with the unanimous approval of the Charter of Fundamental Rights and was delighted that the Heads of State and Government had acknowledged the value of the method chosen for drafting the charter, which had proved to be very effective, transparent and open. Parliament reaffirmed that, if the Charter were not incorporated into the Treaty, it should be referred to in Article 6 of the Treaty as soon as it was proclaimed at the European Council in Nice¹²². Finally, Parliament gave its agreement on the charter on 14 November 2000¹²³. It approved the charter and instructed its President to sign it. However one issue, which had been a constant of the whole process of drafting the charter, still remained to be resolved, namely the question whether the charter should be binding or non-binding and whether it should be incorporated into the Treaties. On several occasions in 2000, the EP had called for the charter to be incorporated into the new treaty that was being negotiated, pointing out that, unless it was binding, it would lose some of its effectiveness. This was stressed again in an important resolution a few days before the European Council meeting in Nice¹²⁴. In the EP's opinion, a proclamation of the charter as a text with only political value, i.e. as a simple declaration, would serve no purpose. The new charter would have positive consequences only with a legal and constitutional force. According to the conclusions of the Cologne summit, the Convention was required to submit a draft Charter to the European Council in December 2000, following which *'the European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights'*¹²⁵. Responsibility for deciding whether the charter should be binding and whether it should be incorporated into the Treaties therefore lay solely with the Heads of State and Government.

3.8 *Nice European Council: the official proclamation of the Charter and its content*

On 7 December 2000, the Charter of Fundamental Rights of the European Union was officially proclaimed in Nice by the European Parliament, the Commission and the Council of the European Union¹²⁶. The Intergovernmental Conference also undertook

121 Nicole Fontaine stressed this point about the incorporation of the charter in her speech at the Biarritz European Council on 13 October 2000.

122 EP resolution of 25 October 2000 on the outcome of the informal European Council in Biarritz on 13-14 October 2000, OJ C 197, 12.7.2001, p. 184.

123 EP decision of 14 November 2000 approving the draft Charter of Fundamental Rights of the European Union (C5-0570/2000), A5-0325/2000, OJ C 223, 8.8.2001, p. 74. The Commission gave its agreement on 6 December 2000.

124 Paragraph 9 of the EP resolution of 30 November 2000 on the preparation of the 7-9 December 2000 Nice European Council, OJ C 228, 13.8.2001, p. 162 (doc. B5-0884/2000).

125 Cologne European Council 3 and 4 June 1999, Presidency Conclusions, Annex IV.

126 Conclusions of the Presidency, Nice European Council, 7-10 December 2000:
http://www.europarl.europa.eu/summits/nice1_en.htm#top

to consider the future status of the charter within a year as one of four specific items of further constitutional reform of the Union to be concluded in a new IGC in 2004.



The Charter was solemnly proclaimed on 7 December 2000 by the European Council, the European Commission and the European Parliament. Handshake between Nicole Fontaine, President of the EP (on the left) and Romano Prodi, President of the European Commission. In the middle Hubert Védrine, French Minister for Foreign Affairs 1997-2002.

(© European Union, 2000)

The EU Charter of Fundamental Rights sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU¹²⁷. In the preamble the Member States affirm that *'they are resolved to share a peaceful future based on common values'*¹²⁸. While the charter was not intended to create new rights, it succeeded in making existing rights more visible. The Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity and on the principles of democracy and the rule of law. This wording replaced the *'cultural religious and humanist heritage'* proposed by the Christian Democrats but not adopted due to opposition from several countries, and especially from France. The charter is a dynamic document, seeking, as the preamble has it, to *'strengthen the protection of fundamental rights in the light of changes*

See also M. Socco, *La carta europea dei diritti fondamentali: valore giuridico e significato politico*, Torino: Trauben, 2002; L. Ferrari Bravo et al, *Carta dei diritti fondamentali dell'Unione europea: commentata con la giurisprudenza della Corte di giustizia CE e della Corte europea dei diritti dell'uomo e con i documenti rilevanti*, Milano: Giuffrè, 2001.

¹²⁷ OJ C 364, 18.12.2000, p. 1.

¹²⁸ These values are based, in particular, on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of the EU Member States, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers and other international conventions to which the European Union or its Member States are parties.

in society, social progress and scientific and technological developments'. The preamble states that the Union contributes to the preservation and development of these common values *'while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States'* [...] *'with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity'*.

In the charter, the fundamental rights are listed in six chapters: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights and Justice.

Chapter I declares *human dignity* to be inviolable, and states that everyone has the right to life, that no one may be condemned to the death penalty and that everyone has the right to respect for his physical and mental integrity. Hence the prohibition of eugenic practices, of the cloning of human beings, and of torture, slavery and forced labour.

Chapter II, *Freedoms*, gives a long list of freedoms: the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition.

The third chapter, *Equality* before the law, lists non-discrimination, respect for cultural diversity, religious and linguistic diversity, equality between men and women, the rights of the child and the elderly, and the integration of disabled people.

The fourth chapter, on *Solidarity*, was more difficult to draw up. Its title was adopted in place of 'Social Rights' because of divergences in the Convention between the southern countries, attached to a statement of economic and social rights and how they were to be regulated, and the northern countries, which preferred an approach based on simple dialogue between social partners. The UK and Ireland had even attempted to oppose the inclusion in the charter of the right to strike and the right to form unions, which were finally included. This chapter lists very general principles, such as workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, and protection of family and professional life (maternity and parental leave). Finally, the charter refers to the protection of health, environment and consumers. In all these areas, the modalities of implementation are those established by Community law and national laws and practices.

The fifth chapter, on *Citizenship*, lists the rights of European citizens – who are, by definition, citizens of Member States – that accrue from being part of the Union. EU citizens are entitled to vote and stand in European Parliament and local elections in their country of residence. EU citizens have a right to good administration by the institutions and bodies of the Union and, to this end, the right to refer to the Ombudsman of the Union and a right of access to European Parliament, Council and Commission documents, as well as the right to petition Parliament and the right to diplomatic and consular protection in the territory of a third country by any Member State if the Member State

of which they are nationals is not represented. As for third-country nationals residing in the Union, they may only enjoy freedom of movement and residence.

The sixth chapter, on *Justice*, simply recalls the essential principles: the right to an effective remedy before an impartial tribunal for any person whose rights or freedoms guaranteed by Union law are violated, presumption of innocence and right of defence, legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice for the same offence.

The final provisions state that *'the provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law'*. They apply *'in accordance with their respective powers'*. Overall, despite its shortcomings and rather cautious approach taken in order to reconcile differing ideas and policies, the charter has the advantage of forming a coherent whole. However, its legal status remains unclear. If it is a constitutional act binding upon states, it must be a treaty subject to ratification. In fact, the charter, though formally only 'proclaimed' and not a legally binding instrument, is not without political, constitutional and legal force. The EP welcomed the proclamation of the Charter of Fundamental Rights¹²⁹, but at the same time continued to push for incorporation of the charter into the Treaties after the Nice summit.

3.9 *The charter's journey: from Nice to Lisbon*

3.9.1 *The role of the EP after the Nice European Council*

After the Nice European Council, the Member States of the EU engaged in a general debate on the future of the European Union, which was initiated on 1 January 2011. As part of this fundamental debate, they decided to consider the question of the charter's legal status. Furthermore, the Treaty of Nice, signed on 26 February 2001, opened the way for the institutional reforms necessary for the new enlargement of European Union to include candidate countries in Eastern and Southern Europe¹³⁰. For this reason, Declaration No 23 annexed to the Treaty of Nice focused on four major areas to achieve this important goal: delimitation of powers, the status of the Charter of Fundamental Rights, simplification of the Treaties and the role of the national parliaments. The declaration provided that, after these preparatory steps, a new IGC would be convened in 2004. Those candidate countries which had concluded accession negotiations with the Union were allowed to participate in the Conference. The inclusion of the Charter of Fundamental Rights in the Constitutional Treaty was a major step towards the much-wanted 'social Europe' and the result of fierce battles and political agreements on giving social rights the same status as political and economic rights. In its resolution on the Treaty of Nice, the EP not only renewed its call for the charter to be incorporated into the Treaties but called *'on the Union institutions to respect as of now in their activities the rights and freedoms acknowledged in the Charter'*¹³¹. It should be emphasised that it

¹²⁹ EP resolution of 14 December 2000 on the outcome of the European Council on 7-11 December 2000 in Nice, OJ C 232, 17.8.2001, p. 342.

¹³⁰ In the 'Declaration on the Union' annexed to the Treaty, further steps were scheduled to be taken to deepen institutional reforms and ensure that the Treaty of Nice constituted only a stage in this process. The Treaty of Nice has been ratified by all Member States in accordance with their respective constitutional rules, and entered into force on 1 February 2003.

¹³¹ Paragraph 9 of EP resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union, OJ C 47 E, 21.2.2002, p. 108.

was the particular responsibility of the European Parliament (by virtue of the role conferred on it under the new Article 7(1) of the Treaty of Nice) and of its appropriate committee to ensure (in cooperation with the national parliaments and the parliaments of the candidate countries) that both the EU institutions and the Member States upheld the rights set out in the various sections of the charter. These committees were also involved in the drawing up of an annual report on fundamental rights¹³².

The EP was in favour of establishing a permanent dialogue with the Member States' parliaments – its natural partners – particularly as regards significant developments in national constitutions, law, policies and practices having an impact on the concept of, and respect for, fundamental rights in the EU. It also stated that its appropriate committees should continuously consider the situation as regards the fundamental rights as listed particularly in the Charter and any infringements of those rights, so that such matters could be taken into account both in legislative activity and in interinstitutional dialogue.

3.9.2 *The Convention on the Future of Europe and the Charter of Fundamental Rights*

On 15 December 2001, the European Council announced, in its Laeken Declaration¹³³, that it had decided to convene a Convention composed of the main parties involved in the debate on the future of the Union. The task of that Convention was to consider the key issues arising for the Union's future development and try to identify the various possible responses. This constitutional Convention, under the chairmanship of Valéry Giscard d'Estaing, former President of the French Republic, would consider, among other things, whether the Charter should be included in the basic treaty and whether the European Community should accede to the European Convention on Human Rights. Inspired by the Convention which had drafted the Charter of Fundamental Rights, the constitutional Convention was composed of representatives of national governments and parliaments of the Member States and candidate countries, and representatives of the European Parliament and Commission. The first session was held on 28 February 2002 and proceedings continued for 17 months. The Convention set up a working group, under the chairmanship of Commissioner Vitorino, to deal with the modalities and consequences of the incorporation of the Charter into the Treaty and accession by the EU to the ECHR. The result was a draft Treaty establishing a Constitution for Europe, which was presented to the Thessaloniki European Council. The draft constitution formed the working basis for the Intergovernmental Conference convened in October 2003. The draft drawn up at the Intergovernmental Conference was signed by the EU Heads of State and Government on 29 October 2004¹³⁴.

The entry into force of the Constitution was conditional upon ratification by all Member States, in accordance with their respective constitutional requirements. Following the difficulties in ratifying the Treaty in some Member States, the Heads of State and Government approved, in the European Council of 16 and 17 June 2005, a

¹³² Report A5-0223/2001 on the situation as regards fundamental rights in the European Union (2000) (2000/2231(INI)) of 21 June 2001 (rapporteur T. Cornillet). Text adopted: resolution of 5 July 2001 on same subject, OJ C 65 E, 14.3.2002, p. 350.

¹³³ Text of the Laeken Declaration available from:

http://www.cvce.eu/obj/laeken_declaration_future_european_union_15_december_2001-en-a76801d5-4bf0-4483-9000-e6df94b07a55.

¹³⁴ A. Cagiati, 'La crisi della Costituzione europea', *Rivista di studi politici internazionali*, a. lxxi, n. 1, gennaio-marzo 2004, pp. 15-21; U. Villani, 'I diritti fondamentali tra Carta di Nizza, Convenzione europea dei diritti dell'uomo e progetto di Costituzione europea', in *Il diritto dell'Unione europea*, No. 1, 2004, pp. 73-116.

period of reflection¹³⁵. The Charter of Fundamental Rights was included as the second part of the European Constitution, so that if and when the Constitution was ratified, the charter would become legally binding. After the failure of the ratification process, a debate was initiated on whether to include the charter in the new treaty.

3.9.3 *The Treaty of Lisbon*

At the Brussels European Council meeting of 21 and 22 June 2007, a compromise was reached on the subject, and it was decided to convene an Intergovernmental Conference to prepare a 'Reform Treaty' for the European Union rather than to draw up a new Constitution. The result was that the Treaty of Lisbon entered into force on 1 December 2009, following ratification by all 27 Member States. It provided for incisive institutional and procedural reforms relating to the functioning of the EU, so as to adapt to enlargement to 27 Member States and the new geopolitical and economic challenges facing the European Union. It was decided to include in the Treaty only one item with an express reference to the charter, but which was sufficient to make the charter legally binding on EU Member States¹³⁶. After more than 50 years of discussions, Article 6(2) TEU (Lisbon version) required the Union to accede to Protocol No 8 relating to Article 6(2) TEU on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms. The European Union was committed to defending the universal and indivisible nature of human rights. It actively promoted and protected them both within its borders and in its relations with other countries. It did this by working in full and active partnership with EU Member States, partner countries, international organisations, regional organisations and civil society¹³⁷.

The EP considered the Treaty of Lisbon a positive step for the future of the Union. In its view, the new treaty was a substantial improvement on the existing Treaties, which would bring more democratic accountability to the Union and enhance its decision-making (through a strengthening of the roles of the European Parliament and the national parliaments), enhance the rights of European citizens *vis-à-vis* the Union and ameliorate the effective functioning of the Union's institutions. Above all, the EP welcomed the fact that the rights of citizens were strengthened thanks to the EU Charter of Fundamental Rights, which became legally binding, setting out a complete and up-to-date list of civil, political, economic and social rights. The charter gave the citizens of the Union legal certainty, ensuring that all provisions of EU law, and all actions taken by the EU institutions or based on EU law, were in keeping with fundamental rights, while complying with the principle of subsidiarity. Furthermore, after the Lisbon Treaty, the Union was required to apply to accede to the European Convention on Human Rights, which made the Union subject to the same external review as regards the obligation to respect citizens' rights as its Member States. The EP pointed out that the new provisions of the Treaty of Lisbon could facilitate participation by citizens and representative

¹³⁵ EP report on the period of reflection: the structure, subjects and context for an assessment of the debate on the European Union (2005/2146(INI)) of 16 December 2005, (doc. A6-0414/2005), co-rapporteurs A. Duff and J. Voggenhuber. Text adopted: resolution of 19 January 2006 on same subject, OJ C 287 E, 24.11.2006, p. 306.

¹³⁶ The rights enshrined in the charter are solidly anchored in the Treaty of Lisbon, though with exceptions for the United Kingdom and Poland, which were not yet prepared to accept the full effect of the charter.

¹³⁷ EP report on the Treaty of Lisbon (2007/2286(INI)) of 29 January 2008 (rapporteurs R. Corbett and I. Méndez de Vigo). Text adopted: resolution of 20 February 2008 on same subject, OJ C 184 E, 6.8.2009, p. 25.



The Charter was solemnly proclaimed by the Presidents of the Council, the European Parliament and the European Commission in Strasbourg on 12 December 2007, one day before the signing of the Treaty of Lisbon, which made the Charter legally binding. From the left: José Socrates, President-in-office of the Council of the European Union and Prime Minister of Portugal, Hans-Gert Pöttering, President of the European Parliament, and José Manuel Barroso, President of the European Commission.

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Hans-Gert Pöttering, José Manuel Barroso and José Sócrates on 13 December 2007 in Lisbon, where the signing of the Treaty of Lisbon took place inside the fifteenth-century Jerónimos Monastery.

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associations of civil society in the deliberations of the Union and encourage dialogue with social partners, as well as with churches, religious communities and non-confessional organisations.¹³⁸

3.10 *The Charter of Fundamental Rights to date*

On 12 December 2007, the Charter of Fundamental Rights was proclaimed again in Strasbourg by the Presidents of the Commission, Parliament and the Council on the occasion of the signing of the Treaty of Lisbon¹³⁹. The Treaty, which now required the Union to accede to the ECHR, was in fact a major turning point in human rights' journey towards becoming an essential part of the Community setup¹⁴⁰. It conferred international legal personality on the EU, thereby enabling it to accede, with its individual Member States, to the principal European human rights instrument – the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹⁴¹.

Hans-Gert Pöttering, President of the European Parliament, declared, in the aftermath of the agreement achieved on the Treaty of Lisbon, that Europe was off again and was able to regain the trust of its citizens. With the Charter of Fundamental Rights, the EU was, according to Pöttering, a model legal and social system, that could be proudly described as the '*European way of life*'. The adoption of the charter speeded up the process of defining European identity. The Lisbon Treaty would help to bring about a radical modernisation of the EU and its institutions, but the heart of European integration beats in the charter and the fundamental rights and values it embodies¹⁴².

Protocol 14 to the European Convention on Human Rights (ECHR) entered into force on 1 June 2010. By amending Article 59, the protocol established a new legal framework making it possible for the EU to accede to the Convention, as provided for, in principle, by Article 6 of the Treaty of Lisbon (2007) and up until then precluded by the non-state nature of the Union. On 7 July 2010, official talks began, aimed at enabling the European Union, represented by the Commission during the negotiations, to accede to the ECHR. Discussions on the subject are still in progress. At the end of this process, the accession agreement will be signed by the Committee of Ministers of the Council of Europe and, unanimously, by the Council of the EU (with the consent of Parliament). Once concluded, the agreement must be ratified by all 47 parties to the ECHR, including those that are also EU Member States. The reform introduced by ECHR Protocol 14 has removed the last obstacle in the way of a renewed commitment to human rights. As a result of its accession to the Convention, the EU will finally be on the same footing as its Member States as regards respect for and protection of human rights. By exercising a control function in this area, the Union can ensure that those developments that have taken place in external relations are similarly introduced and firmly established at

138 G. di Federico, *The EU Charter of Fundamental Rights: from declaration to binding instrument*, Dordrecht: Springer, 2011.

139 OJ C 303, 14.12.2007, p. 1.

140 See E. de Poncins, 'Le traité de Lisbonne en vingt-sept clés', *Lignes de Repères*, Paris, 2008, pp. 80-84; P. Mengozzi, 'Les caractéristiques spécifiques de l'Union européenne dans la perspective de son adhésion à la CEDH', in *Il diritto dell'Unione europea*, No. 2, 2010, pp. 231-246; A. Rizzo, 'L'Unione europea e la Carta dei diritti fondamentali: un rapporto ancora da definire', in *La Comunità internazionale: rivista trimestrale della Società italiana per l'organizzazione internazionale*, v. lvi, No. 1, 2001, pp. 103-118.

141 P. Auvret, 'L'adhésion de l'Union à la Convention européenne des droits de l'homme', in J. Rideau, *Les droits fondamentaux dans l'Union européenne – Dans le sillage de la Constitution européenne*, Bruxelles: Bruylant, 2009, pp. 379-403.

142 La Repubblica of 8 January 2008.

internal level, in order to make the two approaches more consistent. Only then will it be possible to achieve a European human rights system that is global and horizontal and, therefore, actually conforms to the principles of universality, indivisibility and interdependence.

CHAPTER II

1. A SHORT HISTORY OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS AND THE ROLE OF THE EUROPEAN PARLIAMENT

Since 1 May 1999 fundamental rights have been the ‘foundation’ of the European Union, according to Article 6(1) of the Treaty on European Union (TEU)¹⁴³. The problem was (and is) that the existing treaties lack a clear description of these rights as they only refer to the European Charter on Human Rights and Fundamental Freedoms (ECHR) and to the common constitutional traditions of the Member States. Enhancing the ‘visibility’ of these rights was the mandate given by the European Council to the Convention, which drafted the Charter. The Treaty of Amsterdam also set the creation of an Area of Freedom, Security and Justice as an objective of the European Union. The Tampere European Council made this aim a priority of the EU’s political agenda. Above all, the protection and promotion of fundamental rights became an essential precondition for the establishment of the Area of Freedom, Security and Justice. However, the promotion of fundamental rights required a structured approach to this new context; and a clear political will regarding the direction to be taken still needed to be expressed. The EU Member States therefore saw the establishment of an Agency as an excellent opportunity to fill the gaps in the existing system for protecting human rights within the EU. On 13 December 2003, the European Council, meeting in Brussels, proposed the establishment of an EU Fundamental Rights Agency (FRA)¹⁴⁴.

The Agency’s objective was set out in Article 2 of the related Commission proposal, namely to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights¹⁴⁵. The agency’s central function is therefore to act as an early warning system to prevent the occurrence of violations of fundamental rights under EU law. The EP expressed its opinion on the Commission Communication in a resolution¹⁴⁶. As this ‘new legal order’ was liable to alter the focus of the EU’s mission, it was essential to examine the implications of such a shift of emphasis, which was seen as part of the process of evolving from an economic union to a political community. The resolution called, in particular, for the Agency to be given a strong mandate and the power to monitor the implementation of the Charter within the EU, the Member States

143 As amended by the Amsterdam Treaty, which codified the ECJ decisions in cases 29/69 ‘Stauder’ of 12 November 1969 (ECR p. 419), 11/70 ‘Internationale Handelsgesellschaft’ of 17 December 1970 (ECR p. 1125), 4/73 ‘Nold’ of 14 May 1974 (ECR 491), 44/79 ‘Hauer’ (ECR p. 3727) and 5/88 ‘Wachhauf’ of 13 July 1989 (ECR p. 2609).

144 The European Union Agency for Fundamental Rights is called the ‘FRA’ for short and is based in Vienna, Austria.

145 Proposal for a Council establishing a European Union Agency for Fundamental Rights, COM(2005)0280, 30 June 2005.

146 EP report A6-0144/2005 of 11 May 2005 on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency (2005/2007(INI)), Committee on Civil Liberties, Justice and Home Affairs, rapporteur K. Gál). Text adopted: resolution of 26 May 2005 on same subject, OJ C 117 E, 18.5.2006, p. 242.

and, in some cases, third countries. It stressed that the Agency should be independent and that its governing bodies should be appointed by Parliament. It could monitor political systems but not individual cases, responsibility for which already lay with the European Court of Human Rights. The EP's position on the Agency was summarised in paragraph 35 of the same resolution, which described it as a 'network of networks', in the sense that it would be a specialised body with horizontal competences, in which each of the layers would be required to play a role and contribute to the development of a fundamental rights culture in the Union. It would therefore be the Agency's responsibility to gather all relevant information, analyses and experience available in European and national institutions, national parliaments, governments and human rights bodies, Supreme/Constitutional Courts, NGOs and existing networks, such as the Network on Independent Experts in Fundamental Rights, and especially the expertise of the European Monitoring Centre on Racism and Xenophobia (EUMC) and its information network, RAXEN. The European Agency of Fundamental Rights was finally established by Regulation 168/2007¹⁴⁷. It comprised the following bodies; a Management Board, an Executive Board, a Scientific Committee and a Director.

The EP voted in favour of this regulation and expressed its point of view in two resolutions¹⁴⁸. The author of one of these resolutions, Kinga Gál¹⁴⁹ considered that it was the right moment for Europe to flag the protection and promotion of fundamental human rights. In Kinga Gál's opinion it was essential to create an Agency which was both independent and responsible. Thus, a balance needed to be struck between these two requirements, always keeping in mind that the most important thing was to create a functional and efficient body. In order to achieve this aim, active and close cooperation was needed between the three main European institutions to achieve a political consensus. Parliament had a very important role to play in the process of setting up the Agency. Recital 23 of Regulation 168/2007 referred to the EP's significant role in the defence and promotion of fundamental rights. The regulation stipulated that the Agency operated on the basis of a five-year plan, approved by the Council on a Commission proposal and Parliament's opinion, and gave details of its working methods and forms of cooperation with the Council of Europe and civil society. The EP resolution pointed to the need for Parliament – as a democratic body *par excellence* – to be more extensively involved in the procedure for verifying that legislative proposals were compatible with the rights laid down in the Charter¹⁵⁰. It also stressed the need to overcome the crisis in the constitution process, to preserve the central achievements of the constitution and to establish the Charter of Fundamental Rights as legally binding. Parliament welcomed the Commission's proposals on the consolidation and improved transparency of the procedure on compliance with fundamental rights, considering them to be the first positive result of the ambitious measures on the protection of

¹⁴⁷ OJ L 53, 22.2.2007, p. 1.

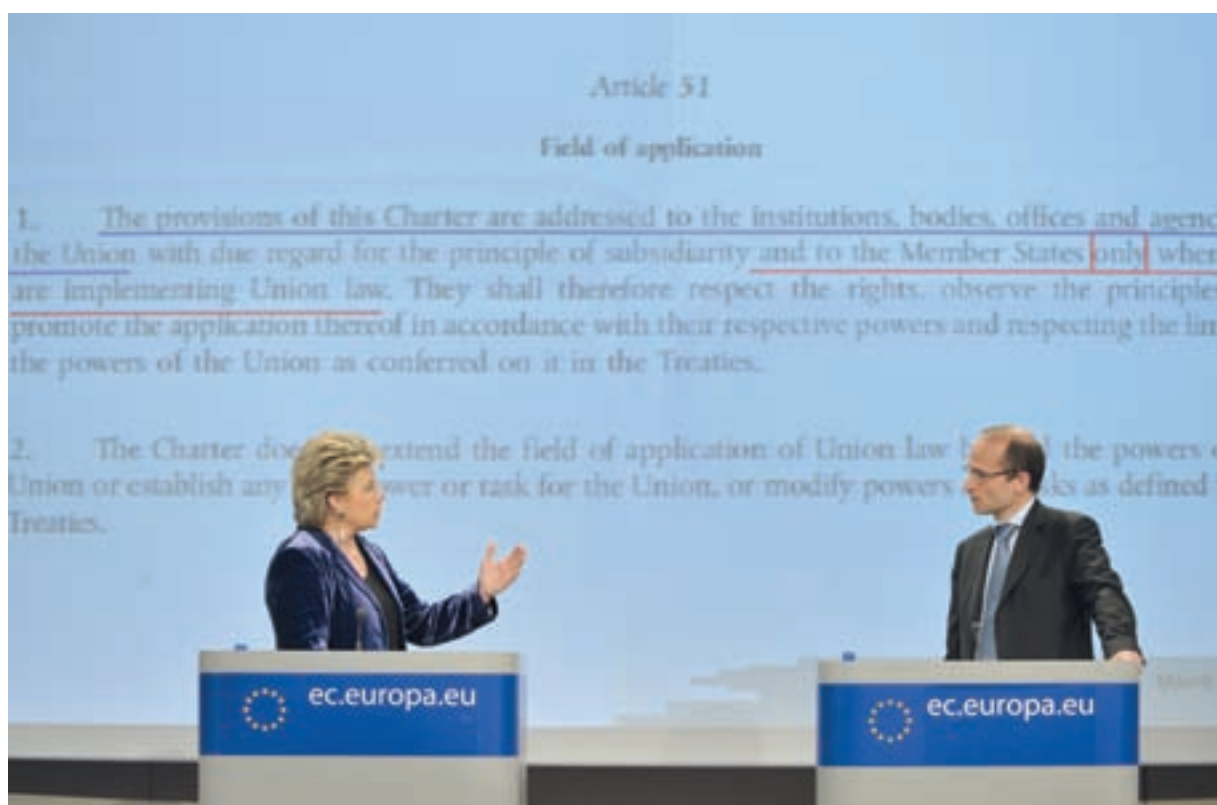
¹⁴⁸ EP report A6-0306/2006 of 25 September 2006 on the proposal for a Council regulation establishing a European Union Agency for Fundamental Rights (COM(2005)0280 – C6-0288/2005 – 2005/0124(CNS)), Committee on Civil Liberties, Justice and Home Affairs (rapporteur K. Gál). Text adopted: resolution of 30 November 2006 on same subject, OJ C 316 E, 22.12.2006, p. 116. See also aforementioned resolution of 26 May 2005, OJ C 117 E, 18.5.2006, p 242.

¹⁴⁹ Kinga Gál, MEP, EPP Group.

¹⁵⁰ EP resolution of 15 March 2007 on compliance with the Charter of Fundamental Rights in the Commission's legislative proposals: methodology for systematic and rigorous monitoring, OJ C 301 E, 13.12.2007, p. 229.

fundamental rights announced in Parliament by Commission President José Manuel Barroso on 17 November 2004¹⁵¹.

The new approach adopted by the Commission constituted an ideal starting point for efforts to ensure that fundamental rights at EU level enjoy better protection and a higher profile. In his report¹⁵², the MEP Johannes Voggenhuber considered it necessary to extend the procedure on compliance with the Charter of Fundamental Rights to the entire legislative procedure and to the comitology system, to strengthen the position of Parliament, to make the role of the prospective Fundamental Rights Agency more precise and to call more frequently on its support.



Joint press conference given on 31 March 2011 by Viviane Reding, Vice-President of the European Commission in charge of Justice, Fundamental Rights and Citizenship, on the left, and Morten Kjærum, Director of the European Agency for Fundamental Rights (FRA), on the annual report on the EU Charter of Fundamental Rights.

(© European Union, 2011)

The report reaffirmed that Parliament and other European Union institutions might benefit, within the framework of the legislative procedure, from the expertise on fundamental rights acquired by the Fundamental Rights Agency, as well as in the areas of police and judicial cooperation. It stated that Parliament's committees should be involved to a greater extent in monitoring the compatibility of legislative proposals with fundamental rights. It suggested that Parliament's Rules of Procedure should be

¹⁵¹ EP debates, 17 November 2004, p. 77. On this occasion, Mr Barroso said: 'I should of course like to reaffirm my commitment to the establishment of a new group of Commissioners responsible for basic rights, the fight against discrimination and equal opportunities, as well as my intention to put forward proposals on a series of ambitious measures aimed at strengthening our respect for basic rights [...]'.
¹⁵² EP report A6-0034/2007 of 12 February 2007 on compliance with the Charter of Fundamental Rights in the Commission's legislative proposals: methodology for systematic and rigorous monitoring, rapporteur J. Voggenhuber. Text adopted: resolution of 15 March 2007 on same subject, OJ C 301 E, 13.12.2007, p. 229.

amended with a view to enabling the committee responsible for protecting fundamental rights to assess the impact of any Commission legislative proposal which was likely to have a bearing on the rights laid down in the Charter.

Today the European Union Agency for Fundamental Rights (FRA) is based in Vienna (Austria) and continues to focus on the situation of fundamental rights in the EU and its 27 Member States, as well as in Croatia, which will become a member in 2013. Candidate countries and countries which have concluded a stabilisation and association agreement with the EU can be invited to participate in the work of the Agency. Thus, the FRA monitors the laws in each country. Experts in each country collect different types of legal information and the FRA then assesses the differences between countries. The FRA performs the following three main tasks:

1. collecting and analysing objective, reliable and comparable data on a variety of fundamental rights issues in the European Union; based on this information, the FRA offers advice on how to enhance respect for the fundamental rights of people living in the European Union;
2. networking with partner organisations and ensuring that the research carried out by the FRA is relevant to their needs, that it complements the work of other organisations and that the research findings reach the relevant actors;
3. communicating its evidence-based advice to partner organisations and the general public and raising awareness of fundamental rights.

2. RESPECT FOR FUNDAMENTAL RIGHTS AS A CONDITION OF EU MEMBERSHIP: THE CASE OF CROATIA (1995-2012)

2.1 *The importance of fundamental rights for new Member States: a short introduction*

In the first part of this study, it was emphasised several times that, for the EP, the Charter was highly symbolic at a time when the EU was preparing to open its doors to Central and Eastern European countries. It also reaffirmed – for the benefit of old, new and potential Member States – the principle that fundamental rights were at the heart of the European integration process. Respect for fundamental rights has, without a doubt, been one of the key issues surrounding Croatia's application to join the EU. In this part of the publication, we will look at the efforts Croatia has made to take proper account of the importance of fundamental rights and the role of the EP.

2.2 *Croatia on the road to EU membership and the role of the EP (1992-1996)*

Diplomatic relations between the EU and Croatia began with the EU's recognition of Croatia's independence on 15 January 1992¹⁵³. From the day of that recognition, the Republic of Croatia considered that the EU membership was as an important goal in its foreign policy. Following the Dayton peace agreement¹⁵⁴, the 15 EU Member States considered that the integration of the republics of the former Yugoslavia in the European democratic organisations constituted an important element in achieving lasting peace in the region. The first step towards this integration could be achieved only when fundamental human rights, minority rights and the fundamental principles of democracy were fully respected. After Dayton, the EP began to focus on new goals in the former Yugoslavia, such as promoting democracy, strengthening human rights and other humanitarian issues. It was necessary to implement the peace accords, in particular with regard to the reconstruction plan, to encourage the development of multiethnic coexistence and to address the refugee issue¹⁵⁵.

Croatia had applied for membership of the Council of Europe in September 1992 and December of the same year. The war situation had certainly made it more complex to ascertain whether all the requirements for membership had been met. In any event, the Assembly of the Council of Europe delivered a favourable opinion in 1992 and 1995. The requirements laid down for Croatia's membership were recognition of and respect for human rights, with specific reference to the condition of refugees and minorities, a full commitment by the Government of Croatia to implementing the peace agreements and its full cooperation with the international war crimes tribunal in The Hague. The

153 On 25 June 1991, Croatia declared its independence from Yugoslavia, then fought a war against Serbia, which lasted until 1995. On 15 January 1992 the European Community recognised the independence of Croatia and Slovenia.

154 The peace talks on the former Yugoslavia began on 1 November 1995 in a military base near Dayton, Ohio. Leaders of Bosnia, Serbia and Croatia signed the Dayton Accord in Paris to end three-and-a-half years of war in the Balkans. The agreement was witnessed by representatives of the Contact Group nations – the United States, the UK, France, Germany, and Russia – and the European Union Special Negotiator.

155 These new objectives emerged especially in the European Council in Madrid on 15 and 16 December; see EP debates, 16 January 1996, p. 42. See also M. Staničić, *Croatia on its way towards the EU*, Baden-Baden: Nomos, 2002; G. Avery et al, *Croatia: pathfinder for EU enlargement*, European Policy Centre, 30.6.2011.

Croatian Government was prepared to cooperate with the International Tribunal in The Hague, immediately arresting and surrendering to the court the persons suspected of having committed war crimes. It was also asked to comply fully with the Paris/Dayton agreements and to conduct free, fair and democratic elections. Although Croatia repeatedly maintained that it was complying with the peace accords, its position regarding media freedom and democratic standards did not always meet Council of Europe requirements¹⁵⁶. The EU and the European Parliament fully supported the decision taken by the Council of Europe, but the EP was anxious to do something to encourage Croatia on the road to democracy. For this reason, in one of its resolutions on Croatia¹⁵⁷, all its political groups agreed to provide support for the Zagreb government. The EP invited Croatia to comply with the conditions that had been imposed, and urged the Commission and Council to make frozen funds under the PHARE programme (Section 4) available to Croatia for the development of democracy¹⁵⁸.

In July 1996, Croatia was able to join the Council of Europe¹⁵⁹ and the decision had a certain resonance in the EP. Jan Willem Bertens (ELDR) considered that the Council of Europe's decision was '*premature*' because, as already mentioned, Croatia had not yet complied with the conditions that the Committee of Ministers had imposed. The curtailment of media freedom was one of the reasons that should have prevented its admission¹⁶⁰. In his group's motion for a resolution, Jan Willem Bertens called on the Council of Europe to monitor closely the situation in Croatia and to do all in its power to encourage its new member to adopt policies compatible with respect for human rights¹⁶¹. The EPP group was genuinely excited about Croatia's accession to the Council of Europe¹⁶². However, Parliament adopted a cautious approach on Croatia, endorsing Mr Bertens' position.

2.3 *Obstacles in the way of Croatia's accession to the EU and financial aid from the EP (1997-1998)*

In 1997, the EU renewed its commitment to continue reconstruction in the troubled Balkan Peninsula, and specifically in Croatia. It embraced the new policy approach on Croatia – the 'Regional Approach' – adopted by the EU in the post-Dayton era. The Regional Approach initiative was aimed at stabilising the area through the promotion of cooperation between regional states and between the latter and the EU. Specifically, the Regional Strategy Approach included the signing of bilateral agreements, primarily

156 See *Background Note on the political and socio-economic situation in the Republic of Croatia*, EP Delegation for relations with South-East Europe, 3 June 1996.

157 EP resolution of 6 June 1996 on Croatia's failure to gain admission to the Council of Europe, OJ C 181, 24.6.1996, p. 45.

158 The PHARE programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. Phare's objectives are: 1. Strengthening public administrations and institutions to function effectively inside the European Union, 2. Promoting convergence with the European Union's extensive legislation (the *acquis communautaire*) and reduce the need for transition periods, 3. Promoting economic and social cohesion.

159 See documents in: <http://www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc96/EDOC7617.html>

160 Croatia still committed other serious violations such as blocking the return of refugees and the clashes that still persisted in different areas in Croatia. See Written Question E-2210/97 by L. Harrison (PSE) to the Commission of 30 June 1997, in OJ C 45, 10.2.1998, p. 159. See also J. Budak, 'Corruption in Croatia: perceptions rise, problems remain', *Croatian Economic Survey*, No. 9, 2006, pp. 35-68.

161 See paragraph 5 of motion for resolution B4-1110/96 on the situation in Croatia by G. La Malfa and H. Cars (ELDR). Text adopted: resolution of 24 October 1996 on same subject, OJ C 347, 18.11.1996, p. 166.

162 One of its members, A.M. Oostlander, maintained that, once Russia had been admitted, there was no longer any valid reason to oppose the entry of Croatia, whose sins were 'less heinous'. See EP debates, 24 October 1996, p. 270.

on economic and trade issues, followed by the establishment of political dialogue, and the promise of financial assistance. However, in order to enjoy these benefits, recipient countries were required to meet certain conditions, above all respect for the Dayton agreements¹⁶³. While some progress had been observed, Croatia had clearly not yet made sufficient progress in complying with the conditions to permit the opening of negotiations on a cooperation agreement. Even if the Croatian Government had begun to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), arresting and extraditing the individuals most wanted by it, it continued to have a monopoly over most print and broadcast outlets¹⁶⁴. This was confirmed by the General Affairs Council at its meeting of 10 November 1997¹⁶⁵.

The EP therefore expressed its condemnation of Croatia and its attacks against the independent media. It urged the Government and Parliament of Croatia to stop restricting the freedom of association and to review the law on associations, as well as the other laws imposing unwarranted restrictions on civil society, with a view to amending them so that they complied with international human rights standards and practice¹⁶⁶. On the other hand, Doris Pack, Chair of the EP's Delegation for relations with South-East Europe, stated that the human rights, civil society and media situation in Croatia was much better than rumoured¹⁶⁷. The EP decided to support Croatia's aspirations for gradual access to various integration processes and associations such as trade organisations, free trade areas and regional associations. In this way it continued to help Croatia and its neighbouring countries with financial assistance¹⁶⁸.

2.4 *Further steps towards Croatia's accession to the EU: the Stability Pact and the Stabilisation and Association Agreement (SAA) of 29 October 2001 (1999-2001)*

The Stability Pact ('SP') was devised by the European Commission as a base document for the stabilisation and integration of the five Republics of the former Yugoslavia, including Croatia. It was a political document with a primary strategic objective: the stabilisation of conditions in South-East Europe through the strengthening of mutual cooperation and rapprochement between the states of this region and Euro-Atlantic integration. Following the SP, which essentially repeated only a basic commitment, the European Union developed the Stabilisation and Association Agreement ('SAA'), from which would emerge a 'new generation' of individual pre-accession agreements (Stability and Association Agreements), as 'integral parts' thereof. In 2000, significant

¹⁶³ See Conclusions of the General Affairs Council of 26 February 1996 and 29 April 1997.

¹⁶⁴ European Parliament, Delegation for relations with South-East Europe, Report by the International Helsinki Federation for Human Rights 1997 on the situation of human rights in Croatia. See also European Commission: *The Stabilisation and Association Process conditionalities were defined by the Council on 29 April 1997 and included cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and regional cooperation. These conditions are a fundamental element of the Stabilisation and Association Process and are integrated into the Stabilisation and Association Agreement signed with Croatia. In its opinion, therefore, the Commission analyses the Croatian application on the basis of Croatia's capacity to take on the obligations of meeting the criteria set by the Copenhagen European Council of 1993 criteria and conditions set for the Stabilisation and Association Process, notably the conditions defined by the Council in its Conclusion of 29 April 1997* (COM(2004)0257).

¹⁶⁵ Question No. 47 by B. Posselt (H-0891/97), in OJ 4-511, 16.12.1997, p. 112.

¹⁶⁶ EP resolution of 18 December 1997 on Croatia, OJ C 14, 19.1.1998, p. 206.

¹⁶⁷ European Parliament Delegation for relations with South-East Europe, report by D. Pack on the 6th EP/Croatia inter-parliamentary meeting, 18 March 1998.

¹⁶⁸ EP report A4-0123/98 of 30 March 1998 on the proposal for a Council regulation (EC) amending Council Regulation (EC) No 1628/96 of 25 July 1996 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia (COM(1998)0018 - C4-0105/98 - 98/0023(CNS)), rapporteur K. Schwaiger), 30 March 1998. Text adopted: resolution of 2 April 1998 on same subject, OJ C 138, 4.5.1998, p. 15.

improvements occurred in EU-Croatia relations, especially after the Croatian political election held in January of that year. The EP believed that the Stability Pact for South-Eastern Europe was a central challenge for the European Union and considered that it would be decisive for the future of peace and stability in South-Eastern Europe and for the Union's political credibility. Parliament welcomed the democratic development of Croatia and encouraged the new government to take the necessary steps to ensure that the EU could extend its aid towards the country and that negotiations for a Stabilisation and Association Agreement could commence¹⁶⁹.

The Zagreb Summit held on 24 November 2000 was another important step towards Croatia's accession to the EU. It was attended by leading representatives of the 15 EU Member States and the countries of 'Western Balkans' (Albania, Bosnia-Herzegovina, Croatia, Macedonia and the Republic of Serbia). The Final Declaration that was adopted contained a guarantee of the principle of recognition of the objectives set and called for individualised EU membership criteria (i.e. state by state, the principle applied by Croatia) for the Western Balkan states. For the first time, 'enlargement' was proposed as a stabilising factor in the region¹⁷⁰. Under these agreements the EU Council would enact the Decision on the CARDS programme (Community Assistance for Reconstruction, Development and Stabilisation) of technical and financial assistance for reconstruction of the states involved in the Stability and Association Process for the period 2001-2006¹⁷¹. After the Zagreb Summit, negotiations were officially opened between the EU and Croatia. The EP expressed its firm belief that these negotiations would be concluded swiftly. It welcomed the significant progress made by Croatia in fulfilling its commitments as a member of the international community and, in particular, its ratification of the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities, the European Charter of Local Self-Government and the European Charter for Regional or Minority Languages. The EP also welcomed the change of attitude of the newly elected Croatian authorities *vis-à-vis* the International Criminal Tribunal for the former Yugoslavia (ICTY) and expressed its support for their fresh efforts to cooperate with a view to bringing to justice all those suspected of committing crimes during the war¹⁷². Croatia signed the Stabilisation and Association Agreement (SAA) on 29 October 2001. For Croatia the SAA was the most important step before applying for membership and acquiring 'candidate country' status¹⁷³. The Croatian Parliament ratified the agreement

169 EP report A5-0069/2000 on the communication from the Commission on the stabilisation and association process for countries of South-Eastern Europe (COM(1999)235 – C5-0124/1999 – 1999/2126(COS)), rapporteur J. Lagendijk. Text adopted: resolution of 13 April 2000 on same subject, OJ C 40, 7.2.2001, p. 440.

170 See Final Declaration in:
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/er/Declang4.doc.html.

171 EP report A5-0330/2000 on the amended proposal for a Council regulation on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia and amending Regulation (EEC) No. 3906/89, Decision 97/256/EC and Regulation (EEC) No. 1360/90 (COM(2000)628 – C5-0525/2000 – 2000/0111(CNS)). Text adopted: OJ C 223, 8.8.2001, p. 168.

172 Report A5-0364/2000, on the Commission report on the feasibility of negotiating a Stabilisation and Association Agreement with the Republic of Croatia (COM(2000)311 – C5-0506/2000 – 2000/2244(COS)), rapporteur A. Baltas.

173 The SAA grants to a signatory country the status of an associated member and a potential candidate for EU membership. The goal of the Agreement is to establish political dialogue, align legislation, promote economic relations, develop a free trade area, ensure regional cooperation and encourage cooperation in a number of other areas.

on 5 December 2001 and the European Parliament gave its assent on 12 December 2001¹⁷⁴.

2.5 *Formal negotiations for Croatia's accession and the EP (2003-2005)*

2.5.1 *Croatia's application for EU membership*

The fact that the SAA had not by then entered into force did not prevent Croatia from applying for membership of the EU on 21 February 2003. Following Croatia's request, the EU Council delegated to the European Commission the task of formulating its own opinion on the application. For this purpose, a survey (screening) was initiated on the country's situation in all areas, on the basis of a questionnaire containing over 4 500 questions. This kept the entire Croatian public administration occupied for several months. Based on the responses to this survey, the Commission delivered a favourable opinion on the Croatian application for EU membership on 20 April 2004. While acknowledging that Croatia had stable democratic institutions and could be regarded as a functioning market economy, the Commission pointed out that considerable work remained to be done to implement the reforms necessary for the achievement of European standards and to bring Croatia's legislation into line with EU law¹⁷⁵.

At the same time as it issued its favourable opinion, the Commission adopted the proposal for the European Partnership with Croatia. This document was very important because it laid down the priorities and time frame for additional preparations for Croatia's membership of the EU, especially in the short term. Croatia's progress towards accession was assessed on the basis of these requirements. Under these agreements, Croatia was required to annually prepare its National Programme for EU Membership, in order to review, verify and determine the priorities and the necessary reforms of the company and to achieve the greatest possible compatibility with EU standards and requirements¹⁷⁶.

The EP welcomed Croatia's application for accession to the European Union and stressed Croatia's European vocation. It highlighted the fact that Croatia's application for accession represented a logical continuation of the steps it had already taken in an effort to bring the country as close as possible to the European Union. Parliament noted this progress, stressing that the legislative elections of 23 November 2003 had been conducted in a proper manner and in accordance with the standards expected of any democratic country. The EP also welcomed the new constitutional law on the rights of national minorities, which provided a necessary and useful framework for regulating their status. However, Croatia still faced many challenges, of which the three most important in the eyes of the EP's rapporteur were: firstly, the return of refugees; secondly, cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY);

174 Recommendation: 1. on the proposal for a Council and Commission decision on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part (11172/2001 - COM(2001) 371 - C5-0565/2001 - 2001/0149(AVC)), 2. on the proposal for a Council decision on the conclusion and the provisional application of an Interim Agreement between the European Community, of the one part, and the Republic of Croatia, of the other part (11941/2001 - COM(2001)429 - C5-0564/2001 - 2001/0160(AVC)). Text adopted: OJ C 177, 25.7.2002, pp. 122-123.

175 Communication from the Commission – Opinion on Croatia's application for membership of the European Union (COM(2004)0257).

176 Council Decision of 13 September 2004 on the principles, priorities and conditions contained in the European Partnership with Croatia (2004/648/EC), OJ L 297, 22.9.2004, p. 19.

thirdly, the extension of Croatian jurisdiction in the Adriatic. The return of refugees was a problem with a political, social and psychological dimension¹⁷⁷. Providing housing was a *sine qua non* for encouraging the return of refugees. The Croatian Government had established a legal framework to deal with tenancy/occupation rights which had been lost when the holders of these rights had left their homes during the conflict, but this only covered zones of special national interest. A solution was needed as a matter of urgency to the question of occupation rights outside these areas. It was important to encourage the Croatian Government to review the validity of decisions on the loss of occupation rights, in line with the recommendations of the European Court of Human Rights. A further factor discouraging refugees from returning was the lack of job prospects. The second matter of concern was Croatia's cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Croatia had not yet acted on the warrants for the arrest of those accused of war crimes. However, the new Croatian Government had given a firm undertaking to cooperate fully with the Tribunal, and the first encouraging signs were already apparent. The third problem concerned the extension of Croatian jurisdiction in the Adriatic. Croatia's plan to establish an exclusive economic zone in the Adriatic had aroused sharp tensions with its neighbours (Slovenia and Italy), which had not been consulted on the matter¹⁷⁸. In any event, on 18 June 2004, the European Council granted Croatia the status of official candidate for full EU membership and the clear prospect of a possible future as a member of the Union¹⁷⁹.

2.5.2 *The first halt in Croatia's accession process*

Croatia had some problems to solve in order to be able to continue on its journey towards EU membership. In March 2005, the EU Foreign Ministers decided to suspend the start of negotiations on Croatia's accession until it complied with the requirement of 'full cooperation with the Hague Tribunal'¹⁸⁰. Accession talks were officially opened only in October 2005¹⁸¹ when, following a statement by the ICTY prosecutor, Carla Del Ponte, the Council decided that Croatia was cooperating fully in the capture of war crimes suspects¹⁸². Even if progress reports were generally positive as regards the fulfilment of political and economic criteria for EU membership and Croatia's capacity to take on the obligations of membership¹⁸³, the European Commission did not stop monitoring human rights in Croatia.

177 The issue was about 200 000 Serbian refugees wishing to return to their homes after being chased away from Croatia in 1995 during the military Operation Storm.

178 EP report A5-0206/2004 of 22 March 2004 containing a proposal for a European Parliament recommendation to the Council on the application by Croatia for accession to the European Union 2003/2254(INI)), rapporteur A. Baltas. Text adopted: resolution of 1 April 2004 on same subject, OJ C 103 E, 29.4.2004, p. 822.

179 Brussels European Council 17 and 18 June 2004, Presidency conclusions, points 34-38.

180 One of the reasons for suspending the negotiations was the issue relating to General Gotovina, a leading war criminal, who was hiding in Croatia. See also K. Ott, *Croatian accession to the European Union: facing the challenges of negotiations*, Zagreb: IJF, 2005; P. Roter et al, 'Croatia and the European Union: a troubled relationship', *Mediterranean politics*, 2005, 10(3), pp. 447-454.

181 The European Council of 3-4 October 2005 decided to open accession negotiations with Croatia, on the basis of Croatia's application for membership (February 2003) and the European Commission's opinion of April 2004.

182 Policy Department, DG External Policies, Croatia-EU relations, 22 February 2006.

183 Four progress reports were published – for the years 2006, 2007, 2008 and 2009 – concerning the three pre-accession financial programmes, PHARE, ISPA and SAPARD, of which Croatia was a beneficiary since the 2005 budget year (in 2007 these programmes were replaced by the IPA programme).

2.6 *Croatia makes further progress (2005-2006)*

On 9 November 2005 the Commission published the proposal for the Accession Partnership with Croatia, and the Council of the EU adopted the decision on the Partnership on 20 February 2006¹⁸⁴. The Accession Partnership identified short-term and mid-term priorities in the process of fulfilling membership criteria, such as judicial reform, the fight against corruption, protection of minorities, dealing with border issues and the implementation of obligations from the Stabilisation and Association Agreement. The Accession Partnership priorities were based on the priorities included in the 2004 European Partnership, which had been revised in accordance with the Commission's Croatia 2005 Progress Report. Since accession negotiations with Croatia, which had started on 3 October 2005, the Commission had deemed it necessary to adopt the Accession Partnership, which updated the previous European Partnership with Croatia¹⁸⁵. The Accession Partnership therefore replaced the former European Partnership as a central document for measuring the further progress of Croatia's integration into the European Union. In addition, the Accession Partnership served as a guide for programming pre-accession financial assistance from the EU to Croatia. Croatia started implementing the priorities contained in the Accession Partnership by defining the measures which needed to be implemented in 2006, and which were contained in the National Programme for the Integration of the Republic of Croatia into the EU 2006. Each subsequent programme defined the measures to be implemented in the year to which it referred.

The EP continued to express its satisfaction with the EU's decision to open accession negotiations with Croatia in October 2005. It urged Croatia to maintain full cooperation with the ICTY and to strengthen overall its administrative and judicial capacity¹⁸⁶. Parliament noted that Croatia met the necessary political criteria but pointed out that it faced a number of major challenges in the field of judicial reform, particularly with regard to the large backlog of cases and with judgments showing an ethnic bias against Serb defendants in the prosecution of war crimes; in addition, it stressed that efforts to reduce corruption needed to be stepped up. Furthermore the EP reminded the Croatian authorities that an open competitive market economy was a fundamental requirement for EU membership¹⁸⁷.

2.7 *Final steps in the process of Croatia's accession to the EU (2008-2011)*

Generally positive progress reports from the European Commission led to suggestions from the Commission President that Croatia's accession talks might conclude in 2009¹⁸⁸. Despite Croatia's efforts towards continuity in negotiations, the talks were held back

184 Council Decision of 20 February 2006 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2004/648/EC (2006/145/EC), OJ L 55, 25.2.2006, p. 30.

185 The screening of Croatian legislation started after the opening of negotiations in autumn 2005 and was completed within the usual duration of one year on 18 October 2006. It was conducted by representatives of the European Commission on the EU side, and by members of the Working Groups for the Preparation of Negotiations on individual chapters of the acquis and representatives of the state administration on the Croatian side.

186 See EP report A6-0025/2006 of 3 February 2006 on the Commission's 2005 enlargement strategy paper (2005/2206(INI)), rapporteur E. Brok. Text adopted: resolution of 16 March 2006 on same subject, OJ C 291 E, 30.11.2006, p. 402. In paragraph 33, the EP welcomed the capture of General Gotovina.

187 EP report A6-0092/2007 of 29 March 2007 on Croatia's 2006 progress report (2006/2288(INI)), rapporteur H. Swoboda. Text adopted: resolution of 25 April 2007 on same subject, OJ C 74 E, 20.3.2008, p. 675.

188 Coinciding with Croatia's admission to NATO, on 1 April 2009.

from the end of 2008 until September 2009. Overall, the EP congratulated the Croatian authorities on the positive results achieved so far, particularly with regard to the number of negotiation chapters which had been opened¹⁸⁹. Negotiations for the accession of the Republic of Croatia into the European Union comprised 35 negotiating chapters¹⁹⁰.



The EU-Croatia Joint Parliamentary Committee's 10th meeting on 25 and 26 November 2009 in Strasbourg. The JPC was confident that Croatia would do everything in its power to achieve the target of finalising accession negotiations by mid-2010, and expressed the hope that it would soon be able to welcome Croatian observers to the European Parliament following the signing of the Accession Treaty.

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The EP highlighted the fact that Croatia had achieved the goal set in the field of human rights as the Croatian authorities had maintained their efforts towards an impartial prosecution of domestic war crimes. Croatia had continued to cooperate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY) and, in the EP's view, it was important for the Croatian authorities to exercise continuous vigilance in order to avert the risk of ethnically biased rulings and to ensure that all measures were in place

¹⁸⁹ EP report A6-0048/2008 of 28 February 2008 on Croatia's 2007 progress report (2007/2267(INI)), rapporteur H. Swoboda. Text adopted: resolution of 10 April 2008 on same subject, OJ C 247 E, 15.10.2009, p. 7.

¹⁹⁰ These were as follows: 1. Free movement of goods, 2. Freedom of movement for workers, 3. Right of establishment and freedom to provide services, 4. Free movement of capital, 5. Public procurement, 6. Company law, 7. Intellectual property law, 8. Competition policy, 9. Financial services, 10. Information society and media, 11. Agriculture and rural development, 12. Food safety, veterinary and phytosanitary policy, 13. Fisheries, 14. Transport policy, 15. Energy, 16. Taxation, 17. Economic and monetary policy, 18. Statistics, 19. Social policy and employment, 20. Enterprise and industrial policy, 21. Trans-European networks, 22. Regional policy and coordination of structural instruments, 23. Judiciary and fundamental rights, 24. Justice, freedom and security, 25. Science and research, 26. Education and culture, 27. Environment, 28. Consumer and health protection, 29. Customs union, 30. External relations, 31. Foreign, security and defence policy, 32. Financial control, 33. Financial and budgetary provisions, 34. Institutions, 35. Other issues.

to protect the integrity of the judicial process¹⁹¹. The EP therefore urged the Croatian Government, with the support of all political parties, the media and civil society and jointly with the ICTY office in Croatia, to take steps to maintain popular support for the role of the ICTY in addressing the war crimes perpetrated during the Yugoslav conflict. However, it also stressed that Croatia should introduce reforms, especially in the public services and local and regional government, and supply the necessary resources and training for the implementation of these reforms. The last remaining obstacles in the way of Croatia's accession were a border dispute with Slovenia and the issue of state corruption, which slowed progress. These aspects were stressed in another EP resolution on Croatia in 2010¹⁹². The EP noted that the last major hurdle was the new chapter 23 on the judiciary and fundamental rights, introduced after Bulgaria and Romania's accession.

Chapter 23 contained 31 'benchmarks' (compared with between three and six for most other chapters), covering judicial transparency, impartiality and efficiency; tackling corruption; protecting minority rights; resolving refugee return issues; protection of human rights; and full cooperation with the ICTY¹⁹³. The Commission and the Member States were particularly concerned that Croatia should show tangible and sustainable reforms in these areas, to protect the credibility of the EU's enlargement process in the face of other political pressures to make progress¹⁹⁴. Croatia was the first country to have to meet these new requirements. The Croatia accession process did not stop but it was simply slowed down. Despite much progress being made, the Commission still had significant concerns on these issues. An interim report on Chapter 23 in March 2011 highlighted particular areas where more work was needed: the appointment of judges and state prosecutors, impunity for domestic war crimes and obtaining court rulings on high-level corruption and public procurement cases¹⁹⁵.

2.8 Closing negotiations and signing the treaty

In June 2011 the Commission considered that Croatia had met all the criteria for closing the last four chapters (including Chapter 23 on judiciary and fundamental rights) in the negotiation process for EU membership, but proposed a two-year delay before Croatia actually joined the EU. The chapters were formally closed on 12 July 2011, and the proposed date for Croatia's accession to the EU was 1 July 2013. Croatia's October 2011 progress report noted substantial progress but still called for '*constant attention*' on judicial reform, the issue of impunity to be '*thoroughly addressed*', further development of handling corruption cases effectively, and further improvement in protecting fundamental rights¹⁹⁶. The EP welcomed the conclusion of the accession negotiations with Croatia after six years of negotiation and several years of preparation. It stressed the need to keep up the reform momentum and considered that this process was not complete, but should continue with the same vigour and hard work after the

191 EP report A6-0048/2008 of 28 February 2008 on Croatia's 2007 progress report (2007/2267(INI)), rapporteur H. Swoboda. Text adopted: resolution of 10 April 2008 on same subject, OJ C 247 E, 15.10.2009, p. 7.

192 EP resolution of 16 February 2011 on the 2010 progress report on Croatia (P7_TA(2011)0059).

193 See European Scrutiny Committee, 1st Report, 21 September 2010, HC 428-I 2010-12, paragraph 65.15.

194 European Commission, Interim report from the Commission to the Council and the European Parliament on reforms in Croatia in the field of Judiciary and Fundamental Rights (Negotiation Chapter 23), COM(2011)0110, 2 March 2011, p. 2.

195 Ibidem, p. 4.

196 European Commission, Croatia 2011 Progress Report, SEC(2011)1200 final, 12 October 2011, pp. 45-53.

conclusion of the negotiations and beyond accession. Parliament hoped that the positive results of this process could encourage people to participate in the EU referendum and support the Accession Treaty. The EP supported the signing of the accession treaty and called on EU Member States to complete its ratification in a timely manner; it also looked forward to receiving parliamentary observers from Croatia¹⁹⁷. The European Parliament approved Croatia's accession treaty on 1 December 2011¹⁹⁸. Croatia and all 27 EU Member States signed it on 9 December in the margins of the European Council meeting in Brussels. For any EU accession treaty to take effect, it has to be ratified by the accession state as well as by each of the existing EU Member States, according to their own domestic ratification processes. Meanwhile, on 22 January 2012 Croatia held a referendum on the accession treaty, in which Croatians said yes to the EU. On 1 July 2013 Croatia will become the 28th Member State of the European Union.

197 EP report A7-0389/2011 of 22 November 2011 on the application of Croatia to become a member of the European Union (2011/2191(INI)), rapporteur H. Swoboda. Text adopted: resolution of 1 December 2011 on same subject (P7_TA(2011)0539).

198 Recommendation on the draft Decision of the Council of the European Union on the admission of the Republic of Croatia to the European Union (17142/11 – C7-0252/2011 – 2011/0805(NLE)), (doc. A7-0390/2011, rapporteur H. Swoboda); see also H. Pribitzer et al, Croatia: country briefing 2011, DG EXPO/B/PolDep/Note/2011_64.

ANNEX 1

SELECTION OF DOCUMENTS OF THE EUROPEAN PARLIAMENT ON FUNDAMENTAL RIGHTS



Hemicycle of the European Parliament in Strasbourg (© European Union, 2012)

Sitting of Wednesday, 4 April 1973

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Romualdi

chance interventions, to a real comprehensive policy in the social sphere. It is important that the Commission, in presenting its first social programme, should have taken account of these needs, but we hope that these good intentions can be converted into effective action, which up to the present, unfortunately, has not been the case.

Social life in Europe has declined, unemployment has increased and housing conditions are far from ideal. As well as that, the effort to give the worker a share in the life, the decisions and the administration of his company, in other words to raise the worker from being a mere wage earner to the condition or better still to the dignity of having a say in his company, has taken very few steps forward, if, in fact, it has not rather gone backward—I speak of this because it is a basic element for which my political party has been fighting for many years. It is my wish, therefore, while being aware of the sincerity with which this problem has been tackled in this Parliament, that we should pass as soon as possible from good intentions and from fine words to actions, thus giving a higher social value to the life of the workers and of the peoples of all of Europe.

President. — Does anyone else wish to speak?

The general debate is closed.

We shall now consider the motion.

I have received no amendments or requests to speak.

Does anyone wish to speak?

I put the motion to the vote.

The resolution is adopted.¹

13. Change in agenda

President. — The next item on the agenda is a debate on the report by Mr Pêtre, on behalf of the Committee on Social Affairs and Health Protection, on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations (Doc. 289/72).

At the request of Mr Jozeau-Marigné, and in agreement with Mr Pêtre, I propose, however, that the House now consider Mr Jozeau-Mari-

gné's report, and then the report by Mr Pêtre. Mr Jozeau-Marigné has to leave soon to meet other obligations.

Are there any objections?

That is agreed.

14. Fundamental rights of Member States' citizens

President. — Pursuant to the decision just taken, the next item is a debate on the report by Mr Jozeau-Marigné, on behalf of the Legal Affairs Committee, on the motion tabled by Mr Lautenschlager, on behalf of the Socialist Group, concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted (Doc. 297/72).

I call Mr Jozeau-Marigné, who has asked to present his report.

Mr Jozeau-Marigné, rapporteur. — (F) Mr President, ladies and gentlemen, our colleague, Mr Lautenschlager, has, in the name of the Socialist Group, tabled the motion for a resolution confirming protection of the fundamental rights of Member States' citizens when Community law is drafted.

This is a problem which to many will seem extremely abstract, and yet in the daily life of our fellow citizens it is of capital importance. Your Legal Affairs Committee has done me the honour of asking me to examine this problem and propose a resolution. It is in the name of the unanimous Legal Affairs Committee that we applauded Mr Lautenschlager's initiative, and the motion for a resolution which I shall submit for a vote at the end of this introduction has been unanimously voted for by the Committee and therefore by all the representatives of the Political Groups. The modifications which I have introduced have in fact been nothing more than corrections of detail, which moreover have received Mr Lautenschlager's unqualified approval.

An abstract problem, I said! Indeed, how many people find themselves wondering what a 'fundamental right' is! And so, in this introduction—without, of course, wishing to recapitulate the whole of my written report, which is at your disposal—I must recall that fundamental rights constitute a clearly defined legal category in German constitutional law, but that in the law of certain other countries, more particularly of my own country, France, one fails to find as excellent a definition as that which exists in the Federal Republic. We have therefore agreed to state the following: "The term 'fundamental

¹ *Of No C 26, 30 April 1973, p. 5.*

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rights' is applied to rights and freedoms underpinned by positive guarantees; these rights and freedoms may be set forth in the written provisions contained in the constitution or form part of a continuing constitutional tradition kept alive by the law-giver or case law".

In my report, I gave by way of example the following rights: respect of human life, freedom of the individual, freedom of conscience, freedom of opinion. You may reply: We are familiar with these rights, but how can they possibly be contradicted in any way by legislation, be it in the form of directive or regulation, emanating from an Assembly such as ours? The point is that the rights I mentioned just now, which are among the most important, are nevertheless not the only ones. There are those deriving from the general principle of equality before the law; there are those deriving from the principle of equality of the sexes (a few minutes ago these problems were raised by some of our colleagues and by Mr Hillery); there are also the right of association, the right to work, and the right freely to engage in an occupation. You see how many rights may be affected either by a directive or by a regulation!

I must also, at the beginning of my speech, attempt, together with you, to get a better knowledge of conflicts which may arise between Community law and these fundamental rights, to find ways and means of defining and asserting these rights at Community level and to provide arrangements for ensuring that these rights are effectively safeguarded.

The supremacy of Community law and the protection of the fundamental rights of Member States citizens; how should this problem be formulated? Here it is essential to recall certain things—as has incidentally already been done in the course of previous sessions, in particular by two eminent jurists whose names I have pleasure in recalling as I have pleasure in saluting their achievements. These are Mr Deringer, who has been chairman of our Legal Affairs Committee and who has made an indelible impression upon this Parliament, and Mr Dehousse, who represents Belgium in this Parliament; both of these have had the occasion, in reports of high quality, to re-evoked the great principle underlying these rights. The principle of the supremacy of Community rules over the corresponding national rules is the corollary of the direct applicability of the provisions of Community law in the national legal systems of Member States. What would become of all our work, of all the system of rights and laws which we wish to establish if these Community rules were not obligatory in all our countries? Different forms of Community decisions have been conceived, and Mr Lautenschlager's motion for

a resolution envisaged the consequences deriving from directives; the committee has decided to add to these the consequences deriving from regulations, for it must not be forgotten that these regulations have a direct impact upon the lives of all our fellow citizens, since their application is direct and immediate. Mr Lautenschlager, in his motion for a resolution was right in envisaging the consequences deriving from directives, for even though these directives are not directly applied—the national parliaments in fact also have something to say—we must bear in mind that in passing them it is not our intention to confront our national parliaments with difficulties resulting from the impossibility—a moral impossibility if nothing else—of adopting a text which conflicts with the fundamental rights recognized in these States. Above all, it is the wish of the entire committee to make recommendations, and the text which we are submitting to you is in no way to be regarded as a sanction.

I have already re-evoked the great principle underlying Community law. I shall not recount the consequences which have been drawn from this, for you have them in your written text. This principle has been confirmed by doctrine and by case law. The Belgian Court of Cassation and the highest courts of Germany have affirmed—I insist on repeating this, and it will never be repeated too often—that the supremacy of Community law stands out in fact as an essential rule observance of which insures uniformity of implementation of Community law, which is the prerequisite for its coherency and authority.

But the implementation of such a rule raises some doubts, and these doubts have already been expressed. Is not the implementation of a rule which appears so rigid and so necessary not likely to affect each one of our citizens? On more than one occasion, colleagues of ours have expressed their doubts on this point. Mr Dehousse has done so, Mr Halstein after him; on an earlier occasion Mr Lautenschlager, in his report on proposals for directives on self-employed activities of opticians, drew our attention to the same problem. With his permission I will quote what he said without changing a word. He said: 'The parliamentary committee to which the directives have been referred wondered "how far it was possible to encourage Member States, pursuant to Article 100 of the EEC Treaty, to adjust their national legislation in a manner liable to restrict more severely than is warranted by public health requirements certain fundamental rights embodied in the constitutions" '. These words were heard from the lips of Mr Lautenschlager within these very walls, and his proposals were accepted by this

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Assembly. But these difficulties to which Mr Lautenschlager drew attention in connexion with the freedom of establishment of opticians will easily be found to recur in all problems concerning the freedom of establishment and the freedom to provide services; one might say that it is the field of occupational freedom that attracts the attention of many writers, and indeed of all those engaged in the study of these problems; it is also the field in which we may find the greatest number of difficulties.

That is why it seemed to the Legal Affairs Committee that ways must be found of ensuring observance of the rights of Member States' citizens whenever the prerogative of the individual might be adversely affected by the process of economic integration. The problem has been put this way, but it may equally well be viewed in a two-fold perspective: at the juridical and at the political level. At the juridical level, we must prevent all possibility of challenging the supremacy of Community law: I need not insist upon this point any further. At the political level, the position of personal rights in the Community structure must be strengthened—'a highly European idea,' according to Thomas Mann. In this way, the fact that the European Community, created by law and itself a source of law, is—in the strongest sense of the term—a legal structure will be solemnly affirmed.

I will not recapitulate the substance of my report; nevertheless, permit me to say that we have attempted to find two kinds of solutions—formal and pragmatic.

On the subject of the formal solutions, some people have been obliged to take into consideration—and have been right in doing so—that none of the three treaties contains a declaration of fundamental rights.

This does not entitle us to say that the Community authorities wanted to evade the great principles which inspired the constitutions of States. Moreover, we find in the treaties more than one reference to the respect that exists for these great principles. Doubtless this has not sufficed to dissipate people's doubts, and some have asked themselves whether it was not advisable to make arrangements for adopting a text to be annexed to the Treaty, in order to incorporate these great principles of law. Others have thought that other points of view should be taken into consideration and negotiations begun for the signing of an *ad hoc* convention on the basis of Article 220 of the Treaty, according to which:

'Member States shall, as far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

— the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals.'

The formal adhesion of the Communities to the Convention on Human Rights has also been suggested. This might have something to be said for it, but we have seen certain difficulties in this course. In fact, according to the terms of the Convention, it is only States which can accede. Can we consider that the Community, juridically speaking, is a state? You see, there are many difficulties which may present themselves on the formal level.

President. — Mr Jozeau-Marigné, you have already exceeded your speaking time. Would you please conclude.

Mr Jozeau-Marigné. — (F) I ask for only three minutes.

President. — I am sorry, I can give you only one.

Mr Jozeau-Marigné. — (F) After the formal solutions, there are the pragmatic solutions, which I have indicated in my report. Without dwelling on the subject, I must say—you see that I am being as brief as possible—that the pragmatic course is to ask for the European Court of Justice to be given an opportunity of recognizing the rights of the individual citizen and so acquire an ever stronger position.

I conclude. In the motion for a resolution, we ask you first of all to draw the Community's attention to the respect of human rights and, in a second paragraph, to request the submission of a report on all the possibilities envisaged by the Community on this subject. We have also drawn attention, unanimously and emphatically, to the need for opening more widely the doors of the European Court to the ordinary man, for in so doing we shall be more humane—and I thank you, Mr President, for having been so humane as to grant me an extra minute-and-a-half.

(Laughter—applause)

President. — I call Mr Lautenschlager on behalf of the Socialist Group.

Mr Lautenschlager. — (D) Mr President, Mr Jozeau-Marigné's report deals with an area of great importance, one might almost say the greatest importance, for a democratic system of government. The gratitude and esteem of this House are due to the rapporteur for his out-

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standing work, which testifies to the great depth of his knowledge and the strength of his commitment to the cause. My regard for French jurisprudence is now higher than ever before. I should like to thank the rapporteur also for the kind remarks he made about my original motion for a resolution.

Mr President, on every occasion when the European Parliament has turned its attention to the protection of the fundamental rights, the means of safeguarding them in those areas taken out of the national jurisdiction and placed under Community law has been a subject of constant concern. This concern is well justified by the absence in the Community of any effective parliamentary control in this domain and only a dubious control through the legislation. The power structures in the Community are based exclusively on the Treaties. The latter, however, contain no charter of basic rights. Moreover, when criticizing Community legislation one cannot invoke, for example, the Convention of Human Rights. The conventions concluded in the Council of Europe form a system of multilateral treaties embodying its own organs, including judicial control. The problem of safeguarding the fundamental rights under Community law has not yet been solved, and shows how well founded is the constant criticism of the status of Parliament, in particular its purely consultative role, even though the latter is as a rule obligatory. In the final analysis, the movement towards political union must founder on this problem, unless those with the power of decision within the Community find a way of gradually increasing Parliament's competence. Without this, direct election of this Parliament would be pointless, a mere charade.

The attempts currently being made to overcome the difficulties in the monetary sector, in the common economic policy, and especially in agriculture are doomed to failure in the face of the growing scepticism among the Member States as to whether the Community can be made to work. It is obvious that as a result of this scepticism national governments will be more and more reluctant to cede their sovereign powers to the Community without firm safeguards for their citizens' basic rights. A further point is that both the Commission and the Council of Ministers are totally lacking in any democratic basis. Parliament does have such a basis, but only indirectly, and in any case this institution has no real legislative powers. It is therefore, I suggest, the highest time for this vicious circle to be broken.

However, I would ask you to allow me, Mr President, to touch on an aspect which Mr

Jozeau-Marigné was unable to discuss in his report, because it concerns a court case in the Federal Republic of Germany, the outcome of which is still in the balance. The rapporteur made a number of references to this case, but was unable to comment upon it, since the decision of the Federal Constitutional Court is not expected until July of this year. It relates to the Council's Regulation of 21 August 1967 concerning European companies. The Administrative Court of Frankfurt/Main had referred a case to the Federal Constitutional Court to test its opinion that only a national judicial body could decide on the control of constitutional norms, since the Community organs were not bound by constitutional law. In this context I find it very interesting that the government of my own country considers it improper to invoke the Federal Constitutional Court once the European Court of Justice has given its decision on a case. Nevertheless, it cannot be ruled out that the Federal Constitutional Court will, after all intervene in the matter. This would mean a national court ruling on the compatibility of Community law with national fundamental rights. My supposition as to this action on the part of the German Federal Constitutional Court is based on the fact that the European Court in its decision of 17 December 1970 recognized only fundamental rights which, if I may be allowed to quote, Mr President, 'are inherent in the constitutions of every one of the Member States.' This decision leaves unresolved the problem of priorities when Community law infringes a fundamental right recognized by one or more Member States, but not by all of them.

I should therefore very much like to know whether the Commission shares my view that Community legislators should either recognize fundamental rights allowed in individual Member States, be it only one, or else work towards the harmonization of the fundamental rights guaranteed to citizens in all the Member States. I believe that unless this problem is resolved satisfactorily there is a danger of Community legislation being blocked. The Commission should therefore as soon as possible exercise the right of initiative as provided for in the Treaties, with a view to a decision in the Council.

In conclusion, I should like, Mr President, to stress on behalf of my Group that we attach the utmost importance to this Council decision, since it will have a crucial effect on future legislation. My political colleagues and I regret all the more that, apart from the present resolution, Parliament has no other means of helping to bring this matter to a satisfactory conclusion at the earliest possible date.

Sitting of Wednesday, 4 April 1973

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Lautenschlager

Mr President, it only remains for me to confirm that my political colleagues and I will support this motion.

(Applause)

President. — I call Mr Scarascia Mugnozza.

Mr Scarascia Mugnozza, Vice-President of the Commission of the European Communities. — (F) Mr President, ladies and gentlemen, the topic of discussion today is of fundamental importance, for when we speak of protecting human rights we are concerned with the very basis of Community law. That is evidence of the importance of this debate. But its importance also derives from the value of the report with which it opened and I should like to begin by paying it due tribute. Indeed Mr Jozeau-Marigné's report follows in the tradition of the Legal Affairs Committee's great reports which marked an epoch in the elucidation of the main problems of Community law.

I would like to say at once that the Commission's views coincide as a whole with those of the rapporteur, both as regards analysis of the problems and their solutions.

The rapporteur was quite right to stress the links that exist between observance of fundamental rights and freedoms of the individual and the recognition of the supremacy of Community law. Furthermore, the condition for the supremacy of Community law and its very existence is the protection of personal prerogatives, for any conflict between human rights and Community law would affect the very foundations of the latter.

The entire structure of the Communities is based on Member States' recognition that they belong to a common philosophic, political and juridical tradition, and naturally at the centre of this common democratic awareness lies the priority of human rights and the need to guarantee them. There can be no conflict between these basic requirements and Community law.

Admittedly not all the fundamental rights of the individual are formally embodied in texts. Nevertheless they must be respected by the Community legislator as positive rights, as general principles of unwritten Community law. In this respect, the Court of Justice's recent judgment cited by your rapporteur is such as to allay all anxiety.

Yet continual efforts must be made to further protect the public freedoms and fundamental rights of the individual. The Commission will naturally apply itself to this task.

In this connection, some people might wish to find more specific guarantees in a text which, one way or another, would formally embody the obligation of Community law to respect these freedoms and rights.

Here the Commission subscribes entirely to Mr Jozeau-Marigné's conclusions. I share his scepticism entirely as regards the practical effectiveness of a formal guarantee of that kind. I will not go into the political inconveniences and practical legal problems that would arise if such a guarantee were established at this stage.

The attempt to further safeguard individual rights and freedoms in Community law should not, therefore, be done on the basis of theory but by recourse to the flexible and pragmatic solutions put forward by the Legal Affairs Committee. They alone are operational solutions, at least for the time being. Moreover they have the immense advantage of conforming more closely to the extremely evolutionary character of the Community and Community law. These solutions are based on action by the Community institutions.

Respect for individual rights is above all a question of juridical protection, and in this respect everything speaks for placing full confidence in the Court of Justice, which would act, where need be, in conjunction with the national jurisdictions pursuant to the provisions of Article 177 of the Treaty. The powers thereby conferred on the Court of Justice's judgments, the evolutionary nature and creative force of the Court's methods of judging and the case laws it has laid down sufficiently ensure—and I hope this will answer Mr Lautenschlager's question—that far from merely satisfying the lowest common denominator of the various national systems, the Court will strive to draw the necessary inferences from these principles to give sufficient guarantees of individual rights and freedoms.

The question of protecting the fundamental rights of the individual also arises in everyday life. The Committee was well aware that it must pay constant attention to this question in all its activities and take practical steps. It fully intends to take great care that its own actions or its proposals to the Council never conflict with the requirements of observing human rights. Here the Commission goes a step further than the Legal Affairs Committee's report. In fact it considers these requirements valid not only in respect of normative Community acts, such as regulations and directives, but in respect of all legal acts whatever their form or destination, that is to say including decisions addressed to states or individuals.

Scarascia Mugnozza

It is convinced that this will enable individuals to find guarantees in Community law at least equal to those provided by their own constitutional law, and that this will allay any doctrinal anxieties on the question.

President. — Does the rapporteur wish to speak again?

Mr Jozeau-Marigné, rapporteur. — (F) No, Mr President, I have nothing to add.

President. — Does anyone else wish to speak?

The general debate is closed.

We shall now consider the motion.

I have no amendments or speakers listed.

Does anyone wish to speak?

I put the motion to the vote.

The resolution is adopted.¹

15. Second report of the Commission on certain agreements concluded within the framework of other international organizations

President. — The next item is a debate on the report by Mr Pètre, on behalf of the Committee on Social Affairs and Health Protection, on the second report of the Commission of the European Communities on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations (Doc. 289/72).

I call Mr Pètre, who has asked to present his report.

Mr Pètre, rapporteur. — (F) Mr President, ladies and gentlemen, in presenting this report for which the Committee on Social Affairs appointed me rapporteur, allow me to remind the House that the question is not a new one, since our Parliament already considered it in 1963 and 1968. In 1968 the European Parliament adopted a resolution in which it invited Member States' governments to accelerate the procedure for ratifying international agreements.

Mr President, several years have passed since then, yet examination of the Commission's second report to the Council shows that little progress has been made. This worries your Committee on Social Affairs, and all the more so because the seven conventions on the Commis-

sion's first list have an undoubted social interest, which incidentally is recognized by both sides of industry and by Parliament. To save time, I shall only remind you of the subjects of these conventions.

First there was Convention No. 103 on maternity protection, adopted at the 35th International Labour Conference in Geneva in 1952. The second was Convention No. 111 concerning discrimination in employment and professional activities. The International Labour Organization adopted this convention in 1958. Then there is Convention No. 117 on basic standards and aims of social policy which was adopted at the 1962 conference. Next came Convention No. 119 on protection of machines, adopted in 1963. Then came Convention No. 120 concerning hygiene in trade and office premises, adopted in 1964. And finally, the sixth Convention, No. 122, concerned employment policy and took effect in 1966. In addition to these six conventions, all of which were adopted at International Labour Organization conferences, there is also, ladies and gentlemen, the European Social Charter, signed in 1961, by the Committee of Ministers of the Council of Europe.

Reading the Commission's second report, it appears that only one Member State of our Community, Italy, has ratified the seven conventions on that first list.

As for the other Member States, the situation varies greatly from country to country. The Federal Republic of Germany and France ratified two conventions and the European Social Charter. Belgium, the Grand Duchy of Luxembourg and the Netherlands have only ratified one convention out of the seven we have mentioned! I stress the fact, Mr President, Ladies and Gentlemen, that the European Social Charter, signed nearly twelve years ago, has still not been ratified by three of the original Member States of the Community, so that you will understand why your Committee on Social Affairs deplores this state of affairs and repeats its demands to countries which have not yet done so to ratify the international conventions immediately, as indeed requested by the European Parliament in its earlier resolutions.

As for the three new Member States, the Committee on Social Affairs has noted that the United Kingdom has ratified three of the seven conventions on the first list. Denmark has ratified four and Ireland two.

After this rapid survey of the situation as regards ratifying the ILO conventions, your Social Affairs Committee must state that the situation as regards ratification of the European Social Charter is hardly better. Indeed,

¹ OJ No C 26, 30 April 1973, p. 7.

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11. Points to the difficulties that this programme will encounter when the time comes to move from statements of principle to practical action, and in particular the weak legal bases provided by the Treaties if recourse is not had to Article 235, the absence of a genuine political will, dissension within the Council and the differences of opinion regarding the division of responsibilities between Member States, the two sides of industry and the Community institutions;
12. Urges the Commission and the Council to do their utmost to solve these difficulties;
13. Urges the Commission to take all the measures necessary to implement Articles 119 of the Treaty, which establishes the principle that men and women should receive equal pay for equal work, and in its new programme to give the same opportunities and consideration to women as to men;
14. Requests its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

Modification of agenda

At the request of Mr Jozeau-Marigne and with the agreement of Mr Pètre, it was decided that Parliament should deal with the former's report on the basic rights of Member States' citizens before discussing Mr Pètre's report on agreement concluded within the framework of international organizations.

Basic rights of Member States' citizens

Mr Léon Jozeau-Marigne introduced his report drawn up on behalf of the Legal Affairs Committee on the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71) concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted (Doc. 297/72).

The following spoke: Mr Lautenschlager, on behalf of the Socialist Group, and Mr Scarascia Mugnozza, *Vice-President of the Commission of the European Communities*.

The following resolution was agreed to:

RESOLUTION

concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71);
- having regard to the report of the Legal Affairs Committee (Doc. 297/72);

1. Invites the Commission of the European Communities when drafting regulations, directives and decisions, to prevent conflicts from arising with national constitutional law and to examine in particular how the fundamental rights of Member States' citizens may be safeguarded;

2. Invites the Commission, furthermore, to submit to it a report as to how it intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States;
3. Stresses the need to make the European Court more widely accessible to the individual citizen;
4. Instructs its President to forward this resolution and the report of its Committee to the Council and Commission of the European Communities.

Second Commission report on agreement concluded within the framework of international organizations

Mr René Pètre introduced his report drawn up on behalf of the Committee on Social Affairs and Public Health on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations (Doc. 289/72).

The following spoke: Miss Lulling, Mr Walkhoff, Mr Hillery, *Member of the Commission of the European Communities*, and Mr Pètre, *rapporteur*

The following resolution was agreed to:

RESOLUTION

on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations

The European Parliament,

- having regard to the report of the Commission of the European Communities to the Council (SEC (72) 2147 final),
- having regard to the provisions of Articles 117 and 118 of the EEC Treaty,
- having regard to the report of the Committee on Social Affairs and Health Protection (Doc. 289/72),

1. Draws attention to its resolutions of 14 May 1963 ⁽¹⁾ concerning the European Social Charter of the Council of Europe, and of 2 July 1968 ⁽²⁾ on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations;
2. Is delighted that the Commission has continued to pay close attention to the problem of ratification of ILO and Council of Europe agreements;
3. Welcomes the fact that, following Parliament's resolution and the Commission's proposal, certain Member States proceeded to ratify some of the specified agreements;
4. Regrets, however, that by 1 January 1973, only one of the nine Member States of the Community, Italy, had ratified all the ILO agreements in question and the European Social Charter;

⁽¹⁾ OJ No 84, 4. 6. 1963, p. 1577/63.

⁽²⁾ OJ No C 72, 19. 7. 1968.

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5. Urgently calls for emergency measures to provide immediate humanitarian aid to help relieve the suffering of all the victims in Lebanon;

6. Asks its President to forward this resolution to the Conference of Foreign Ministers of the Member States responsible for political cooperation and to the Council and Commission of the European Communities.

Oral question with debate: Earthquake in the Friuli area — Debate on draft supplementary budget No 1 for 1976

Lord Bessborough moved the oral question with debate which, on behalf of the European Conservative Group, he had put, together with Mr Fellermaier on behalf of the Socialist Group, Mr Alfred Bertrand on behalf of the Christian-Democratic Group, Mr Bangemann on behalf of the Liberal and Allies Group, Mr de la Malène on behalf of the Group of European Progressive Democrats and Mr Fabbrini on behalf of the Communist and Allies Group, to the Commission of the European Communities on the earthquake in the Friuli area (Doc. 153/76).

The following then spoke in the ensuing debate, which also covered draft supplementary budget No 1 for 1976: Mr Cointat, *rapporteur for the Committee on Budgets on draft supplementary budget No 1*, Mr Ortoli, *President of the Commission*, Mr Normanton, Mr Rosati and Mr Concas.

The President declared the debate closed.

Primacy of Community law

Mr Rivierez introduced his report, drawn up on behalf of the Legal Affairs Committee, on the primacy of Community law and the protection of fundamental rights (Doc. 390/75). He pointed out

that in the German text the word 'Urteil' should be replaced by 'Beschluss'.

Mr Broeks spoke on behalf of the Socialist Group, Sir Derek Walker-Smith on behalf of the European Conservative Group and Mr Janter on behalf of the Christian-Democratic Group.

IN THE CHAIR: Mr L. MARTENS

Vice-President

Mrs Ewing, Mr Aigner, Mr Dalyell and Mr Ortoli, *President of the Commission*, spoke.

Parliament then considered the motion for a resolution; the preamble and paragraph 1 were adopted.

On paragraph 2, Mr Rivierez had tabled amendment No 1, which he now moved.

Mr Broeks spoke.

Amendment No 1 was adopted.

Paragraph 2, accordingly modified, was adopted.

Paragraphs 3 to 7 were adopted.

Parliament adopted the following resolution:

RESOLUTION

on the primacy of Community law and the protection of fundamental rights

The European Parliament,

- having regard to the Treaty establishing the European Economic Community, and in particular Articles 5, 164, 169, 173 and 189 thereof,
- having regard to the European Convention for the Protection of Human Rights of 4 November 1950 and the Additional Protocol of 20 March 1952, which have been ratified by all the European Community Member States,

- having regard to the decision handed down on 29 May 1974 by the Federal Constitutional Court of the Federal Republic of Germany ⁽¹⁾,
- recalling its resolutions of 22 October 1965 ⁽²⁾, 10 May 1967 ⁽³⁾ and 4 April 1973 ⁽⁴⁾,
- considering that the principles on which the fundamental rights guaranteed by the constitutional systems of the Member States rest, constitute a philosophical, political and legal basis common to the Member States of the European Communities,
- considering that — within the Community system — these principles should be safeguarded against any encroachment in the context of the law-making activities of the European Community institutions,

1. Solemnly reaffirms that, in matters governed by the Treaties:

- (a) observance of the primacy of Community law over the domestic law of Member States is a condition for the uniform application of Community law and thus constitutes a guarantee of the equality of the citizens of Community Member States before Community law;
- (b) the Court of Justice of the European Communities is — by the very terms of the Treaty — the sole arbiter of the legality of the Council's and the Commission's acts;

2. Notes that the Court of Justice of the European Communities has ruled that the fundamental rights are an integral part of the general principles of law, the observance of which is ensured by that Court, drawing inspiration both from the constitutional traditions common to the Member States and from international instruments, in particular the European Convention on Human Rights, for the protection of human rights with which the Member States have cooperated or to which they have acceded;

3. Emphasizes that, in its judgment of 14 May 1974 ⁽⁵⁾, the Court of Justice declared that it could not uphold measures incompatible with the fundamental rights recognized and protected by the Constitutions of the Member States;

4. Recalls that under the terms of Article 189 of the Treaty establishing the EEC a Regulation shall have general application and shall be binding in its entirety and directly applicable in all Member States.

5. Finds consequently that the decision of the Federal Constitutional Court of the Federal Republic of Germany, in recognizing the right of national courts to ascertain whether a duly enacted Community Regulation conforms to the national constitutional law on the protection of fundamental rights as defined in the basic law of that State and thus to set themselves up as arbiters of the applicability of a Community Regulation, is contrary to the principle of the independence of the Community legal order and constitutes an infringement of the Treaties;

6. Invites the Commission to keep a close watch over any developments in the situation created by this decision and to ensure by all available means full compliance with the principle of the uniform application of Community law, in accordance with Article 189 (2) of the EEC Treaty.

7. Instructs its President to forward this resolution to the Council and the Commission of the European Communities and, for information, to the Governments and Parliaments of the Member States.

⁽¹⁾ *Europarecht* (10), p. 150 *et seq.*

⁽²⁾ OJ No 187, 9. 11. 1965, p. 2923/65.

⁽³⁾ OJ No 103, 2. 6. 1967, p. 2054/67.

⁽⁴⁾ OJ No C 26, 30. 4. 1973, pp. 7 and 8.

⁽⁵⁾ *Nold v. Commission*, 4/73, *Recueil de Jurisprudence de la Cour* 1974/4, p. 508.

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RESOLUTION

on the report of the Commission of the European Communities on the protection of fundamental rights

The European Parliament,

- having regard to its resolutions of 4 April 1973 ⁽¹⁾, 10 July 1975 ⁽²⁾ and 15 June 1976 ⁽³⁾,
- having regard to the Commission's report on the protection of fundamental rights (COM(76) 37 fin.) ⁽⁴⁾,
- having regard to the report of the Legal Affairs Committee (Doc. 321/76),

as regards the Commission's report

1. Welcomes the submission by the Commission of the report requested by Parliament on how the former intends in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States;
2. Commends the quality of the Commission's contribution towards upholding due respect for fundamental rights in the Community order both in the exercise of its power to take decisions and submit proposals and in its role of guardian of the Treaties;

as regards recent trends in the protection of fundamental rights in the Community's legal order

3. Recalls that the Court of Justice, in a recent judgment ⁽⁵⁾, referred expressly to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and had stated ⁽⁶⁾ some months previously that it could not uphold measures which were incompatible with fundamental rights recognized and protected by the Constitutions of the Member States;
4. Appreciates the improvement in existing legal channels which widens access to the Community Court for individuals and contributes to a better protection of their rights;
5. Notes, therefore, in view of the development of Community jurisprudence concerned with the protection of fundamental rights, that the protection of these rights is now very clearly guaranteed by the Community Court and that the level of legal security thus achieved at present in this essential sphere is certainly — in the circumstances — at least as high as that which would be provided by the adoption of a charter of fundamental rights;

as regards the protection of fundamental rights within the context of the future European Union

6. Considers, with the Commission, that the idea of a charter of the fundamental rights of Community citizens retains its full validity in the context of the European Union, whatever form such Union should take;
7. Recalls that, in accordance with the traditions of all Member States, the establishment of such a catalogue should predominantly be carried out by parliamentary representatives of the peoples of the Member States of the European Union;

⁽¹⁾ OJ No C 26, 30. 4. 1973, p. 8.

⁽²⁾ OJ No C 179, 6. 8. 1975, p. 30, point 12.

⁽³⁾ OJ No C 159, 12. 7. 1976, p. 13.

⁽⁴⁾ Published in the Bulletin of the European Communities, Supplement No 5/76

⁽⁵⁾ ECR 28. 10. 1975 (Rutili v. Minister for the Interior, Case 36/75 (1975), p. 1219).

⁽⁶⁾ ECR 17. 5. 1974 (Nold, Case 4/73, (1974) p. 507).

as regards the proposal contained in the Commission's report

8. Shares the opinion expressed by the Commission ⁽¹⁾ that a solemn common declaration by the three political institutions of the Community, Parliament, Council and Commission, confirming the principle of respect for the fundamental rights in the Community, would serve as a reply to criticisms of the exclusively judicial character of the present system;

9. Accordingly urges its President, in conjunction with its Legal Affairs Committee, to take every possible step to encourage the Council and the Commission to adopt such a declaration;

10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission and, for information, to the Governments and Parliaments of the Member States.

⁽¹⁾ COM(76) 37 fin. paragraph 38.

Agenda for next sitting

The President announced the following agenda for the next sitting on Wednesday, 13 October 1976:

10.00 a.m. and 3.00 p.m.:

- Question Time;
- Oral question with debate to the Conference of Foreign Ministers on détente in Europe;
- Oral questions with debate to the Council and Commission on customs procedures;
- Joint debate on
 - oral questions to the Council and Commission on International Women's Year, and
 - the oral question to the Commission on women in the Europe of the Nine;
- Joint debate on
 - oral question to the Council on the extension of Member States' fishing zones,
 - oral question to the Commission on the same subject and
 - oral question to the Commission on agriculture.

The sitting was closed at 7.00 p.m.

H. R. NORD
Secretary-General

Georges SPÉNALE
President

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I

(Information)

EUROPEAN PARLIAMENT

COUNCIL

COMMISSION

JOINT DECLARATION

by the European Parliament, the Council and the Commission

THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION,

Whereas the Treaties establishing the European Communities are based on the principle of respect for the law;

Whereas, as the Court of Justice has recognized, that law comprises, over and above the rules embodied in the treaties and secondary Community legislation, the general principles of law and in particular the fundamental rights, principles and rights on which the constitutional law of the Member States is based;

Whereas, in particular, all the Member States are Contracting Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

HAVE ADOPTED THE FOLLOWING DECLARATION:

1. The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
2. In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights.

Done at Luxembourg on the fifth day of April in the year one thousand nine hundred and seventy-seven.

*For the
European Parliament*

E. COLOMBO

*For the
Council*

D. OWEN

*For the
Commission*

R. JENKINS

MINUTES OF PROCEEDINGS OF THE SITTING OF FRIDAY, 27 APRIL 1979

IN THE CHAIR: MR MEINTZ

Vice-President

The sitting was opened at 9 a.m.

Approval of minutes

The minutes of the previous day's sitting were approved.

Procedure without report

Since no member had asked leave to speak and no amendments had been tabled to them, the President declared approved under the procedure without report laid down in Rule 27A of the Rules of Procedure the following Commission proposals, which had been announced at the sitting of Monday, 23 April 1979:

- proposal from the Commission of the European Communities to the Council for a Directive supplementing the Annex to Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (Doc. 16/79);
- proposal from the Commission of the European Communities to the Council for a Regulation opening, allocating and providing for the

administration of Community tariff quotas for certain wines having a registered designation of origin, falling within subheading ex 22.05 C of the Common Customs Tariff and originating in Algeria (1979 to 1980) — (Doc. 41/79);

- proposal from the Commission of the European Communities to the Council for a Directive amending for the second time the Annex to Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (Doc. 49/79).

Accession by the Community to the European Convention on Human Rights (vote)

Parliament then voted on the motion for a resolution contained in the report by Mr Scelba (Doc. 80/79); the preamble and paragraph 1 were adopted.

On paragraph 2, Mr Scott-Hopkins had tabled amendment No 1 seeking to replace this paragraph by a new text.

Mr Santer, deputizing for the rapporteur, spoke.

Amendment No 1 was adopted.

Paragraphs 3 to 5 were adopted.

Parliament adopted the following resolution:

RESOLUTION

on the accession of the European Community to the European Convention on Human Rights

The European Parliament,

- having regard to its resolution of 13 April 1978 on the legal policy of the European Community (1),
- having regard to the progress achieved at the round table convened by it from 26 to 28 October 1978 in Florence,
- having regard to the need, in the run-up to the elections to the European Parliament by direct universal suffrage, to make clear to the Community citizen that his rights in the Community must be strengthened and in what way this is to be done,

(1) OJ No C 108, 8. 5. 1978, p. 42.

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- having regard to the resolution it adopted on 16 November 1977 in which it called for the Convention in question to be implemented under Community law ⁽¹⁾,
 - having regard to the motion for a resolution tabled by Mr Bayerl, Mr Calewaert, Mr Pisani, Mr Dondelinger, Mr Albertini, Mr Sieglerschmidt, Mr Holst and Lord Ardwick on behalf of the Socialist Group and Mr Bangemann on behalf of the Liberal and Democratic Group on the accession of the European Community to the European Convention on Human Rights (Doc. 509/78),
 - having regard to the report of the Political Affairs Committee (Doc. 80/79), and the opinion of the Legal Affairs Committee,
1. Is in favour of the accession of the European Community to the European Convention on Human Rights;
 2. Envisages the establishment of a Committee of Experts with a view to drafting a European Charter of Civil Rights;
 3. Calls on the Council and Commission, in close cooperation with the European Parliament:
 - (a) to make immediate preparations for the accession of the European Community to the European Convention on Human Rights,
 - (b) to enshrine the citizen's right of petition in the Community Treaties, and
 - (c) to guarantee in the Treaties the individual's right of direct appeal to the Court of Justice of the European Community;
 4. Instructs its appropriate committees to submit a report on this matter as soon as possible;
 5. Requests its President to forward this resolution to the Council and Commission.

⁽¹⁾ OJ No C 299, 12. 12. 1977, p. 26.

Expulsion from Malta of Mr von Hassel (vote)

Parliament then voted on the motion for a resolution contained in the Johnston report (Doc. 584/78); the first indent of the preamble was adopted.

On the second indent of the preamble, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 1 seeking to modify this indent.

Amendment No 1 was adopted.

Parliament adopted the second indent thus amended and then the third indent of the preamble.

On paragraph 1, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 2 seeking to replace this paragraph by four new paragraphs.

Amendment No 2 was adopted.

On paragraph 2, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 3 seeking to amend this paragraph.

Amendment No 3 was adopted.

Parliament adopted paragraph 2 thus modified and then paragraph 3.

Since the result of the show of hands was doubtful, Parliament took a fresh vote: by sitting and standing and rejected the motion for a resolution.

Decision introducing a Community system of information on accidents (vote)

Parliament adopted the resolution contained in the Cassanmagnago Ceretti report (Doc. 40/79):

Thursday, 18 June 1981

RESOLUTION

on the abolition of the death penalty in the European Community

The European Parliament,

- having regard to the motion for a resolution (Doc. 1-20/80),
- having regard to petition Nos 16/80 and 41/80,
- whereas the European Community is not simply a 'common market', but also a common civilization,
- whereas any concept of human rights consonant with the principles of European civilization requires that the right to live be respected and guaranteed for all, therefore the Law must be both strong to defend potential victims and consistent by never ordering that human life be taken,
- aware that the responsibilities deriving from universal suffrage give the European Parliament a political and moral duty to contribute to the formation, guidance and expression of the opinion of the peoples of Europe faithful to the principles of European civilization,
- whereas the application of the death penalty makes it impossible to correct judicial errors,
- whereas the death penalty may be replaced by long prison sentences that are just as powerful a deterrent (in cases where the assailant can be deterred) and whereas, as the statistics in countries which have abolished capital punishment have amply demonstrated, the incidence of those crimes for which the death penalty was formerly imposed has not varied significantly from the incidence of crime generally,
- whereas efforts must be directed towards preventive care and curative treatment to reintegrate the criminal into society wherever possible,
- whereas an implementing agreement to the European Convention on the suppression of terrorism was signed in Dublin in December 1979 and work has begun at the request of the Ministers of Justice of the Nine meeting in Dublin on the preparation of a draft Convention for cooperation in matters of criminal law between the Member States of the European Community,
- whereas cooperation in matters of criminal law should not consist solely of repressive measures, but must also help to strengthen existing humanitarian measures,
- voicing the hope that this initiative will provide inspiration for all countries in the world which still enforce the death penalty,
- having regard to Article 230 of the EEC Treaty ('The Community shall establish all appropriate forms of cooperation with the Council of Europe'),
- having regard to Resolution 727 (1980) and Recommendation 891 (1980), in which on 22 April 1980, the Parliamentary Assembly of the Council of Europe declared itself in favour of the abolition of the death penalty for crimes committed in times of peace and asked that Article 2 of the European Convention on Human Rights be amended accordingly,

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- having regard to the joint declaration by the European Parliament, the Council and the Commission on respect for fundamental rights ⁽¹⁾,
 - drawing attention to its resolution of 21 November 1980 on the abolition of the death penalty in the Community ⁽²⁾, in which it called upon the Member States to abandon capital punishment,
 - having regard to the report of the Legal Affairs Committee (Doc. 1-65/81),
1. Expresses its strong desire that the death penalty should be abolished throughout the Community;
 2. Invites the Member States to amend their legal provisions, where necessary, and to take active steps within the Committee of Ministers of the Council of Europe to ensure that the European Convention on human rights is amended accordingly;
 3. Hopes, with that end in view, that a wide-ranging debate on the abolition of the death penalty will take place within the competent national bodies and in the necessary spirit of calm consideration;
 4. Instructs its President to forward this resolution to the parliaments and governments of the Member States and to the Council and Commission.

⁽¹⁾ OJ No C 103, 27. 4. 1977, p. 1.

⁽²⁾ OJ No C 327, 18. 12. 1980, p. 95.

10. Budgetary control (vote)

The next item was the vote on the motions for resolutions contained in reports Docs. 1-136/81, 1-59/81, 1-66/81, 1-695/80 and 1-174/81.

Proposed decisions and motion for a resolution contained in the report by Mr Irmer (Doc. 1-136/81/A).

Proposed Decision I

- amendment No 10 by Mr Irmer on behalf of the Committee on Budgetary Control.

Parliament agreed that this compromise amendment should be put to the vote, pursuant to Rule 74 (4).

Parliament adopted this amendment.

Parliament adopted the following Decision:

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No C 304/253

Friday, 29 October 1982

Paragraph 2:

— amendment No 2 by Mr Forth: rejected.

Paragraph 2 was adopted.

Paragraph 3:

— amendment No 3 by Mr Forth: rejected.

Paragraph 3 was adopted.

Paragraph 4:

— amendment No 4 by Mr Forth: rejected.

Paragraph 4 was adopted.

Paragraph 5:

— amendment No 5 by Mr Forth:

The President declared this amendment rejected.

Mr Forth requested an electronic check.

The result was confirmed.

Paragraph 5 was adopted.

Paragraphs 6 and 7: adopted.

After paragraph 7:

— amendment No 1 by Mr Sieglerschmidt, on behalf of the Socialist Group:

Mr Sieglerschmidt asked that the words: 'and are already covered by legislation in most Member States of the Council of Europe' be deleted from the amendment.

Parliament therefore took a split vote on the amendment.

First part: adopted.

Second part: rejected.

Paragraphs 8 and 9: adopted.

Explanations of vote :

The following spoke: Mr Piskovitis, Mr Ferri, on behalf of the Socialist Group, Mrs Pery, Mr Haagerup, the latter on a point of procedure.

Parliament adopted the following resolution:

RESOLUTION

embodying the opinion of the European Parliament on the memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms

The European Parliament,

- having been consulted by the Commission (Doc. 160/79),
- having regard to its resolution of 4 April 1973 on the protection of the fundamental rights of Member States' citizens when Community law is drafted ⁽¹⁾,
- having regard to its resolution of 12 October 1976 on the protection of fundamental rights ⁽²⁾,
- having regard to its resolution of 27 April 1979 on the accession of the European Community to the European Convention on Human Rights ⁽³⁾,
- having regard to the Declaration on the European identity made by the Heads of State or of Government of the Community Member States in Copenhagen in December 1973,
- having regard to the Joint Declaration by Parliament, the Council and the Commission of 5 April 1977 on respect for fundamental rights ⁽⁴⁾,
- having regard to the Declaration on democracy made by the European Council in Copenhagen in April 1978,
- having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 1-547/82),

1. Reaffirms its determination to strengthen and increase the protection of the rights of the individual in the formulation and development of Community law;

2. Stresses that the accession of the Community to the European Convention on Human Rights will demonstrate to the outside world and to public opinion in the Community

⁽¹⁾ OJ No C 26, 30. 4. 1973, p. 7; Jozeau-Marigné report Doc. 197/72.

⁽²⁾ OJ No C 259, 4. 11. 1976, p. 11; Jozeau-Marigné report Doc. 321/76.

⁽³⁾ OJ No C 127, 21. 5. 1979, p. 69; Scelby report Doc. 80/79.

⁽⁴⁾ OJ No C 103, 27. 4. 1977.

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Member States the determination of the Community institutions increasingly to reinforce the role of the Community as a Community founded on the rule of law;

3. Expresses the conviction that accession will consolidate the principles of parliamentary democracy and will strengthen the protection of fundamental rights in the Community;

4. Considers it essential, in connection with the accession of the Community to the European Convention on Human Rights, that all Member States should allow individual actions to be brought before the Commission of Human Rights;

5. Considers Article 235 of the EEC Treaty to be the appropriate legal basis for accession;

6. Realizes that accession will involve considerable constitutional, political, legal and technical difficulties, but expresses its confidence that the Commission will strive to overcome these difficulties in practice;

7. Requests the Commission to submit at the earliest opportunity to the Council a formal proposal on the accession of the Community to the European Convention on Human Rights, after duly consulting the Court of Justice of the Community and in the light of developments in the situation, and to give a formal undertaking to consult the European Parliament again before opening negotiations on accession;

8. Requests the bodies of the Council of Europe, on the occasion of the accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, to include specifically in the area covered by protection under the Convention the legally enforceable rights which are listed in parts I and II of the social charter;

9. Further requests the Commission to ask to take part in the current discussions within the Council of Europe on the incorporation into the Convention of other fundamental social, economic and cultural rights;

10. Instructs its President to forward this resolution to the Council and Commission of the European Communities, the Council of Europe and, for information, to the Court of Justice of the Community and the Parliaments of the Member States.

— *Motion for a resolution (Doc. 1-483/82/rev.):*

Preamble and recitals A and B: adopted.

Recital C:

— amendment No 1 by Mrs Viehoff: rejected by electronic vote after the rapporteur had spoken.

Recital C was adopted.

Recital D and paragraphs 1 and 2: adopted.

Paragraph 3:

— amendment No 2 by Mrs Viehoff: rejected by electronic vote after Mrs Viehoff and the rapporteur had spoken,

— amendment No 3 by Mr Bord: adopted.

Paragraph 3 was adopted as amended.

Paragraph 4: adopted.

Explanations of vote:

The following spoke: Mr Simmonds, Mr Prag, Mrs Duport, Mr Plaskovitis, on behalf of the Greek members of the Socialist Group, and Mr Eisma.

Mr Israël, rapporteur, spoke.

The EPP Group had requested a roll-call vote on the motion for a resolution as a whole:

Result of vote:

Members voting: 91 ⁽¹⁾.

For: 79.

Against: 5.

Abstentions: 7.

Parliament thus adopted the following resolution:

⁽¹⁾ See Annex.

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4. Supports, in this context, the last OECD annual report on Japan which concludes that 'Japan must now play a leading role in promoting an open and multilateral trading system';
5. Notes the measures which have already been taken by the Japanese Government to reduce its trade surplus by increasing the value of the yen, by reducing certain tariffs, by stimulating domestic demand and by considering ways to reform the structure of the Japanese economy to make it less impervious to imports;
6. Welcomes these measures but fears that they will be both insufficient and too slow in their implementation to stem the rising tide of protectionist pressure in both the United States and Western Europe;
7. Supports the Commission's request that the Japanese Government establish targets for increasing their imports of Community goods and regrets that the Japanese Government was unable to accept such targets, in order to reduce substantially its present trade surplus;
8. Recognizes, nevertheless, that Japan, because of its heavy dependence on imported raw materials, will continue to require a significant trade surplus with its major industrialized trading partners;
9. Notes, moreover, that the continuing excessive value of the US dollar, together with US underinvestment in capital equipment and civilian industrial research and development, is a root cause of the staggering trade imbalance between the United States and Japan;
10. Recognizes that Community companies have, in the past, paid insufficient attention to the need to penetrate Japanese markets, and calls on the Commission, the governments of the Member States and Community industry to redouble their efforts in this direction;
11. Requests the Commission to examine the possibility either of establishing a Community industrial promotion centre to facilitate investments by Community undertakings in Japan, or of making more effective use of facilities already available, such as the World Import Mart in Tokyo;
12. Calls on the Commission and the Japanese Government to continue their present dialogue in full awareness of the gravity and urgency of the present situation, and to strive for speedy and mutually beneficial agreement;
13. Looks forward to a full report on EEC trade with Japan being presented by its Committee on External Economic Relations, as soon as possible;
14. Instructs its President to forward this resolution to the Commission, the Council, the governments of the Member States and to the Government of Japan.

9. Abolition of the death penalty

— Doc. A2-167/85

RESOLUTION

on the abolition of the death penalty and the accession to the Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

The European Parliament,

- having regard to the motion for a resolution by Mr de Vries (Doc. B2-220/85),
- having regard to Article 230 of the EEC Treaty (1),
- having regard to the report of the Committee on Legal Affairs and Citizens' Rights (Doc. A2-167/85),

(1) 'The Community shall establish all appropriate forms of cooperation with the Council of Europe.'

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- A. recalling its resolution of 18 June 1981 on the abolition of the death penalty in the European Community in which it expressed its 'strong desire that the death penalty should be abolished throughout the Community' and invited the Member States 'to amend their legal provisions, where necessary, and to take active steps within the Committee of Ministers of the Council of Europe to ensure that the European Convention on Human Rights is amended accordingly' ⁽¹⁾,
 - B. whereas the death penalty is a cruel and inhuman form of punishment and a violation of the right to life, even where strict legal procedures are applied,
 - C. welcoming the entry into force on 1 March 1985 of the Sixth Protocol to the European Convention on Human Rights on the abolition of the death penalty for offences committed in peacetime,
 - D. regretting, however, that two Member States, Ireland and the United Kingdom, have not yet, as at 25 October 1985, acceded to the Protocol in question by appending their signature thereto,
 - E. regretting, moreover, that the procedures for the ratification, acceptance or approval of the Sixth Protocol by the signatory States — members of the Council of Europe, some of whom are also members of the European Community — are being carried out very slowly, which might be considered as an expression of some hesitation on the part of those States over being bound by an international undertaking to abolish the death penalty,
1. Requests Ireland and the United Kingdom, the only Member States of the European Community which have not yet signed the Sixth Protocol to the European Convention on Human Rights, to do so as soon as possible;
 2. Requests all the other Member States of the Council of Europe who have not yet done so to accede to the Sixth Protocol to the European Convention on Human Rights;
 3. Expresses its misgivings over the delay which has been noted with regard to the procedures for the ratification, acceptance and approval of the Sixth Protocol by the signatory States, several of whom are Member States of the European Community, namely Belgium, Germany, Greece, Italy, the Netherlands and Portugal;
 4. Notes with satisfaction that some of the signatory States to the Sixth Protocol are also States whose criminal legislation continues to provide for the death penalty for an admittedly limited number of categories of crime; considers that the fact that the governments of those States have acceded to the Sixth Protocol by appending their signature thereto is an indication of their wish to see the death penalty provided for in their legislation repealed as soon as possible;
 5. Instructs its President to forward this resolution to the Parliaments and Governments of the Member States, to the Council and the Commission and to the Secretary-General of the Council of Europe.

⁽¹⁾ OJ No C 172, 13. 7. 1981, p. 73.

10. Regulations on the markets in cereals and rice

— Commission proposals COM(85) 344 final: approved

Wednesday, 12 April 1989

PART II

Texts adopted by the European Parliament

1. Declaration of fundamental rights

— Doc. A2-3/89

RESOLUTION

adopting the Declaration of fundamental rights and freedoms

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Luster and Mr Pfennig to supplement the draft Treaty establishing the European Union (Doc. 2-363/84),
 - having regard to the Treaties establishing the European Communities,
 - having regard to its draft Treaty establishing the European Union adopted on 14 February 1984, in particular Articles 4 (3) and 7 (1),
 - having regard to its resolution of 29 October 1982 on the Memorandum from the Commission on the accession of the European Community to the Convention for the Protection of Human Rights and Fundamental Freedoms (2),
 - having regard to the Joint Declaration on Fundamental Rights (3),
 - having regard to the preamble to the Single Act,
 - having regard to the shared general principles of the law of the Member States,
 - having regard to the case law of the Court of Justice of the European Communities,
 - 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,
 - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols,
 - having regard to the European Social Charter and its Protocol,
 - having regard to the report of the Committee on Institutional Affairs and the opinion of the Committee on Social Affairs and Employment (Doc. A2-3/89),
- A. whereas, as pointed out in the preamble to the Single Act, it is essential to promote democracy on the basis of fundamental rights,
- B. whereas respect for fundamental rights is indispensable for the legitimacy of the Community,
- C. whereas it is up to the European Parliament to contribute to the development of a model of society which is based on respect for fundamental rights and freedoms and tolerance,

(1) OJ No C 77, 19.3.1984, p. 33.

(2) OJ No C 304, 22.11.1982, p. 253.

(3) OJ No C 103, 27.4.1977, p. 1.

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- D. whereas the identity of the Community makes it essential to give expression to the shared values of the citizens of Europe,
 - E. whereas there can be no European citizenship unless every citizen enjoys equal protection of his rights and freedoms in the field of application of Community law ⁽¹⁾,
 - F. whereas it is determined to sustain its efforts to promote the achievement of European Union,
 - G. whereas it is determined to achieve a basic Community instrument with a binding legal character guaranteeing fundamental rights,
 - H. whereas in the meantime, pending ratification of such an instrument, Parliament restates the legal principles already accepted by the Community,
 - I. whereas completion of the single market scheduled for 1993 lends greater urgency to the need to adopt a Declaration of rights and freedoms guaranteed in and by Community law,
 - J. whereas it is the responsibility of the European Parliament directly elected by the citizens of Europe to draw up such a Declaration,
- 1. Hereby adopts the following Declaration and invites the other Community institutions and the Member States to associate themselves normally with this Declaration;
 - 2. Instructs its President to forward this resolution and the Declaration to the other Community institutions and the Governments of the Member States.

⁽¹⁾ See Article 3 of the draft Treaty establishing the European Union.

DECLARATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

PREAMBLE

IN THE NAME OF THE PEOPLES OF EUROPE

Whereas with a view to continuing and reviving the democratic unification of Europe, having regard to the creation of an internal area without frontiers and mindful of the particular responsibility of the European Parliament with regard to the well-being of men and women, it is essential that Europe reaffirm the existence of a common legal tradition based on respect for human dignity and fundamental rights,

Whereas measures incompatible with fundamental rights are inadmissible and recalling that these rights derive from the Treaties establishing the European Communities, the constitutional traditions common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the institutional instruments in force and have been developed in the case law of the Court of Justice of the European Communities,

The European Parliament, lending expression to these rights, hereby adopts the following Declaration, calls on all citizens actively to uphold it and present it to the Parliament which is to be elected in June 1989.

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GENERAL PROVISIONS

Article 1

(Dignity)

Human dignity shall be inviolable.

Article 2

(Right to life)

Everyone shall have the right to life, liberty and security of person.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 3

(Equality before the law)

1. In the field of application of Community law, everyone shall be equal before the law.
2. Any discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status shall be prohibited.
3. Any discrimination between European citizens on the grounds of nationality shall be prohibited.
4. Equality must be secured between men and women before the law, particularly in the areas of work, education, the family, social welfare and training.

Article 4

(Freedom of thought)

Everyone shall have the right to freedom of thought, conscience and religion.

Article 5

(Freedom of opinion and information)

1. Everyone have the right to freedom of expression. This right shall include freedom of opinion and the freedom to receive and impart information and ideas, particularly philosophical, political and religious.
2. Art, science and research shall be free of constraint. Academic freedom shall be respected.

Article 6

(Privacy)

1. Everyone shall have the right to respect and protection for their identity.
2. Respect for privacy and family life, reputation, the home and private correspondence shall be guaranteed.

Article 7

(Protection of family)

The family shall enjoy legal, economic and social protection.

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Article 8*(Freedom of movement)*

1. Community citizens shall have the right to move freely and choose their residence within Community territory. They may pursue the occupation of their choice within that territory.
2. Community citizens shall be free to leave and return to Community territory.
3. The above rights shall not be subject to any restrictions except those that are in conformity with the Treaties establishing the European Communities.

Article 9*(Right of ownership)*

The right of ownership shall be guaranteed. No one shall be deprived of their possessions except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to fair compensation.

Article 10*(Freedom of assembly)*

Everyone shall have the right to take part in peaceful meetings and demonstrations.

Article 11*(Freedom of association)*

1. Everyone shall have the right to freedom of association including the right to form and join political parties and trade unions.
2. No one shall in their private life be required to disclose their membership of any association which is not illegal.

Article 12*(Freedom to choose an occupation)*

1. Everyone shall have the right to choose freely an occupation and a place of work and to pursue freely that occupation.
2. Everyone shall have the right to appropriate vocational training in accordance with their abilities and fitting them for work.
3. No one shall be arbitrarily deprived of their work and no one shall be forced to take up specific work.

Article 13*(Working conditions)*

1. Everyone shall have the right to just working conditions.
2. The necessary measures shall be taken with a view to guaranteeing health and safety in the workplace and a level of remuneration which makes it possible to lead a decent life.

Article 14*(Collective social rights)*

1. The right of negotiation between employers and employees shall be guaranteed.
2. The right to take collective action, including the right to strike, shall be guaranteed subject to obligations that might arise from existing laws and collective agreements.

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3. Workers shall have the right to be informed regularly of the economic and financial situation of their undertaking and to be consulted on decisions likely to affect their interests.

Article 15

(Social welfare)

1. Everyone shall have the right to benefit from all measures enabling them to enjoy the best possible state of health.
2. Workers, self-employed persons and their dependants shall have the right to social security or an equivalent system.
3. Anyone lacking sufficient resources shall have the right to social and medical assistance.
4. Those who, through no fault of their own, are unable to house themselves adequately, shall have the right to assistance in this respect from the appropriate public authorities.

Article 16

(Right to education)

Everyone shall have the right to education and vocational training appropriate to their abilities.

There shall be freedom in education.

Parents shall have the right to make provision for such education in accordance with their religious and philosophical convictions.

Article 17

(Principle of democracy)

1. All public authority emanates from the people and must be exercised in accordance with the principles of the rule of law.
2. Every public authority must be directly elected or answerable to a directly elected parliament.
3. European citizens shall have the right to take part in the election of Members of the European Parliament by free, direct and secret universal suffrage.
4. European citizens shall have an equal right to vote and stand for election.
5. The above rights shall not be subject to restrictions except where such restrictions are in conformity with the Treaties establishing the European Communities.

Article 18

(Right of access to information)

Everyone shall be guaranteed the right of access and the right to corrections to administrative documents and data concerning them.

Article 19

(Access to the courts)

1. Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.
2. Everyone shall be entitled to have their case heard fairly, publicly and within a reasonable time limit by an independent and impartial court or tribunal established by law.
3. Access to justice shall be effective and shall involve the provision of legal aid to those who lack sufficient resources otherwise to afford legal representation.

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Article 20*(Non bis in idem)*

No one shall be tried or convicted for offences for which they have already been acquitted or convicted.

Article 21*(Non-retroactivity)*

No liability shall be incurred for any act or omission to which no liability applied under the law at the time when it was committed.

Article 22*(Death penalty)*

The death penalty shall be abolished.

Article 23*(Right of petition)*

Everyone shall have the right to address written requests or complaints to the European Parliament.

The detailed provisions governing the exercise of this right shall be laid down by the European Parliament.

Article 24*(Environment and consumer protection)*

1. The following shall form an integral part of Community policy:
 - the preservation, protection and improvement of the quality of the environment,
 - the protection of consumers and users against the risks of damage to their health and safety and against unfair commercial transactions.
2. The Community institutions shall be required to adopt all the measures necessary for the attainment of these objectives.

FINAL PROVISIONS**Article 25***(Field of application)*

1. This Declaration shall afford protection for every citizen in the field of application of Community law.
2. Where certain rights are set aside for Community citizens, it may be decided to extend all or part of the benefit of these rights to other persons.
3. A Community citizen within the meaning of this Declaration shall be any person possessing the nationality of one of the Member States.

Article 26*(Limits)*

The rights and freedoms set out in this Declaration may be restricted within reasonable limits necessary in a democratic society only by a law which must at all events respect the substance of such rights and freedoms.

Article 27*(Degree of protection)*

No provision in this Declaration shall be interpreted as restricting the protection afforded by Community law, the law of the Member States, international law and international conventions and accord on fundamental rights and freedoms or as standing in the way of its development.

Article 28*(Abuse of rights)*

No provision in this Declaration shall be interpreted as implying any right to engage in any activity or perform any act aimed at restricting or destroying the rights and freedoms set out therein.

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27. 12. 89

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PART II

Texts adopted by the European Parliament

1. Community Charter of Fundamental Social Rights — Social and economic cohesion**(a) Doc. A3-69/89****RESOLUTION****on the Community Charter of Fundamental Social Rights***The European Parliament,*

- having regard to Rule 121 of its Rules of Procedure,
 - having regard to the report of the Commission of the European Communities (COM(89) 471 final),
 - having regard to the social provisions of the Treaties of Rome as amended by the Single Act and the Accession Treaties of the various Member States,
 - having regard to the conclusions of the Hanover European Council of 27 and 28 June 1988, the Rhodes European Council of 2 and 3 December 1988 and the Madrid European Council of 26 and 27 June 1989,
 - having regard to the opinion of the Economic and Social Committee of 22 February 1989 on fundamental Community social rights,
 - having regard to its resolutions of 15 March 1989 on the social dimension of the internal market ⁽¹⁾ and 14 September 1989 on the implementation of economic and social cohesion ⁽²⁾,
 - convinced that social rights form part of the general body of fundamental human rights and that their definition in a formal declaration at Community level underlines the significance which attaches to them,
 - having regard to its Declaration on Fundamental Rights and Freedoms adopted on 12 April 1989 ⁽³⁾, and in particular Articles 3, 8, 12, 13, 14 and 15 thereof,
 - having regard to the report of the Committee on Social Affairs, Employment and the Working Environment and the opinions of the Committee on Institutional Affairs and the Committee on Women's Rights (Doc. A3-69/89),
- A. whereas the strengthening of economic and social cohesion in the Community, provided for in Article 130a, is a prerequisite for the success of the internal market and implies that the creation of a genuine social Europe must keep up with progress made in the economic, technological and financial aspects of European integration,
- B. having regard to the urgent need to establish this area, in the light of the deadline of 31 December 1992,
- C. convinced that the adoption by the Council of the Charter of Fundamental Social Rights constitutes the first step towards strengthening the social dimension and should be seen as a call for an action programme to put into effect the rights defined in this Charter,

⁽¹⁾ OJ No C 96, 17.4.1989, p. 61.⁽²⁾ See minutes of that day's sitting, Part II, Item 7.⁽³⁾ OJ No C 120, 16.5.1989, p. 52.

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- D. whereas this social dimension depends on the Community's adopting and implementing all the fundamental social rights enshrined in Community law, creating new scope for actions before the Court of Justice, which cannot be called into question by pressure of competition or a desire to improve competitive position,
- E. whereas these fundamental rights will form one basis for the future negotiations between the two sides of industry provided for in Article 118b, their participation being essential to the success of the internal market,
- F. whereas a dynamic policy for growth and the creation of stable jobs which takes account of environmental protection needs must also be pursued before there can be economic and social cohesion,
- G. whereas, as a Community institution expressing the will of European citizens, it has the firm obligation to defend and promote their legitimate aspirations concerning the improvement of living and working conditions,
1. Vigorously deplores the fact that the procedure followed by the Commission and Council in adopting a text of such vital importance to the European Community did not permit the European Parliament to be associated with its adoption;
2. Considers that the draft Social Charter adopted by the Commission on 27 September 1989 constitutes a first step towards the establishment of fundamental social rights in the European Community but that it represents a minimum threshold below which the European Council cannot go; deplores the watering down of many points in the amended text of the Charter accepted by the Council of Social Affairs' Ministers on 30 October 1989 for forwarding to the European Council in Strasbourg; calls on the Strasbourg Council to revise and improve the text to preserve its credibility in the face of the expectations of Community citizens; regrets that the Charter has not been embodied in Community law by means of binding instruments, as called for by the European Parliament in its abovementioned resolutions of 15 March and 14 September 1989;
3. Calls on the Council to conduct a conciliation procedure with Parliament on the Charter before the Strasbourg Summit;
4. Stresses that this draft Charter is at the same time still inadequate and imprecise in many respects and draws the Council's attention to disagreement on the following points:
- the fact that workers from a third country will not receive the same treatment as workers from a Member State,
 - the restriction of numerous rights to those in 'non-temporary' employment, which places a dangerous question mark against the fate of temporary workers employed in a Member State other than their own and which may lead to social dumping,
 - the repeated references to 'national legislation' and 'national practices' (the right to strike, child labour, etc.) which must on no account be allowed to weaken the fundamental nature of the rights set out in the Charter, nor be interpreted by certain Member States to the detriment of workers;
5. States, in addition, that:
- the adoption of the Charter must commit the Council, the Commission and the Parliament to adopting practical implementing provisions in the near future and commit the Member States to carrying them out,
 - the full value of the Charter will be brought out only through the implementation, in accordance with a strict timetable, of binding measures, in particular those provided for in the action programme submitted by the Commission and on which Parliament will have delivered its opinion, and that these measures must become an integral part of the Community's legal system and be accepted as a basis for legal action,
 - the action programme must take account of its abovementioned resolutions of 15 March and 14 September 1989 and must, without fail, be submitted to Parliament before it is implemented;

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6. Stresses, with a view to the completion of the internal market and to protecting the interests of all Community nationals, that it considers that priority should be given in the Charter and the action programme to:

- the creation of jobs, in order to make the right to paid work feasible,
- the right to public social protection,
- the right to a minimum salary which ensures a living standard compatible with those of the Member States in which the worker is employed,
- the right to continue to receive remuneration in the event of sickness,
- the right to a minimum income related to the average cost of living of the Member State concerned together with measures to facilitate reintegration into the world of work,
- the right of all workers to equal protection regardless of their nationality, race, religion, age, sex, sexual preference or legal status,
- the right to guaranteed social protection for atypical working situations, in particular:
 - work at home;
 - part-time work;
 - supply work;
 - temporary work;
- the effective establishment of the right to freedom of movement and professional mobility for workers and self-employed persons, which implies, inter alia, the universal recognition of diplomas, qualifications and training; in this connection, any discrimination in the host country in respect of salaries, working conditions, social protection and taxation must be banned;
- the gradual upward harmonization, to the highest level, of social protection systems and the immediate provision of guarantees as to the continuity and transferability of these rights,
- the right of workers and their representatives to information, prior consultation and participation, in particular with regard to business strategies and programmes in the case of technological innovations, reorganization of work, transfers and changes in undertakings, including take-over bids and share-exchange offers, or mass redundancies,
- equal treatment for men and women and an end to discrimination against older workers,
- the right of the family to appropriate compensatory payments in accordance with the number of children,
- the right to continue vocational training and paid education leave for men and women,
- the right of association and collective action, including the right to strike, and to collective bargaining, as well as the right of workers' representatives to legal protection in the exercise of their duties, and the right to form industrial organizations and to join or not join them (positive and negative right of free association),
- the right of workers to a share of the profits resulting from their undertakings' activities,
- the right of workers to a share of productive wealth,
- the right to health at the workplace and to a healthy working environment,
- the drawing up of rules for the reorganization and reduction of working hours, in agreement with the social partners, to enable people to divide up their time more satisfactorily between their working lives and their private lives, thereby guaranteeing both men and women a full working, family and social life,
- the right of workers to protection against dismissal,
- the right to maternity protection with remuneration continuing to be paid pursuant to ILO rules;

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7. Opposes any restrictive interpretation of the provisions of the EEC Treaty on social matters, since any such interpretation would be contrary to Article 2 of the Treaty; calls on the Commission, so as to ensure the rapid adoption of the measures set out in the action programme, to make full use of the legal potential of the Single Act, and in particular Article 118a ⁽¹⁾, in accordance with the statement made by Mr Jacques Delors, President of the Commission, in Parliament on 13 September 1989; Article 118a should constitute the natural legal basis for areas as important as:

- the adjustment and reduction of working hours, in particular as regards maximum working hours, length of holidays, night work and shift work, overtime, etc.,
- the organization of working hours, and measures enabling workers to reconcile family and professional life;

8. Calls, in addition, for the extension of the procedures provided for in the Single Act (qualified majority voting in the Council and the cooperation procedure with Parliament) to include all those areas connected with the establishment of the social dimension of the internal market to be placed on the agenda for the next intergovernmental conference;

9. Calls on the Commission to submit to it, annually, the report provided for in the draft Charter, this to include an assessment of the implementation of the complementary action programme;

10. In view of its concern regarding the scant headway achieved in the dialogue between management and labour stipulated in Article 118b, calls on the Commission to play a more active role in encouraging social dialogue and stresses that the necessary legislative advances must be accompanied by:

- the establishment of an indispensable Community legal framework so that social dialogue – a vital tool for the implementation of the Charter – may lead to Community framework agreements and the adoption of a directive on economic democracy ⁽²⁾,
- an active, adequately funded employment policy, and specific measures in all the Member States, so as to provide the best possible practical guarantees of the universal right to employment, with special attention being given to less-favoured regions and the long-term unemployed;

11. Recalls that the Social Charter of the Council of Europe, with its additional protocol, constitutes a basis for Community law, and that there is a pressing need for all the Member States to complete the ratification procedure and ensure the implementation of the Charter, the same applying to the ILO Conventions;

12. Calls on the Strasbourg European Council to give a firm mandate to the Commission and the Council of Social Affairs' Ministers to adopt, on the basis of the action programme and with the legislative participation of Parliament, the related measures in accordance with a precise timetable and, in any event, before 31 December 1992;

13. Considers that the existence of a Charter of Fundamental Social Rights and an action programme does not relieve the Council, Commission and European Parliament of their duty to pay proper attention to the social aspects of directives, regulations, action programmes and resolutions on matters relating to company law and economic, financial and monetary affairs;

14. Urges the Commission, as part of the planned action programme on fundamental social rights, to take account of the specific situation of women on the labour market and the aim of equal treatment for men and women, to implement without delay measures in the texts already submitted and to speed up the execution of the directives approved by the European Parliament, to draw up proposals for directives in the fields listed in the opinion of the Committee on Women's Rights ⁽³⁾, and to seek solutions to the equality directives which are at present blocked by the Council;

⁽¹⁾ See EP resolution of 15 December 1988 - OJ No C 12, 16.1.1989, p. 181.

⁽²⁾ See abovementioned EP resolution of 15 March 1989.

⁽³⁾ See Doc. A3-69/89.

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15. Reserves the right to make its agreement to internal market measures in the business, financial and economic fields, which it is considering or is yet to consider, conditional on the content, legally binding nature and pace of introduction of measures contained in the action programme;

16. Instructs its President to forward this resolution to the Strasbourg European Council, the Commission, the Council, the Economic and Social Committee, the European Trade Union Confederation, UNICE and the parliaments of the Member States.

(b) Doc. B3-510/89

RESOLUTION

on economic and social cohesion

The European Parliament,

- having regard to its eight resolutions of 14 September 1989⁽¹⁾ on economic and social cohesion (Docs. B 3-44/89, B 3-80/89, B 3-90/89, B 3-92/89, B 3-157/89, B 3-158/89, B 3-159/89, B 3-160/89) and the resolution on the application of Council directives, resolutions and recommendations concerning women⁽²⁾,
- having regard to its resolution of 16 September 1988 on equal treatment for men and women in statutory and occupational social security schemes⁽³⁾,
- having regard to its resolution of 15 March 1989 on the Commission's programme of work⁽⁴⁾,
- A. whereas, with a view to the completion of the internal market in 1993, the position of women on the labour market and in society in general must be consolidated,
- B. whereas the fostering of the well-being of Community citizens presupposes the implementation of coordinated economic and social and family policies,
- C. regretting that it was informed only at a late stage as to the content of and procedure for the declaration of a Social Charter, which to a large extent prevented the directly elected representatives of the people of Europe from expressing their views on the social expectations,
- 1. Takes the view that the adoption of the Community Charter of fundamental social rights will take on its true significance for European workers only if the planned action programme is implemented swiftly and systematically by means of practical legislative measures, special attention being paid to the position of women in society and the economy;
- 2. Takes the view that the Social Charter is the first step towards the achievement of basic social rights in the European Community; considers, however, that this draft Charter represents a minimum level below which the Council may not go;
- 3. Stresses the need to use the Single European Act, especially Article 118a of the EEC Treaty, in breaking the deadlock, which has particularly affected the directives on women's rights, caused by the unanimity rule which is binding on the Council and laid down in the Articles of the EEC Treaty that have usually formed the legal bases for the directives on women's rights hitherto (Articles 100 and 235);

⁽¹⁾ See Minutes of that day's sitting - Part II, Item 7(a) to (h).

⁽²⁾ OJ No C 262, 10.10.1988, p. 180.

⁽³⁾ OJ No C 262, 10.10.1988, p. 174.

⁽⁴⁾ OJ No C 96, 17.4.1989, p. 56.

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10. Area of freedom, security and justice**(a) B5-0110/1999****Resolution on the establishment of the Charter of Fundamental Rights***The European Parliament,*

- having regard to the conclusions of the Cologne European Council,
- having regard to its proposals contained in its resolutions on the Constitution of the European Union in particular, and in its other resolutions of a general nature on institutional matters adopted in the course of its 1994-1999 term of office⁽¹⁾,

1. Welcomes the decision taken at the Cologne European Council to proceed with drawing up a draft European Union Charter of Fundamental Rights in good time for the December 2000 European Council;

2. Considers that the commitment to establishing that Charter represents one of its constitutional priorities and entails the joint responsibilities of the two Institutions on which the Union's legitimacy is founded, viz: the Council (as regards the Member States) and the European Parliament (as regards the peoples of Europe);

3. Draws attention to the need for an open and innovative approach to shaping the Charter, the nature of the rights to be featured in it, and the part it will play and the status it will command in the constitutional development of the Union;

4. Calls, as regards the membership of the drafting authority and the organisation of its work;

- for the number of the Members of the European Parliament to be equal to the number of the representatives of Member-State Heads of State and Government, in order to confer an equally high public profile on each side and to provide for adequate representation of the different political tendencies and sensitivities represented in the European Parliament;
- for the essential role and contribution of national parliaments to be ensured by the most effective means possible, to be determined in the light of appropriate consultations with speakers of national parliaments;
- for the powers of the President and the Bureau to be determined by the drafting authority;
- for the latter to be empowered to decide on the option of convening a drafting committee and working parties;
- for appropriate steps to be taken to ensure transparency of activities; for contributions from NGOs and the general public also to be ensured, and for public hearings to be held;
- for the authority's secretariat to be the responsibility of the participating bodies;

5. Instructs its President to forward this resolution to the Commission, the Council, the other Community Institutions and the governments and parliaments of the Member States.

⁽¹⁾ OJ C 120, 16.5.1989, p. 51; OJ C 324, 24.12.1990, p. 219 ; OJ C 61, 28.2.1994, p. 155.

(b) B5-0116/1999**Resolution on the extraordinary European Council meeting on the area of freedom, security and justice (Tampere, 15-16 October 1999)***The European Parliament,*

- having regard to the EU and EC Treaties, and in particular the provisions regarding the development of the Union as an area of freedom, security and justice (AFSJ),
- having regard to its previous resolutions on this subject⁽¹⁾,

⁽¹⁾ OJ C 219, 30.7.1999, pp. 5 and 6; OJ C 175, 21.6.1999, p. 4.

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58. Calls on the Commission to submit the proposals referred to above and to inform Parliament of the progress of the legislative programme and of any changes or delays, in order to improve both the transparency of the decision-making process and interinstitutional cooperation;

59. Instructs its President to forward this resolution to the Commission, the Council, the parliaments of the Member States, the Committee of the Regions and the Economic and Social Committee.

4. EU Charter of Fundamental Rights

A5-0064/2000

European Parliament resolution on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 – 1999/2064(COS))

The European Parliament,

- having regard to the decision of the European Council on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999),
- having regard to its position as representative of the peoples of the European Union,
- considering that the Union should strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union (Article 2 of the EU Treaty),
- having regard to the fact that the Union must respect fundamental rights 'as they result from the constitutional traditions common to the Member States, as general principles of Community law' (Article 6 of the EU Treaty),
- having regard to the Preamble of the United Nations Charter and the Universal Declaration on Human Rights adopted by the UN General Assembly in its resolution 217 A (III) on 10 December 1948 in Paris,
- having regard to its numerous initiatives in the matter of fundamental and citizens' rights, in particular to its resolution of 12 April 1989 on the Declaration of Fundamental Rights and Freedoms ⁽¹⁾,
- having regard to its initiatives in the matter of a constitution for the European Union, in particular its resolution of 12 December 1990 on the constitutional basis of European Union ⁽²⁾ and its resolution of 10 February 1994 on the Constitution of the European Union ⁽³⁾,
- having regard to the conclusions of the Cologne European Council and the conclusions of the Tampere European Council,
- having regard to its resolution of 16 September 1999 on the drawing up of a Charter of Fundamental Rights ⁽⁴⁾,
- having regard to its resolution of 27 October 1999 on the European Council meeting in Tampere ⁽⁵⁾,
- having regard to the outstanding importance of the forthcoming enlargement of the Union and the Intergovernmental Conference,
- having regard to the setting-up on 17 December 1999 in Brussels of the Convention to draft a European Union Charter of Fundamental Rights,
- having regard to Rule 47(1) of its Rules of Procedure,

⁽¹⁾ OJ C 120, 16.5.1989, p. 51.

⁽²⁾ OJ C 19, 28.1.1991, p. 65.

⁽³⁾ OJ C 61, 28.2.1994, p. 155.

⁽⁴⁾ OJ C 54, 25.2.2000, p. 93.

⁽⁵⁾ Texts adopted at that Sitting, point 15.

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- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities, the Committee on Petitions and the Committee on Employment and Social Affairs (A5-0064/2000),
- A. whereas the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law (Article 6 of the EU Treaty),
- B. whereas the creation of an ever closer Union among the peoples of Europe (Article 1 of the EU Treaty) and the maintenance and development of the Union as an area of freedom, security and justice (Article 2 of the EU Treaty) are based on general and absolute respect for human dignity, which is unique to each person, yet common to all, and inviolable,
- C. whereas the Union must 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' (Article 6 of the EU Treaty),
- D. whereas some specific rights are already enshrined in the Treaties,
- E. whereas the fundamental freedoms and rights unavoidably stemming from the recognition of human dignity require genuine, comprehensive legal protection and effective legal guarantees,
- F. whereas the primacy of Union law and significant powers of its institutions, which affect individuals, make it necessary to strengthen the protection of fundamental rights at European Union level,
- G. whereas the increase in the powers of the Union and the European Community, especially in the sensitive field of internal security, together with the limits on parliamentary or judicial controls in that field, make it obvious that there is an urgent need for a European Charter of Fundamental Rights,
- H. whereas as the Union develops an imbalance must not be created between the objective of security and the principles of freedom and law,
- I. whereas fundamental freedoms can be restricted without parliamentary approval, both in the framework of the Union Treaty and of Community law, despite the fact that this is incompatible with the constitutional traditions common to the Member States,
- J. whereas, even in the case of legitimate restrictions of fundamental rights, the inherent nature of such rights may in no case be infringed,
- K. whereas the economic aspect of European integration must henceforth be supplemented by a genuine political, democratic and social union,
- L. whereas fundamental social freedoms ought to be strengthened and developed at European Union level,
- M. whereas the Union's common foreign and security policy, which will in future include defence, must be developed in compliance with fundamental rights,
- N. whereas new conflicts with fundamental freedoms can arise from developments in, for example, biotechnology or information technology, and whereas a consensus on fundamental rights at European level constitutes an important contribution towards finding a global solution to the problem,
- O. whereas there are serious indications of a rise in racism and xenophobia,

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- P. whereas it is important that, while respecting the role of every national language, the European Union and its Member States attend to the protection of the diversity of the languages and cultures of Europe, especially regional and minority languages and cultures, and to this end guarantee to the citizens of the Union, through appropriate means of support, that they can maintain and develop their own languages and cultures in the public and private domain,
- Q. whereas the human right to asylum must be maintained according to the provisions of the Geneva Refugee Convention,
- R. whereas a European Union Charter of Fundamental Rights, in the same way as national provisions concerning fundamental rights, should not in any way conflict with the European Convention on Human Rights,
- S. whereas the Union's accession to the European Convention on Human Rights following the necessary amendments to the Treaty on European Union would represent an important step towards the strengthening of the protection of fundamental rights in the Union,
- T. whereas the creation of an ever closer union among the peoples of Europe is inseparably linked with the task of increasing, in addition to fundamental rights, citizens' rights, namely the political, economic and social rights associated with Union citizenship,
- U. whereas a charter of fundamental rights constituting merely a non-binding declaration and, in addition, doing no more than merely listing existing rights, would disappoint citizens' legitimate expectations,
- V. whereas the Charter of Fundamental Rights should be regarded as a basic component of the necessary process of equipping the European Union with a constitution,
1. Welcomes the drafting of a European Union Charter of Fundamental Rights, which will contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries; welcomes therefore the progress made in this connection since the European Council meeting in Tampere, in particular the establishment of the joint Convention composed of representatives of the Heads of State and Government, the European Parliament, the parliaments of the Member States and the Commission;
 2. Notes that the establishment of a binding European list of fundamental rights will confer a more secure legal and moral basis on the process of European integration, will give concrete form to the common basis that exists at the level of the constitutional state and will provide more transparency and clarity for citizens;
 3. Offers its full support and cooperation in drafting the Charter of Fundamental Rights of the European Union;
 4. Notes that the recognition and shaping of fundamental and citizens' rights is one of the primary tasks of parliaments;
 5. Calls on its delegation to the Convention drafting the charter vigorously to defend the position set out in this resolution;
 6. Intends to vote in plenary on the adoption of the Charter at the appropriate time and deems it advisable to publish in advance its objectives regarding the Charter of Fundamental Rights as set out hereunder;
 7. Points out that its final assent to a Charter of Fundamental Rights depends to a large extent upon whether the charter:
 - (a) has fully binding legal status by being incorporated into the Treaty on European Union;
 - (b) subjects any amendment to the Charter to the same procedure as its original drafting, including the formal right of assent for the European Parliament;

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- (c) contains a clause, requiring the consent of the European Parliament whenever fundamental rights are to be restricted in any circumstances whatsoever;
 - (d) contains a clause stipulating that none of its provisions may be interpreted in a restrictive manner with regard to the protection guaranteed by Article 6(2) of the Treaty on European Union;
 - (e) includes such fundamental rights as the right of association in trade unions and the right to strike;
 - (f) recognises that fundamental rights are indivisible by making the charter applicable to all the European Union's institutions and bodies and all its policies, including those contained in the second and third pillars in the context of the powers and functions conferred upon it by the Treaties;
 - (g) is binding upon the Member States when applying or transposing provisions of Community law;
 - (h) is innovative in nature by also giving legal protection to the peoples of the European Union in respect of new threats to fundamental rights, for example from the fields of information technology and biotechnologies, and confirms, as an integral part of fundamental rights, and especially women's rights, the general non-discrimination clause and environmental protection;
8. Resolves to hold a scientific colloquium to advise Parliament and to carry out public hearings of representatives of society in general;
9. Will strongly support initiatives for a broad societal discussion in the Member States, involving social partners, NGOs and other representatives of civil society;
10. Calls for recognition of the contribution that can be made by organisations representing civil society to the drafting of the Charter;
11. Proposes to grant the States applying for accession observer status in the Convention drafting the Charter and to begin a continuous exchange of opinions with them in the context of the European Conference;
12. Emphasises that the charter should not replace or weaken Member States' provisions concerning fundamental rights;
13. Supports the agreement reached by the Convention that the charter should be drafted on the presumption that it will have full legal force;
14. Emphasises the need to incorporate in the charter, in addition to the rights already enshrined in the EU Treaty, the standards applicable to the Union that are set out in the international conventions signed by the Member States within the context of the United Nations, the Council of Europe, the International Labour Organisation and the Organisation for Security and Cooperation in Europe;
15. Calls upon the IGC to:
- (a) put the incorporation into the Treaty of the Charter of Fundamental Rights on its agenda and to give it at that conference the position which it deserves in view of its paramount importance for an ever closer union among the peoples of Europe;
 - (b) enable the Union to become a party to the ECHR so as to establish close cooperation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights;
 - (c) add a reference to the European Social Charter and to the appropriate ILO and UN conventions to the reference to the European Convention on Human Rights in Article 6 of the Treaty on European Union;
 - (d) give all persons protected under the charter access to the Court of Justice of the European Communities by supplementing existing mechanisms for judicial review;
16. Instructs its President to forward this resolution to the Convention responsible for drafting the European Union Charter of Fundamental Rights, the Intergovernmental Conference, the Council, the parliaments of the Member States, the Commission and the Court of Justice and the European Court of Human Rights.

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14. Fundamental rights in the EU (2000)**A5-0223/2001****European Parliament resolution on the situation as regards fundamental rights in the European Union (2000) (2000/2231(INI))***The European Parliament,*

- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the second annual report of the European Union on human rights (11317/2000 – C5-0536/2000),
- having regard to the motion for a resolution by the following Members: Staes, Jillian Evans, Knörr Borràs, Maes, Bautista Ojeda, Hudghton, Nogueira Román, MacCormick, Ortuondo Larrea and Eurig Wyn on the protection and direct political representation of linguistic minorities in Friuli-Venezia Giulia, a region with a special statute (B5-0034/2001),
- having regard to all relevant international conventions on the subject,
- having regard to Articles 6 and 7 of the Treaty on European Union,
- having regard to the reports drawn up by the specialised bodies of the Council of Europe and the European NGOs concerned,
- having regard to the public hearing held on 21 March 2001 with the involvement of the national parliaments on the situation as regards fundamental rights in the EU and the establishment of a European area of freedom, security and justice,
- 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 (A5-0223/2001),

Purpose of the annual report and action to be taken*Purpose*

1. Notes that the EU Charter of Fundamental Rights, which was proclaimed on 7 December 2000, constitutes a synthesis of the fundamental values upon which the European Union is based and a document to which Articles 6(2), 7 and 29 of the EU Treaty (concerning the establishment of a European area of freedom, security and justice) must in future implicitly and necessarily refer;
2. Notes that, following the proclamation of the Charter, it is therefore the responsibility of the EU institutions to take whatever initiatives will enable them to exercise their role in monitoring respect for fundamental rights in the Member States, bearing in mind the commitments they made in signing the Treaty of Nice on 27 February 2001, with particular reference to new Article 7(1) thereof;
3. Notes that it is the particular responsibility of the European Parliament (by virtue of the role conferred on it under the new Article 7(1) of the Treaty of Nice) and of its appropriate committee to ensure (in cooperation with the national parliaments and the parliaments of the candidate countries) that both the EU institutions and the Member States uphold the rights set out in the various Chapters of the Charter;
4. Notes that, accordingly, this resolution and the report to which it refers constitute an initial attempt (which is of necessity limited and incomplete for lack of adequate resources) to analyse, with reference to the new Article 7(1) of the Treaty of Nice, the situation as regards fundamental rights in the EU in the year 2000 from the perspective of the rights laid down in the Charter;

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Action to be taken in the future

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5. Recommends that a permanent dialogue be established between the European Parliament and the Member States' parliaments, which are its natural partners, particularly as regards significant developments in national constitutions, law, policies and practices having an impact on the concept of, and respect for, fundamental rights in the EU;

6. Recommends that a similar dialogue also be established between the European Parliament and the parliaments of the candidate countries;

7. Recommends that the appropriate committees of the European Parliament should continuously consider the situation as regards the fundamental rights as listed particularly in the Charter and any infringements of those rights, so that such matters can be taken into account both in legislative activity and in interinstitutional dialogue;

8. Recommends that the report on respect for fundamental rights in the EU be incorporated into the warning mechanism provided for in Articles 6 and 7 of the Treaty on European Union in accordance with the following principles:

- assignment of the permanent task of monitoring observance of the Charter to the committee responsible, a task in which the other committees concerned (which will forward observations to that committee in the course of the year) will be involved,
- the drawing up, on behalf of its competent committee, of an annual report:
 - (a) by a working group including the rapporteurs of the previous, current and following years as well as, for opinion, the rapporteurs of the committee responsible for foreign affairs as regards candidate countries and other committees concerned as regards matters within their competences, and
 - (b) on the basis of the observations gathered by specialist bodies, NGOs and the networks concerned, emphasising in particular the achievements and the failures recorded in the course of the reference year,
- consideration of this report at an annual meeting between representatives of the European Parliament and those of the relevant committees of the national parliaments,
- the adoption of the annual report each year (at the latest during the July part-session), while allowing only the committee responsible and the committees asked for opinions to amend both the motion for a resolution and the detailed report upon which it is based; Parliament will consider the report and the draft recommendations in plenary, in accordance with a procedure on the assent procedure,
- the widest possible dissemination of the report, including on the Internet, and a high profile for the report on Parliament's website and those of the other EU institutions,
- the subsequent adaptation of the internal rules of the other EU institutions concerned;

9. Recommends that a network be set up consisting of legal experts who are authorities on human rights and jurists from each of the Member States, to ensure a high level of expertise and enable Parliament to receive an assessment of the implementation of each of the rights laid down notably in the Charter, taking account of developments in national laws, the case law of the Court of Justice of the European Communities and the European Court of Human Rights and any notable case law of the Member States' national and constitutional courts;

10. Recommends that pilot projects necessary for this purpose be implemented and financial provision made for them as from 2002 and, in view of the major tasks which Parliament will be required to perform in monitoring compliance with the Charter, that Parliament's Secretary-General, taking account of the Parliament's draft budget for 2002, submit a proposal for providing the European Parliament's competent committee with the requisite administrative support for monitoring fundamental rights in the EU and in the applicant countries with a view to the annual report on the situation as regards those rights, and that the Directorate-General for Research develop the tools needed as quickly as possible;

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11. Recommends that information tools be developed (databases, helplines, legal aid), in agreement with relevant institutions in the Member States and NGOs operating in the field of fundamental rights, enabling all persons to gain access to the information they require, and that appropriate pilot schemes be implemented and funded with effect from 2002;

12. Recommends that one or more contact networks and a civil society discussion forum be set up, as provided for in the Council Declaration marking the fiftieth anniversary of the Universal Declaration of Human Rights;

COUNCIL

13. Recommends that the Council be involved in the above initiatives for the purpose of preparing its annual report on the human rights situation in the European Union;

14. Recommends that sound practices in the area of fundamental rights be identified in order for a high degree of harmonisation in the protection of these fundamental rights in the EU to be achieved and any threatened infringement of those rights to be prevented;

COMMISSION

15. Recommends that a European day to be held to commemorate the Union Charter of Fundamental Rights and the text of the Charter distributed to all children;

16. Recommends that a Commissioner be appointed within the Commission with responsibility for fundamental rights and the implementation of policies linked to the establishment of an area of freedom, security and justice;

17. Recommends that the Commission reorganise the departments responsible for monitoring the Charter and for ensuring that its principles are observed when defining and implementing Union and Community law;

I. Respect for human dignity (Articles 1 to 5)*Right to life*

18. Recommends that Member States step up the fight against terrorism, using all the instruments available to a country governed by the rule of law, in order to safeguard democracy and protect the freedom and the physical and moral integrity of all citizens;

19. Recommends that Member States implement the agreements concluded at the Tampere European Council (15/16 October 1999), in particular the agreements concerning the mutual recognition of judicial decisions in criminal matters, the simplification of the current extradition procedure and the detention and immediate handing over of persons in respect of whom a warrant for arrest has been issued;

*Prohibition of torture and inhuman treatment***POLICE**

20. Recommends that Ireland ratify the UN Convention against Torture and that Belgium, Ireland and the United Kingdom make the necessary declarations under Article 22 of the Convention recognising the United Nations Committee Against Torture as being competent to receive and examine individual complaints;

21. Recommends that Member States pursue policies for the training and diversification of police staff and the exchange of best practice at European level;

22. Recommends that Member States ensure that persons arrested and detained at police stations have immediate access to legal and medical assistance and, if necessary, to an interpreter;

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23. Recommends that Member States set up independent authorities to investigate police activities in those Member States where such authorities do not yet exist;

PRISONS

24. Recommends that Member States improve living conditions as a matter of urgency, particularly as regards access to medical care and activities (including study and vocational training) in prisons, reaffirm the priority to be given to rehabilitation and improve training of prison staff;

25. Recommends that Member States identify and introduce alternatives to short prison sentences wherever possible;

26. Recommends that Member States reduce periods of custody to a minimum and restrict the use of solitary confinement;

27. Recommends that Member States introduce administrative and/or financial penalties for minor offences, by advocating alternative penalties such as community service and by doing all they can to develop open or semi-open prisons and by granting conditional release;

28. Recommends that Member States pay special attention to special vulnerable categories of prisoner:

- minors, for whom prison must be a last resort, with special accommodation provided;
- pregnant women and mothers of very young children, who should enjoy conditions more suited to their needs and to the needs of their young children;
- mentally ill prisoners, who should be given special medical supervision;
- disabled persons, who should have access to services appropriate to their disability;
- persons with drug-addiction problems, who should be able to follow non-compulsory detoxification and treatment programmes;

29. Recommends that Member States adopt prison laws which ensure that prisoners have a right of appeal in disciplinary matters and can exercise their civil and political rights, and set up external inspection and assessment bodies for prisons with links to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

30. Recommends that Member States set up a European unit for cooperation and exchange of best practice on prisons in the European Union;

31. Recommends that Member States limit detention of asylum seekers to exceptional cases and only for the reasons set out in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers;

PROTECTION OF REFUGEE MINORS

32. Recommends that Member States provide better protection for unaccompanied minors, including the assistance, from the earliest possible moment, of a guardian or a legal advisor and the presence of staff who are qualified to deal with the specific requirements of minors;

PSYCHIATRIC INTERNMENT

33. Recommends that Member States adjust their legislation and practices, where necessary, so as to ensure strict respect for criteria governing involuntary internment, appeals procedures, use of special treatments and internment conditions in general;

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Prohibition of slavery and forced labour

TRAFFICKING IN HUMAN BEINGS

34. Recommends that Member States ratify, if they have not yet done so:

- the Additional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999;
- the new UN Convention against Transnational Organised Crime signed on 15 December 2000;
- The Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors;
- the Additional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography adopted on 25 May 2000;
- the ILO Convention on the worst forms of child labour adopted on 17 June 1999;
- the European Convention on the Exercise of Children's Rights of 25 January 1996;

35. Recommends that Member States make trafficking in human beings a specific offence under their criminal law, in connection with the implementation of the forthcoming Council Framework Decision on combating trafficking in human beings⁽¹⁾;

36. Recommends that Member States adopt, in cooperation with the EU and the countries of origin of victims of trafficking:

- information and prevention programmes for potential victims of trafficking in human beings and domestic slavery,
- national action plans to combat trafficking in human beings and domestic slavery,
- measures to introduce a special helpline and to devise rehabilitation programmes to assist victims of trafficking in human beings and domestic slavery;

37. Recommends that Member States strengthen their controls and judicial cooperation policy through harmonisation of laws;

38. Recommends that Member States adopt a legally binding instrument designed to ensure suitable protection for the victims of trafficking in human beings, which should be recognised as a ground for 'persecution';

39. Recommends that Member States grant temporary residence permits on humanitarian grounds to victims of trafficking in human beings and domestic slavery for the duration of the inquiry and the judicial procedure to encourage them to cooperate with the authorities and assist in the prosecution of offenders;

40. Recommends that Member States introduce tighter controls on recruitment in sectors involving children and provide expert medical and psychological support for minors who are victims of sexual abuse;

41. Recommends that Member States extradite traffickers in human beings and confiscate the proceeds of their criminal activities to finance a European compensation fund for victims;

DOMESTIC SLAVERY

42. Recommends that Member States make domestic slavery a specific offence under their criminal law;

43. Recommends that Member States grant visas to service staff working in embassies, subject to production of an employment contract, and allow them freely to change employers;

⁽¹⁾ 2001/0024(CNS), Position of the European Parliament of 12 June 2001, 'Texts Adopted', Item 5.

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44. Recommends that Member States amend the Vienna Convention of 18 April 1961 on Diplomatic Relations to provide for diplomatic immunity to be waived in the event of human rights abuses resulting from acts carried out by diplomats in their private lives;

45. Recommends that Member States combat domestic slavery in connection with the implementation of the forthcoming Council framework decision on combating trafficking in human beings referred to above;

II. Freedoms (Articles 6 to 19)

Protection of privacy and personal data

46. Recommends that the Council, Commission and Member States take the necessary action to protect the general public against the intrusions of extra-legal communications interception systems such as the Echelon system;

47. Recommends that the Council and the Member States bear in mind that, with regard to the revision of Directive 97/66/EC, the interception and storage of data concerning traffic and location in electronic communications are entirely exceptional measures which must be based on a specific law which is accessible to the general public, be authorised by the judicial or competent authorities, be of limited duration, and be proportionate and necessary within a democratic society; points out that, under the European Convention on Human Rights and pursuant to rulings issued by the Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited;

48. Recommends that the Member States apply:

- the United Nations guidelines for the regulation of computerised personal data files of 14 December 1990, and in particular the principles of lawfulness, fairness, accuracy, access by the persons concerned, non-discrimination, security and sanction;
- the Council of Europe Recommendation R(1999)5 on guidelines for the protection of individuals with regard to the collection and processing of personal data on information highways;

49. Recommends that Member States transpose European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾, so that the EU will have a common legal platform in this area;

50. Recommends that the Union equip itself with a binding legal instrument which offers, in areas within the second and third pillars, guarantees equivalent to those established under Directive 95/46/EC;

Freedom of thought, conscience and religion

51. Recommends that the Member States apply, if they have not yet done so:

- Council of Europe Recommendation 1202 (1993) on religious tolerance in a democratic society;
- Council of Europe Recommendation 1396 (1999) on religion and democracy;

52. Recommends that the Member States focus in particular on the illegal or criminal activities sometimes carried out by cults, which jeopardise the physical and mental integrity of individuals, in particular by means of:

- information and awareness campaigns by specialised independent human rights bodies to ensure that anyone may decide freely whether to join or leave a religious or spiritual movement;
- changes to legal, fiscal and criminal law provisions designed to counteract the illegal activities of some cults;

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

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53. Recommends that Greece should observe strictly the right to conscientious objection, without reference to any religious criteria, and in particular that the Member States concerned should offer an alternative to military service of equal duration, which should not be turned into a punitive form of civilian service;

Freedom of expression and information

54. Recommends that the Member States ratify the European Convention on Transfrontier Television of 5 May 1989, if they have not yet done so;

55. Recommends that the Member States apply the Council of Europe recommendations:

- of 30 November 1997 on the media and the promotion of a culture of tolerance (R(97)21);
- of 22 November 1994 on measures to promote media transparency (R(94)13);

56. Recommends that the Member States observe scrupulously the right of journalists not to disclose their sources of information, in accordance with the Council of Europe recommendation of 8 March 2000 on the rights of journalists not to disclose their sources of information (R(2000)7);

57. Recommends that the Member States display particular vigilance as regards quasi-monopolies or extreme concentrations of ownership in the audiovisual and written press, which are barriers to the expression of pluralism, and establish independent regulatory authorities in those Member States where such authorities do not yet exist;

Right to asylum and rights of citizens from third countries

58. Recommends that the Member States ratify the following international and European conventions, if they have not yet done so:

- Convention relating to the Status of Stateless Persons of 28 September 1954;
- Convention on the Reduction of Statelessness of 30 August 1961;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;
- Protocol No 4 to the European Convention on Human Rights of 16 September 1963;
- Protocol No 7 to the European Convention on Human Rights of 22 November 1984;
- additional Protocol to the European Convention on Extradition of 15 October 1975;

59. Recommends that the Member States adopt promptly a common policy on asylum procedures, reception of asylum seekers and refugee status that strictly respects the rights of asylum seekers and that is based on a non-restrictive interpretation of the Geneva Convention including persecution by non-state agents and gender-related persecution and on UNHCR recommendations and conclusions, while affording those granted the right of asylum a swift, efficient and just administrative procedure and full integration;

60. Recommends that the Member States consider the possibility of granting subsidiary protection to persons who are not protected by the Geneva Convention but who must not, for humanitarian reasons or because they would be in grave danger, be sent back to their country of origin (victims of trafficking in human beings and domestic slavery);

61. Recommends that the Member States ensure that their asylum policies as well as their border and entry policies respect the principle of non-refoulement and be aware that at present the combination of the Dublin Convention rules and the 'safe third country' and 'safe country of origin' concepts, as well as rules on carrier sanctions and the lack of suspensive effect of certain appeal procedures, constitute a threat to this principle;

62. Recommends an increase in EU financial aid to the UNHCR;

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63. Recommends that the Member States make the naturalisation procedure more flexible, so that residents of foreign origin who so desire may acquire full citizenship;

64. Recommends that the Council adopt and the Member States implement without delay the draft directive submitted by the Commission and amended by Parliament on family reunification, in the interests of upholding the right to family life;

III. Equality between citizens (Articles 20 to 26)

Discrimination

65. Recommends that the Member States transpose and implement swiftly the European directives adopted on the basis of Article 13 of the EC Treaty with the aim of combating all discrimination on grounds of sex, race or ethnic origin, religion or belief, disability, age or sexual orientation;

Measures to combat racism

66. Recommends that the Member States ratify the following conventions, if they have not yet done so:

- ILO Convention concerning discrimination in respect of employment and occupation of 25 June 1958;
- Unesco Convention against discrimination in education of 14 December 1960;
- Protocol No 12 to the European Convention on Human Rights of 4 November 2000;

67. Recommends that the Member States swiftly adapt their criminal and civil anti-discrimination laws, in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin⁽¹⁾ and make racism an aggravating circumstance in connection with sentencing for violent crimes;

68. Recommends that the Member States set up independent bodies to support and assist victims of racism, where necessary, and introduce strategies to prevent and combat it;

69. Recommends that the Member States implement jointly the legal and ethical measures necessary to punish use of the Internet for racist purposes and, in particular, sign the EuroISP memorandum of understanding of 6 August 1997 concluded between European associations of Internet access and service providers;

Rights of national minorities

70. Recommends:

- (a) that Belgium, Ireland and Greece, sign and ratify and that Austria, France, Italy, Luxembourg and Portugal, ratify the European Charter for Regional or Minority Languages of 5 November 1992,
- (b) that Belgium and France sign and ratify and that Greece, Luxembourg, the Netherlands and Portugal, ratify the Framework Convention for the Protection of National Minorities of 1 February 1995;

71. Recommends that the Member States honour their special duty to the various national minorities among the EU population and give due weight to their economic, social, political and cultural rights, in accordance with the above conventions;

⁽¹⁾ OJ L 180, 19.7.2000, p. 22.

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72. Recommends that the Member States significantly improve the situation of the Roma/Sinti, in particular by:

- combating all forms of discrimination against this minority, especially in the field of employment and housing;
- introducing educational facilities geared to the needs of Roma/Sinti children;
- increasing the number of parking sites available and introducing a European identity card for itinerants;

Equality between men and women

73. Recommends that the United Kingdom sign and ratify and that Belgium, Germany, Greece, Luxembourg, the Netherlands, Portugal, Spain and Sweden, ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999;

74. Recommends that the Commission proceed swiftly with the enhancement and expansion of legislation, particularly by:

- updating existing European legislation on equal treatment of men and women on the labour market,
- extending this legislation to other areas of the life of society and not only those of employment, occupation and pay, by way of the adoption of a directive on equal treatment in order to guarantee equality between men and women,
- introducing appropriate penalties for non-compliance, including Treaty infringement procedures pursuant to Article 226 of the EC Treaty,
- mainstreaming the principle of equal treatment in legislation and policy pursuant to Article 3(2) of the EC Treaty,
- developing policies (e.g. on parental leave and part-time work) to enable and encourage men to do their share of care tasks;

75. Recommends that the Member States ratify, if they have not yet done so, the Maternity Protection Convention of 15 June 2000;

76. Recommends that the Member States introduce special laws on individualised social protection rights for women;

77. Recommends that the Member States adopt national plans to promote more balanced participation of women and men in political decision-making, inter alia by encouraging political parties to introduce quota systems in their electoral lists;

78. Recommends that the Member States promote the systematic collection and publication of comparable statistics at national and European level in order to gain a clearer picture of the involvement of men and women in all sectors of economic, social, political and cultural life;

Discrimination on the basis of sexual orientation

79. Recommends that the Member States include sexual orientation in Additional Protocol No 12 to the European Convention on Human Rights as one of the prohibited grounds for discrimination and extend the terms of reference of the European Commission against Racism and Intolerance to include homophobia based on sexual orientation;

80. Recommends that the Member States repeal all remaining discriminatory legislation concerning homosexuality and release from prison all persons jailed under such provisions, and calls in particular on Austria — in accordance with the ruling of the European Commission of Human Rights and the numerous appeals issued by the European Parliament — to revise the provisions concerning the age of consent;

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81. Recommends that the Member States prohibit discrimination on grounds of sexual orientation and include it as an offence under the criminal or civil law of all Member States, and adopt appropriate employment-law measures to implement Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁽¹⁾;

82. Recommends that the Member States introduce legislation in line with Directive 2000/78/EC, which forbids discrimination on the grounds of sexual orientation in access to goods and services, health, housing, education and social protection; notes that to date only eight Member States have equivalent anti-discriminatory legislation;

83. Repeal discriminatory laws against gays and lesbians in criminal codes of current Member States, as well as assuring that they will not ratify any accession of countries which have discriminatory laws against homosexuality, such as Romania's Article 200;

Non-marital relationships

84. Recommends that Member States:

- amend their legislation in order to recognise non-marital relationships between persons of the same or the opposite sex and assign them equal rights,
- put the issue of mutual recognition of legally recognised non-marital relationships on the EU agenda;

85. Recommends that the Member States introduce legislation which prohibits discrimination for long term co-habitants and provides the same judicial protection as for legally married couples;

Rights of children

86. Recommends that the Member States ratify, if they have not yet done so:

- Protocol No 7 to the ECHR of 22 November 1984;
- the European Convention on the Adoption of Children of 24 April 1967;
- the European Convention on the Legal Status of Children born out of Wedlock of 15 October 1975;
- the European Convention on the Exercise of Children's Rights of 25 January 1996;

87. Recommends that the Member States make paedophile acts and child pornography on the Internet specific offences under the criminal law of all Member States, in connection with the implementation of the forthcoming Council Framework Decision on combating the sexual exploitation of children and child pornography⁽²⁾;

88. Recommends that the Member States create and appoint an Ombudsman for children at European and national level to promote and safeguard the best interests of all children;

89. Recommends that the Member States support the setting-up and continuing operation (including by means of public funding) of bodies which children may contact directly if they are suffering abuse;

90. Recommends that the Member States ensure that all children present on their territory have access to education;

91. Recommends that the Member States launch national information campaigns concerning the conditions governing international adoption aimed at professionals in the sector and applicants for adoption;

Rights of the elderly

92. Recommends that the Member States ratify the revised European Social Charter of 3 May 1996, if they have not yet done so;

⁽¹⁾ OJ L 303, 2.12.2000, p. 16.

⁽²⁾ 2001/0025(CNS), Position of the European Parliament of 12 June 2001, 'Texts Adopted', Item 4.

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93. Recommends that the Member States apply the United Nations Principles for Older Persons and include them in their respective national programmes;

94. Recommends that the Member States adopt measures for the increasing numbers of elderly people in society, entitling older persons to equal participation at all levels and in all fields, whether social, cultural or political; considers that particular attention should be paid to employment, health and social protection;

95. Recommends that the Member States recognise the right of every worker, at the time of retirement, to be able to enjoy resources affording him or her a decent standard of living, in accordance with the Community Charter of the Fundamental Social Rights of Workers of 1989;

96. Recommends that the Member States take account of ageing in government policies and practices in the field of employment, health and social protection;

Protection of the disabled

97. Recommends that the Member States ratify, if they have not yet done so, the ILO Convention of 20 November 1983 concerning vocational rehabilitation and employment (disabled persons) and the revised European Social Charter, which guarantees the right to autonomy and social integration;

98. Recommends that the Member States insert in Additional Protocol No 12 to the ECHR 'disability' as one of the grounds for discrimination which must be avoided;

99. Recommends that the Member States apply the United Nations standard rules on the equalisation of opportunities for persons with disabilities;

100. Recommends that the Member States sign the revised European Code of Social Security, which guarantees the vocational retraining of invalids;

101. Recommends that the Member States prepare the European Year of Disabled People in 2003, in line with the Commission proposal, and apply the multiannual action programme to combat discrimination (2001-2006), in order to raise public awareness in the Member States and give a higher profile to questions relating to disabilities;

102. Recommends that the Member States give due weight to the importance of sign language and Braille for the integration of those who use them;

IV. Solidarity (Articles 27 to 38)

Fair working conditions

103. Recommends that the Member States ratify the following conventions, if they have not yet done so:

- United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 18 December 1990;
- the revised European Social Charter of 3 May 1996;

104. Recommends that the Member States comply strictly with the minimum work age of 15 years, particularly as regards family firms, home working and agriculture, and penalise infringements;

105. Recommends that the Member States apply the criteria laid down by the Council of Europe for the fair remuneration of adult workers or minors;

106. Recommends that the Member States improve the working conditions and remuneration of temporary or fixed-term contract employees, particularly in the services sector, and take general measures to combat bullying;

107. Recommends that the Member States comply with the provisions requiring adequate notice of dismissal to be given in accordance with the provisions of the revised European Social Charter;

108. Recommends that the Member States step up action to combat undeclared work;

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Social protection

109. Recommends that Germany and the Netherlands sign and ratify and that Austria, Belgium, Denmark, Spain, Finland, Greece, Luxembourg, Portugal and the United Kingdom ratify the revised European Social Charter of 3 May 1996;

110. Recommends that the Member States ensure access to affordable quality health care for all, and in particular people on low incomes;

111. Recommends that the Member States ensure that everybody who is living on their territory has access to health care;

112. Recommends that the Member States comply strictly with, and penalise infringements of, the provisions of the revised European Social Charter and the European directive concerning the right to maternity leave as regards duration and payment, while also prohibiting dismissals during this period, including in the domestic work sector;

Combating exclusion

113. Recommends that the Member States guarantee to meet the basic material needs of persons living in extreme poverty, penalise practices which lead to the marginalisation of such persons and vigorously pursue a strategy to reduce large-scale poverty in the EU;

114. Recommends that the Member States adopt the policies necessary to provide decent housing for all those who do not have adequate resources, since lack of housing is one of the main causes of exclusion, and renovate run-down areas by encouraging high-quality architecture;

Consumer protection

115. Recommends that the Council adopt a resolution defining the concept of the precautionary principle so as to arrive at a legal definition of this principle and the conditions under which it should be applied that is as precise and predictable as possible;

116. Recommends that the European Union and its Member States adopt the measures necessary to step up scientific research in sectors which generate serious public concern, ensure the transparency and traceability of products, and provide consumer information;

V. European citizenship (Articles 39 to 46)*Right to vote and to stand as a candidate at elections to the European Parliament and municipal elections*

117. Recommends that the Member States ratify the following European conventions, if they have not yet done so:

- European Convention on the Participation of Foreigners in Public Life at Local Level of 5 February 1992;
- European Convention on Nationality of 6 November 1997;

118. Recommends that the Member States introduce more transparent and more effective 'governance' of European affairs, together with a genuine public information policy, in order to combat the growing public indifference reflected in the inadequate turnout at European elections;

119. Recommends that the Member States provide better information about elections to citizens of the European Union, so that they can vote in European and local elections in their place of residence;

120. Recommends that the Member States take all possible measures to improve participation in political life by third-country nationals legally resident in EU territory;

121. Recommends that the Member States extend voting rights to citizens of third countries who are long-term residents of the European Union;

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122. Recommends that the Member States extend the right to vote and to stand in municipal and European elections, which Article 19 of the EC Treaty grants to citizens of the European Union, to all non-Union citizens who have been legally resident on their territory for at least three years;

Freedom of movement and of residence

123. Recommends that the Commission, the Council and the Member States take all action necessary pursuant to Article 14 of the EC Treaty to ensure that free movement of persons is fully achieved;

124. The new Italian Parliament honour the promise of the previous Italian Government swiftly to repeal the transitional Article XIII of the Italian Constitution;

125. Recommends that the Member States abolish any restrictions (including ones of a constitutional nature) which prevent the free movement of citizens within their own country; individual laws which impose such restrictions (such as those relating to the members of former reigning families) must be regarded as illegal and as contrary to EU legislation and case law;

126. Recommends that the Commission rapidly revise existing rules, inter alia so as to:

- make it easier for students, researchers and retired persons to enjoy the right of residence;
- overcome the difficulties regarding freedom of residence and movement faced by migrant workers, with particular regard to social security benefits and the acquisition of pension rights;
- ensure protection of family life for members of the families of Union citizens;
- extend the right of freedom of movement and residence to third-country nationals who have been legally resident on the territory of a Member State for at least three years;

127. Recommends that the Member States coordinate more closely their policies on expulsion on grounds of public order or public health, with due regard for the case law of the Court of Justice of the European Communities;

128. Recommends that the Member States draw up a European Constitution, to be devised by a Convention and adopted by citizens, with the Charter as a preamble and serving as a genuine social contract that will guarantee the vital requirements of efficiency, transparency and democracy and will make the European Union more accessible;

129. Recommends that in addition to making the Charter into a binding instrument and in order to guarantee a coherent system for protecting fundamental rights throughout Europe, the Member States take the measures necessary to enable the EU to obtain legal personality and to become party to the European Convention on Human Rights;

Right to good administration

130. Recommends that codes similar to the Code of Good Administrative Conduct proposed by the European Ombudsman be adopted in the near future by all EU Institutions and decentralised bodies;

131. Recommends that the principle of public service neutrality be included in the codes of good conduct adopted by the Member States and European Institutions, together with the principles of fairness and impartiality which should guide any administration;

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Right of access to documents

132. Recommends that the Member States strictly implement European Parliament and Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾;

VI. Justice (Articles 47 to 50)*Right to a fair trial*

133. Recommends that the Member States implement Council of Europe Recommendation on the freedom to exercise the profession of lawyer of 25 October 2000 (R(2000)21);

134. Recommends that the Member States speed up legal proceedings, which are too lengthy in some Member States, as stressed by the European Court of Human Rights, and increase the general efficiency of the public administration of justice, in particular by using new information technologies;

135. Recommends that the Member States monitor and, if necessary, penalise delays or intransigence on the part of national administrations in complying with judgments handed down;

136. Recommends that the Member States ensure that judgments of the European Court of Human Rights are implemented without delay by the national courts and that national laws are brought into line with both the ECHR and the case law of the European Court of Human Rights;

137. Recommends that the Member States reform the procedures for gaining access to legal aid in all sectors and for all persons without adequate resources, without restrictions of nationality or place of residence, and significantly improve conditions for access to competent interpreting services free of charge;

Presumption of innocence and right of defence

138. Recommends that the Member States guarantee the principle of the presumption of innocence, including in matters relating to the prevention of terrorism and, in general, adopt all measures to restrict detention in custody to a minimum;

139. Recommends that the Member States agree common minimum standards for certain aspects of procedural law, in particular rules covering pre-trial orders and the rights of the defence, in order to guarantee a common level of fundamental rights protection throughout the EU;

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* * *

140. Expresses the intention that the substance of this resolution should not in any way limit the future interpretation and development of the rights, freedoms and principles for citizens within the European Union and the obligations and responsibilities of the Member States as laid down in the Charter of Fundamental Rights of the European Union;

141. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice of the European Communities, the European Court of Human Rights, the European Ombudsman, the Council of Europe and the governments and parliaments of the Member States and of the candidate countries.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

we are about to vote. That recital states that terrorism can no longer be eradicated. Can this House really make it official that terrorism cannot be eradicated? I feel that there must either be a translation error in some texts, or a very serious political misjudgement, and for those reasons I ask you, Madam President, to decide on the admissibility of that paragraph.

President. – Ms Muscardini, all the admissibility checks have been done by the services, and it was open to amendments, so I am afraid we are where we are now.

– *Before the vote on Amendment 33:*

Claudio Fava (PSE). – (IT) Madam President, ladies and gentlemen, I ask whether the proposer of the amendment would agree to remove the two phrases which currently read: ‘in some rare instances’ and ‘which may not be lawful’ from the sentence. If these two phrases are removed from the amendment, we would be willing to support it.

(The oral amendment was accepted)

IN THE CHAIR: MR PÖTTERING

President

4. Proclamation of the Charter of Fundamental Rights

President. – Mr President of the European Council, José Sócrates, Mr President of the European Commission, José Manuel Durão Barroso, ladies and gentlemen, it is a great pleasure to welcome you here to the heart of European democracy, to the European Parliament, today on the occasion of the formal signing of the Charter of Fundamental Rights of the European Union. This is indeed a happy day, particularly for the citizens of the European Union.

Fifty years after the founding fathers created the European Communities out of the ruins of a shattered continent, our intention today is to proclaim solemnly the common values that form the core of our European identity.

The Charter of Fundamental Rights that we proclaim today symbolises the momentous journey towards a Union of the people of Europe which we have been making together over the past fifty years.

This Charter is proof that, when we laid the foundations of the European Union, we had learned the most important lesson from European history, and today we continue to regard respect for the dignity of each and every human being, preservation of the freedom that has been won and of peace and democracy and application of the rule of law as the driving forces of European unification.

Freedom cannot develop without respect for the rights of others, and peace cannot flourish without fair accommodation of each other's interests. Freedom, peace, justice and social welfare are achievable only as an integral whole; none of these goals can be obtained at the expense of the others.

The founding fathers understood this and established Europe as a community based on the rule of law. The European Union is not governed by the concept that might is right but by the principle that power emanates from the law. Therein lies the true modernity and

vision of our Union, a community rooted in shared values. Only true justice can guarantee peace for all of us.

This vision of the founding fathers has come to fruition. Far more than that, in the struggle between two systems, in which freedom and democracy were pitted against dictatorship and oppression of the individual, it proved to be the stronger and the more successful vision.

The miracle of our generation has been the end to the division of our continent. The fall of the Iron Curtain and the accession of twelve countries to the European Union were possible because the voice of freedom and democracy and the power of equal rights for all were stronger than those of inhuman ideologies in the twentieth century.

The Berlin Declaration, which was adopted on 25 March of this year to mark the 50th anniversary of the signing of the Treaties of Rome, states an important fact when it says that 'We, the citizens of the European Union, have united for the better', for it is indeed our good fortune that freedom, democracy and human rights have become a reality for all of us in the European Union.

Today's solemn proclamation of the Charter of Fundamental Rights gives us a great obligation and opportunity to bring home the real essence of European unification to the people of the European Union, who number almost 500 million, and to future generations.

The essence of the European Union, ladies and gentlemen, transcends economic cost-benefit calculations. While these are important and will continue to influence our lives in the EU, we are first and foremost a community based on shared values, and solidarity, freedom and equal rights are part and parcel of our everyday existence. These common values, central to which is respect for inviolable human dignity, as enshrined in Article 1 of the Charter of Fundamental Rights, form the foundations of European unification.

(Applause)

For this reason, the European Parliament has regarded legally binding recognition of the Charter of Fundamental Rights as a vital component of any agreement on the reform of the European treaties, and the European Parliament has got its way on this point.

The reference to the Charter of Fundamental Rights in Article 6 of the Treaty of Lisbon, which the Heads of State or Government will be signing tomorrow, lends the Charter the same legally binding character that the Treaties themselves possess.

That 21st-century Europe should possess a comprehensive catalogue of human rights and fundamental freedoms which are equally binding and legally enforceable for all citizens of the Union is perfectly natural; more than that, it is the very core of our perception of the European identity.

(Applause)

People and human dignity are at the heart of our policies. In this way the European Union constitutes a framework that enables us, as citizens of the Union, to build our common future in peace.

Without the firm foundations of our shared values, of which we must be ever mindful, the European Union would have no future. Nor would we have any grounds to insist on respect for human rights in the wider world if we failed to recognise our own values as legally binding in the European Union.

(Applause)

Nor shall we let anyone, whether inside or outside the European Union, set limits on our resolute defence of human rights. We in the European Parliament have a moral and political duty to defend human dignity at all times.

(Applause)

In our world of today, we Europeans must project ourselves as a community united by shared values and stand up for human dignity, and we must seek intercultural dialogue. We can do that with confidence, and we must do it with untiring commitment – and no one will stop us.

(Applause)

In the drafting of the Charter of Fundamental Rights, the new open and democratic convention method was used for the first time in the history of European unification. That method proved highly successful, and the convention became the model and the starting point for the entire reform process.

The European Parliament has played a particularly active part in the drafting of the Charter of Fundamental Rights and has brought decisive influence to bear on the substance of the text.

The Charter is the first instrument to enshrine economic and social rights with the same status as political rights and personal freedoms. It protects fundamental rights within the sphere of activity of the Union and in the application of Community law. It also gives all citizens of the European Union a right of recourse to the European Court of Justice in Luxembourg. We hope that the day might come when the Charter of Fundamental Rights is legally binding on all Member States.

(Applause)

Human rights and fundamental freedoms are indivisible. I therefore appeal to all Member States of the European Union without exception to subscribe, in the interests of all citizens of the Union, to this European consensus.

Today's solemn proclamation should also be an occasion for all European citizens who can assert their own rights on the basis of the Charter to reflect on their duty to the community of Europeans, the wider world and future generations. There are no rights without responsibilities. Solidarity is what unites us.

(Applause)

We are creating a people's Europe and giving our European Union a solid foundation of common fundamental democratic rights. Today's solemn proclamation shows that our community based on shared values is alive and growing. Today that set of common values will be embedded in the lives and minds of the population of the Union. This day is a great triumph for the citizens of the European Union, and all of us can rejoice at that with heart and soul.

(Loud applause)

(Uproar in the Chamber)

(Several Members protest loudly and display banners and placards.)

President. – Please remove these placards now. Show some courtesy to our guest here in the European Parliament.

Mr President of the European Council, may I now ask you to address us.

José Sócrates, *President-in-Office of the Council . – (PT)* Mr President of the European Parliament, President of the European Commission, ladies and gentlemen. Today, in a solemn sitting of the European Parliament, we are proclaiming the Charter of Fundamental Rights of the European Union and I should like to state clearly to you that this day – 12 December – will now be a fundamental date in the history of European integration. A fundamental date in the history of Europe.

(Applause)

(Uproar in the NI and IND/DEM ranks)

President. – Be patient, please. You should at least have the decency to let our speaker deliver his address.

Mr President, the floor is yours.

José Sócrates, *President-in-Office of the Council . – (PT)* However much some may shout to try to stop others from speaking, this is a fundamental date in the history of Europe. And I want to say to you too that this date, this ceremony, is probably the most important ceremony in which I have had the honour of participating. The most important ceremony of my entire political career.

I feel deeply honoured as a European to sign a Charter and to proclaim a Charter of Fundamental Rights and I feel particularly honoured that this Charter is being proclaimed during the Portuguese Presidency. I feel honoured as a European and I feel honoured as a Portuguese citizen, especially as it was during our Presidency in 2000 that the Convention which gave rise to this Charter started its work. That is why I want to say to the European Parliament that it is an honour for my country to be associated in this way with an important step in the project of European citizenship.

This Charter represents a commitment to values that gave birth to European civilisation, values anchored in the defence of human dignity, and we are here to proclaim that we are true to those values, values that have their source in the constitutional tradition common to the Member States of the Union and also in international legal instruments, as in the case of the Universal Declaration of Human Rights and the European Convention on Human Rights. And to emphasise this compatibility, the Treaty of Lisbon itself provides for the Union to accede to the Council of Europe Convention and thus recognises what the protection of fundamental rights now represents in modern democracies.

This is why today is a such an exceptional day because from today on, though some may not like it, fundamental rights will be formally and irreversibly established as part of the Union's common heritage, a moral heritage, a political heritage, a heritage of citizenship and of the best aspects of European civilization.

But this Charter is also an instrument for political action, an instrument for the institutions because the Charter will shape their activities. They will be duty bound to respect the rights and principles set out in the Charter and promote the application of those rights and principles, but it is also an instrument for action by the citizens because it shows that the

project of the Union is a project of citizenship and it shows that the Union is at the service of its citizens and that it protects and promotes their rights.

The Charter embodies, in the European context, the projection of human dignity and the rule of social rights. This is why it also has a social component, because it projects human dignity in the world of work, in the world of employment, in the world of health, in the field of social security and welfare, and also human dignity with regard to protection of the environment. It is the Charter of equality and solidarity, the Charter of the battle against discrimination of any kind, and it is a Charter for equality because it enshrines a special attention, the special attention that we pay to children and young people, to equality between men and women, to the role of old people, and to the substantial issues of protecting personal rights and personal data.

I must also draw attention to the freedoms that are enshrined in the Charter, the freedoms connected with European citizenship and the political rights associated with it, and the economic freedoms based on the Treaty of Rome, whose 50th anniversary we are celebrating this year. We are therefore true to our tradition and we repeat the ban on the death penalty, and I especially welcome the decision taken by the Council last week to mark the European Day against the Death Penalty.

Finally, I should like to point out that the Charter covers the rights of citizens and the rights of people, addressing a body that extends beyond the actual citizens of the Member States, and this is no less important because it represents, as of today, a fundamental element in our conviction that a better world is a world in which these rights and freedoms are universally respected.

This Charter, as of today, will be at the service of the external policy of the European Union which aims to establish a world in which all these rights and freedoms are universally respected and guaranteed. It will therefore act as a pointer, a pointer to the position of the European Union on the international stage and in any action that is proposed to secure global respect for fundamental rights.

This is why the citizens of Europe can, in this way, recognise themselves in a Union that is their Union. They can recognise the rights that the Union guarantees them and realise that Europe is a project of peace and democracy, a project in which the rights of the individual are fully respected. It is our moral authority and it is the sentiment of this ceremony that unites the three institutions. We are proclaiming this Charter on the eve of the signing of the Treaty of Lisbon, a Charter which has the legal status of a basic law and a legal status which is equal to that of the Treaties, for the benefit of many and to the displeasure of some. This Charter is in the Treaty.

(Standing ovation)

(Renewed uproar in the NI and IND/DEM ranks)

President. – You should at least have the decency to let our guest finish speaking.

Loudness is not an argument. Leave the Chamber!

José Sócrates, *President-in-Office of the Council.* – (PT) In this globalised world, in which many claim that economic and financial rules are absolute, the fact that twenty-seven European States are reiterating in the context of the Union this firm commitment to values and objectives designed to protect and safeguard fundamental rights is a signal contribution to the regulation of globalisation itself. Fundamental rights are a common tradition of

democratic states under the rule of law, ways of limiting the power of the authorities and fundamental instruments for the protection of the individual.

In binding the institutions and states of the Union, the Charter limits the power of the authorities in the name of protecting the interests of the citizens and their organisations. And in formalising this limitation on the power of the authorities, the limits on its application will strictly observe the principle of subsidiarity and strengthen the eminently democratic nature of the Union itself. The defence of fundamental rights is clearly a value that is essential to the European identity, that is part of our genetic code, an element that structures the whole European project and enables Europe to be defined as a Union of values, and the unconditional affirmation of these values is what the world expects of Europe.

This is the Europe I want to belong to, a Europe that defends these values. And we are well aware, I and all the Members, that the battle for fundamental rights is a daily task and probably an endless task, a task for states, a task for civil societies, a task for industrial undertakings and trade unions, a task for each and every citizen. That is why, in proclaiming the Charter, we rejoice in the agreement reached on the Charter, in the recognition of its legal value on an equal footing with the very Treaties establishing the Union.

But in addition to marking a day for rejoicing, the proclamation of this Charter represents an agreement by the institutions of the Union to be respected and applied daily in its actions. Only in this way will we live up to Europe's history, only in this way will we be worthy heirs of the best features of our collective identity and our common tradition: a collective identity and a common tradition that do honour to a Europe that fights for the rights, the freedoms and the guarantees of its citizens. I thank you all.

(Renewed standing ovation, with the exception of the GUE/NGL, the NI and the IND/DEM)

President. – Ladies and gentlemen, I should like to convey some information to you, and I ask you to provide now for the necessary calm. The King of Jordan is in the European Parliament and will address us immediately after the solemn proclamation of the Charter of Fundamental Rights. Please ensure, not least out of consideration for our guest from Jordan, that we have no more interruptions so that we can complete this proclamation in a dignified manner.

José Manuel Barroso, *President of the Commission.* – (PT) Mr President of the European Parliament, Prime Minister of Portugal and President of the Council of the European Union, ladies and gentlemen, on the eve of the signing of the Treaty of Lisbon, the Presidents of the three political institutions of the European Union – the European Parliament, the Council and the Commission – are signing here, in Strasbourg, the European Charter of Fundamental Rights.

It is, for me, a great personal honour to participate in an act of such high significance. The proclamation of the Charter of Fundamental Rights enshrines a culture of law in Europe. In the European Union, which is above all a community under the rule of law, institutional changes require the reinforcement of respect for fundamental rights.

Honourable Members, today the three European institutions reaffirm their commitment – the commitment they made in December 2000 when the Charter was proclaimed for the first time. But, seven years later, we go a crucial step further.

The Charter of 2000 was not legally binding. With tomorrow's signing of the Treaty of Lisbon, and then ratification, the Charter will be part of the Union's primary law and will have the same legal value as the Treaties themselves. This progress will have very concrete benefits for European citizens. Let me illustrate this point by looking briefly at the content of the Charter. The 54 articles cover rights that until now had to be recognised by the Court of Justice on a case-by-case basis. Now they are brought together.

The Charter, recognising the basic principles of human dignity, incorporates first of all the classic civil liberties already included in the European Convention on Human Rights: freedom of speech, freedom of assembly, freedom of religion, equality before the law and the principle of non-discrimination.

The Charter also confirms economic and social rights. It includes the right to property and the freedom to conduct business, but, at the same time, the rights of workers and of social partners, and it enshrines topics such as social security and social assistance.

The Charter also covers the new challenges facing society today. It therefore includes guarantees on data protection, on bioethics and on good administration, known as 'third-generation rights'. These will be highly relevant in many of our areas of activity, be it in research policy, in the area of freedom, security and justice or in our permanent quest for good governance.

(FR) Mr President, ladies and gentlemen, the Charter of Fundamental Rights will help to anchor the European Union within a genuine culture of fundamental rights. By signing the Charter today, we – the Presidents of the Union's three political institutions – are undertaking, as a priority, to respect those rights in all that we do. That commitment might, on the face of it, seem easy to uphold, but in reality it will be an ongoing challenge to ensure that civil liberties are fully respected in all EU policies, whether in legislating for the internal market, managing immigration or endeavouring to combat terrorism.

The Charter is the first legally binding document ever produced at international level which brings together in a single text not only civil and political rights but also economic and social rights, making them all subject to the same system of legal supervision. It is undoubtedly a major achievement and one that the European Union should be proud of. It is, I believe, particularly significant that this should be possible now in the new enlarged Europe, a Europe formerly divided by totalitarian and authoritarian regimes which disregarded human rights, whereas the Europe that we have today is a Europe united around the values of freedom and solidarity.

(Applause)

If we work together to promote the culture of human rights, we shall make a crucial contribution to achieving a Europe genuinely rooted in values – tangible values that are credible in the eyes of ordinary people. Strengthened by the Charter, Europe has become more determined to promote its values at world level. Ever since the signing of the Universal Declaration of Human Rights, Europe has led the way in the fight for basic rights. From now on it will be better equipped to pursue that fight successfully in the interests of freedom, peace and democracy.

(Standing ovation)

(Several Members loudly voice their opposition, waving flags and banners and chanting: 'Referendum!')

(The President of the House, José Sócrates and José Manuel Barroso proceed to sign the Charter of Fundamental Rights)

5. Formal sitting - Jordan

President. – Honourable Members, Commissioner Ferrero-Waldner, ladies and gentlemen, it is a particular honour for the European Parliament to welcome to Strasbourg today His Majesty Abdullah II, King of the Hashemite Kingdom of Jordan. We bid Your Majesty a warm welcome to the European Parliament.

(Applause)

I also welcome the high-ranking delegation accompanying King Abdullah, particularly the Speakers of both Houses of the Jordanian Parliament.

(Applause)

Today's visit by the King of Jordan is the third since 2002, when His Majesty first addressed the European Parliament. In November 2004 the King visited the Conference of Presidents in Brussels. His visit and his speech in the European Parliament today are both a sign of the strong partnership between the Hashemite Kingdom of Jordan and the European Parliament and an encouraging signal for our common future in the Mediterranean region.

Your Majesty, I had prepared a far longer speech, but since we had to ask you to wait for a while, I shall cut my speech short and simply say that it is wonderful to have you here with us, and it now gives me great pleasure to invite you to address us.

(Applause)

Abdullah II, *King of the Hashemite Kingdom of Jordan.* – *Bismillah ar-Rahman ar-Rahim,* Mr President, Members of Parliament, ladies and gentlemen, thank you for your warm welcome and, on behalf of the people of Jordan, I am honoured to come before this distinguished institution again.

My friends, a changing Europe and a changing Middle East are here today. A Europe of expanding membership and a visionary mission: for cooperation across borders and growth without barriers. A Middle East of new horizons and growing hope: for peace among neighbours, opportunities for our people and a future for our youth.

These trends do not take place in isolation. The achievement of the hopes of our regions will advance stability and create new possibilities for security and prosperity worldwide. It is deeply in our interest to succeed. And a critical opportunity is before us.

Two weeks ago, with the support of the European Union and nations from both our regions, Israelis and Palestinians met at Annapolis. They pledged all-out negotiations toward a peace treaty in 2008 and immediate steps to implement their obligations under the Road Map. For the first time in years, we see movement towards a permanent settlement and an independent, sovereign, viable Palestinian state.

(Applause)

This progress is the work of many friends of peace, including leaders in Europe and the Arab states. We believed that, after years of worsening crisis, a change of strategy was required. We urged a new commitment to the two-state goal and a targeted process that could achieve it – with tight timelines, measurable requirements and milestones for action.

ANNEX 2

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION



Charter of Fundamental Rights (© European Union, 2004)

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2010/C 83/02)

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY*Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II
FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article 11***Freedom of expression and information**

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

*Article 12***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article 13***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article 14***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

*Article 15***Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

*Article 16***Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

*Article 17***Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

*Article 18***Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

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

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY*Article 20***Equality before the law**

Everyone is equal before the law.

*Article 21***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

*Article 25***The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article 26***Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

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

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article 32***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article 33***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article 34***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

*Article 35***Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article 39***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article 40***Right to vote and to stand as a candidate at municipal elections**

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

*Article 41***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:
- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article 50***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER*Article 51***Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

*Article 52***Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

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