FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

SYNTHESIS REPORT : CONCLUSIONS AND RECOMMENDATIONS ON THE SITUATION OF FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION AND ITS MEMBER STATES IN 2003

4 February 2004

Reference : CFR-CDF.Conclusions.2003.en

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Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lithuanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. Verbruggen.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxemburg), Pavel Sturma (Czeck Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.
The documents of the Network may be consulted on :
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EXPLANATORY NOTE

The EU Network of Independent Experts on Fundamental Rights has examined the reports prepared by the individual members of the Network on the situation of fundamental rights in the 25 Member States of the Union[1] and on the activities of the institutions of the Union. These reports offer an evaluation of the situation of fundamental rights in the Member States and in the Union in 2003, on the basis of the EU Charter of Fundamental Rights. The EU Network of Independent Experts on Fundamental Rights has decided to highlight certain issues of particular concern, and to select a limited number of good practices in the implementation of fundamental rights, on the basis of a comparative reading of these reports.

For the purpose of these conclusions, "good practices" are defined as innovative answers to problems in the implementation of fundamental rights which are faced by all or most of the Member States. These are identified in these conclusions because, when experimented successfully in one Member State, they could inspire similar answers in other Member States, launching a process of mutual learning which the European Parliament has sought to encourage when it requested the European Commission to set up the EU Network of Independent Experts on Fundamental Rights.

In accordance with the communication which the Commission presented to the Council and the European Parliament on Article 7 EU, "Respect for and promotion of the values on which the Union is based"[2], certain recommendations are made to the institutions of the Union, either where the EU Network of Independent Experts on Fundamental Rights arrives at the conclusion that certain violations of fundamental rights or risks of such violation by Member States are serious enough to justify that the attention of the European Parliament be drawn upon them, as they could imperil the mutual trust on which Union policies are founded, where it is found that certain initiatives taken by the EU in the limits of its attributed powers could truly add value to the protection of fundamental rights in the Union, or where the violations which are found to have occured in 2003 have their source in the law of the European Union, requiring that this situation be remedied.

Article 51 of the Charter of Fundamental Rights limits the scope of application of the Charter to the institutions of the Union and to the Member States only in their implementation of Union law. However, the Charter also constitutes a catalogue of common values of the Member States of the Union. In that respect, the Charter may be taken into account in the understanding of Article 6(1) EU, to which Article 7 EU refers. In conformity with the mandate it has received, the EU Network of Independent Experts in Fundamental Rights considers the Charter as the most authoritative embodiment of these common values, on which its evaluation therefore may be based. This should not be seen as operating an extension of the scope of activities in which the Charter is legally binding, beyond the limits clearly defined by Article 51 of the Charter.

In adopting these conclusions, the EU Network of Independent Experts on Fundamental Rights has relied essentially on the reports prepared by the individual members of the Network, although the findings made in the individual reports do not necessarily represent the views of the Network as a whole and are presented under the sole responsibility of the individual expert. In certain cases, outside sources known to the experts of the Network were also relied upon. In particular, the Network has taken into account the information presented by the non-governmental organisations which took part in the hearing organised by the Network on 16 October 2003 in the European Parliament, where that information could be

[1] In these conclusions, the reference to the "Member States" should be understood as referring also the countries acceding to the European Union on 1 May 2004.
[2] COM (2003) 606 final, of 15.10.2003.

independently verified[3]. The principle according to which the situation of fundamental rights in the Member States should be approached on a non-selective manner has been scrupulously adhered to. All experts have followed the same guidelines, which served to identify the legislation or regulations, case-law or practice of national authorities which could be incompatible with the fundamental rights enumerated in the Charter, or which are positive aspects or constitute good practices under the definition given above. However, where the present conclusions mention particular Member States, this cannot be construed as meaning that similar problems do not occur in other jurisdictions : indeed, as the conclusions focus, as the reports do, on the year 2003, problems which have not developed or emerged during that period but may have been continuing since a longer period of time, will not be highlighted.

The interpretation of the EU Charter of Fundamental Rights is based on the explanations provided by the Presidium of the Convention entrusted with the elaboration of the Charter of Fundamental Rights[4], which the EU Network of Independent Experts on Fundamental Rights considers as offering a particularly authoritative reading of the Charter.

Moreover, in accordance with Article 52(3) of the EU Charter of Fundamental Rights, the Network reads the provisions of the Charter which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms as having the same meaning and the same scope of those rights, as interpreted by the European Court of Human Rights ; in certain cases, the provisions of the Charter however are recognized a broader scope, as confirmed by the second sentence of Article 52(3) of the Charter. The Network also takes into account the fact that other provisions of the Charter have to be read in accordance with the rights guaranteed in instruments adopted in the field of human rights in the framework of the United Nations, the International Labour Organisation or the Council of Europe. Where this is the case, these provisions of the Charter are interpreted by taking into account those instruments and the interpretation given to them in the international legal order. Finally, certain international instruments adopted in the field of human rights develop guarantees equivalent to those of the Charter, widening the scope of the protection of the rights of the individual or developing the procedural guarantees which are attached to these rights. The signature and ratification by the Member States of the Union of these instruments would ensure a minimal level of protection of the rights guaranteed in the EU Charter of Fundamental Rights throughout the Union[5]. Therefore the Network encourages the States to make such ratifications or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

These conclusions do not seek to be exhaustive on the domains covered by the individual reports. On the contrary, the conclusions select particular topics, which are felt to be of particular importance in the evaluation of the situation of fundamental rights in the Union in 2003. Moreover, even on the issues they do cover, these conclusions do not repeat all the findings and descriptions found in the individual reports, where they are detailed.

Certain provisions of the Charter have not led to the adoption of conclusions by the Network. This is either because no significant developments occured during the year 2003 which is the period under scrutiny, or because the reports on the Member States and the European Union

[3] These non-governmental organisations were the following : International Federation of Human Rights Leagues (FIDH), European Association for Human Rights (FIDH-AE), World Organisation Against Torture (OMCT) Statewatch, Amnesty International (AI), Human Rights Watch (HRW), International Commission of Jurists (ICJ), European Trade Union Confederation (ETUC), International Movement ATD Fourth World (ATD), Social Platform, European Anti Poverty Network (EAPN), Fair Trials Abroad (FTA), European Women's Lobby (EWL), European Children's Network (EURONET), European Roma Rights Center (ERRC), European Criminal Bar Association, European Disability Forum, the European Older's People Platform. The United Nations High Commissioner for Refugees (UNHCR) also was heard on that occasion.

[4] CHARTE 4473/00, CONVENT 49, 11 October 2000 (revised French version : CHARTE 4473/1/00 CONVENT 49 REV 1 of 19 October 2000).

[5] The information concerning the state of ratifications is based on the situation on 15.2.2004.

presented a too fragmentary or unequal information. Indeed, where sufficient comparability could not be ensured, the Network took the view that it would be more advisable to refrain from formulating conclusions, which otherwise – especially if they mention certain countries in particular – would run the risk of being selective. Even where no conclusions have been adopted, however, the reports which served as the background to these conclusions may contain information to which the reader is referred.

The findings made in these conclusions are not binding upon the institutions of the Union, and the institutions cannot be held responsible for any information they contain. Although the EU Network of Independent Experts on Fundamental Rights was set up by the European Commission upon request of the European Parliament, the views expressed in these conclusions are formulated by the Network, acting in a fully independent manner.

CHAPTER I : DIGNITY

Article 1. Human dignity

No conclusions have been adopted under this provision of the Charter of Fundamental Rights.

Article 2. Right to life

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that in accordance with Article 52(3) of Charter of Fundamental Rights, this provision of the Charter corresponds to Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 6 of the International Covenant on Civil and Political Rights (1966), by its Second Optional Protocol aiming at the Abolition of Death Penalty (1989), by the Rome Statute of the International Criminal Court (1998), by Protocol n°6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty (1983), and by Protocol n°13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all Circumstances (2002).

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 3 Member States still have to be sign the Second Optional Protocol to the International Covenant on Civil and Political Rights: the Czech Republic, France and Latvia. Poland has signed this instrument but has not ratified.

It also notes that all Member States have now signed Protocol n°13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. 14 Member States have signed this instrument but still have not ratified it: Czech Republic, Estonia, Germany, Greece, Finland, France, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Slovak Republic and Spain.

To ensure a minimal level of protection of the right guaranteed in Article 2 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- The excessive use of firearms by the police and security forces is pointed out by many reports. In **Austria, Greece, Germany, Portugal, France** and **Hungary**, the use of firearms by police officers led to the death of individuals during the period under scrutiny. Allegations of violence and ill-treatment by the security forces are underlined in almost all the reports. In **France**, certain ill-treatments have occurred especially during the expulsion procedures of foreigners. In the **Slovak Republic**, allegations of

harassment and ill-treatment by the police against the Roma minority raise particular sources of concern. The Network moreover would recall that where a person dies in custody, the effective protection of the right to life requires that death is fully and speedily investigated, by an independent and impartial instance which must have the required investigatory powers to identify the circumstances of the death and the entailed responsibilities. In this respect, while the Network welcomes the fact that demonstrable shortcomings in the legislative framework for post-mortem inquiries in **Ireland** are about to be addressed in new legislation, it notes that there remain other practical concerns (such as delays in the forensic science laboratory) that can only be addressed by increased resourcing of the relevant services associated with such inquiries

- The land mines fields on the Northeast border of **Greece** – aiming at prohibiting the illegal crossing of borders – caused the death of 10 persons during the period under scrutiny.

- The Network is concerned about the disproportionately high incidence of deaths in custody of members of ethnic or racial minority groups in the **United Kingdom**, as noted by the Committee on the Elimination of Racial Discrimination in the Concluding Observations on the United Kingdom's sixteenth and seventeenth periodic reports (CERD/C/63/CO/11, 10 December 2003). The Network is also concerned about the adequacy in the **United Kingdom** of arrangements to prevent persons in custody from taking their own lives or being exposed to harm by others and the failure always to secure prompt, effective and transparent investigations of the circumstances in which such deaths, and those in which law enforcement officials are involved, occur.

- The domestic approaches of the question of euthanasia are widely diverging. Euthanasia is allowed under certain conditions in some States (e.g. the **Netherlands** and **Belgium**). It is strictly forbidden in other States (e.g. **Czech Republic, Poland, Malta, Sweden**) whilst it is lively discussed in **France, Hungary** and **Germany**. Although it acknowledges that the Member States may have different approaches to this issue in the present state of the international law of human rights, the Network emphasizes that, where this is the choice made within a Member State, the partial decriminilization of euthanasia may only be considered compatible with the right to life of the individual if the conditions under which it may legally be performed guarantee fully the free and informed consent of the individual concerned, and ensure that no form of pressure, including but not limited to pressure exercised by the medical staff and by family members, is exercised upon him or her. The Network notes in this respect the decision by the Constitutional Court of **Hungary** on euthanasia (decision 22/2003. (IV. 28.) AB határozat), where, while acknowledging that the Act on Health Care makes the self-determination of terminally ill patients only to a limited extent possible, it considered that this restriction was in accordance with human dignity and could be justified by the need to protect the right to life.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights notes with concern that according to "Feasibility study on the control of the European Union's maritime borders" prepared by Civipol Conseil for the Commission, "The increasing deterrent effective of improving the surveillance and control mechanisms of the Spanish and Italian authorities on the Straits of Gibraltar and the Sicilian Channel is shifting the focus towards riskier passages, the Canary Islands Channel and the Gulf of Sirte". In defining the measures to combat illegal immigration across the maritime borders of the EU, the Member States are urged to take into account the impact these measures could have on the means of illegal immigration, and the risks entailed for the candidate immigrants.

Positive aspects and good practices

The Network notes with satisfaction that in Greece, significantly stricter conditions have been imposed in 2003 on the use of firearms by the police, whose practical training moreover has been improved.

The Network notes with interest that in Finland, the Constitutional Law Committee whilst interpreting the provision of the Finnish Constitution providing that a foreigner shall not be deported, extradited or returned to another country if there is a risk of death sentence or torture, expressed the view that personal data should not be transferred if it is processed for the purpose of sentencing a capital punishment or executing it.

The Network also notes with interest that the Netherlands have immediately launched an official investigation after a soldier stationed with the Dutch troops in Iraq as part of the Multilateral Stabilisation Forces pursuant to UN Security Council Resolution 1483 (2003) was accused of having committed killed an Iraqi civilian at a moment that there was no immediate danger to any Dutch soldier. The Network considers that by launching an investigation in such circumstances, the Netherlands acts in conformity with the obligations flowing from Article 2 of the European Convention on Human Rights (Eur. Ct. HR, *Kelly v. the United Kingdom* judgment of 4 May 2001, Appl. no. 30054/96, paras. 91-98), to the extent that the troops stationed in Irak effectively control the relevant territory and its inhabitants and "exercise all or some of the public powers normally to be exercised by the Government" (Eur. Ct. HR, 19 December 2001, *Bankovic a.o. v. Belgium* and 16 other Contracting Parties (adm. dec.), application no. 52207/99, para. 71).

Article 3. Right to the integrity of the person

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 7 of the International Covenant on Civil and Political Rights (1966), by the Rome Statute of the International Criminal Court (1998) and by Article 1 of the Council of Europe Convention on Human Rights and Biomedicine (1997).

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 6 Member States still have to be sign the Convention on Human Rights and Biomedicine: Austria, Belgium, Germany, Ireland, Malta and the United Kingdom. 8 Member States have signed this instrument but still have not ratified it: Finland, France, Italy, Latvia, Luxembourg, the Netherlands, Poland and Sweden.

To ensure a minimal level of protection of the right guaranteed in Article 3 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights noted that therapeutic and reproductive cloning are prohibited in almost all Member States. In certain Member States, however, the present regime of therapeutic cloning is in discussion or is ambiguous, which may rise a problem of legal certainty. In the **Slovak Republic**, therapeutic cloning is

not presently prohibited, but there is a proposal to impose this prohibition in the future. In **Austria**, the prohibition of reproductive cloning is not explicit and the status of therapeutic cloning is still unclear. In **Malta,** the lack of legislation in the field of medicine and biology on issues such as cloning, eugenic practices and on free and informed consent gives rise to ambiguous situations, which may be source of concern.

While welcoming the Proposal of a new Health Care Act in the **Slovak Republic** guaranteeing the informed consent of the patient and access to medical files, the Network remains concerned about the information concerning forced sterilisation of women in that country. The Slovak Republic should adopt all necessary measures to investigate all alleged cases of coerced or forced sterilization, publicize the findings, provide effective remedies to victims and prevent any further instances of sterilization without full and informed consent.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights notes with interest that the Criminal Codes of both **France** and the **Slovak Republic** have been amended in order to insert specific incriminations of eugenic practices. The **French** Code now provides with a new chapter devoted to "Crimes against the human race" (*crimes contre l'espèce humaine*), which severely punishes eugenic practice aiming at organising the selection of human beings. In the **Slovak Republic**, the amendment introduces the new "crime of human being cloning".

The Network also notes a trend towards a better protection of the patient in relation to medical acts. Patients' rights have improved in **Germany** through the adoption of the new "Charter of Patients Rights in Germany", which seems to be similar to the previous ones adopted in the United Kingdom, Ireland, Portugal and Austria. Steps in this direction have also been undertaken by the **Latvian** Draft Law on the Protection of Patients' Rights. In **Belgium,** the Law of 22 August 2002 regarding Patients' Rights establishes the "Patients Rights Federal Commission" in charge of ensuring the follow-up of patients rights, advising the competent minister in these matters, assessing the specific mediation functions to be created and dealing with possible complaints regarding these mediation functions. Also with regard to **Belgium**, the Network notes with interest the criteria identified in Opinion n° 21 of 10 March 2003 of the Belgian Advisory Committee on Bioethics where the Committee tackles the issue of forced treatments in the context of forced hospitalisation as covered by law of 26 June 1990 regarding the protection of persons with mental health problems.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that in accordance with Article 52(3) of Charter of Fundamental Rights, this provision of the Charter corresponds to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 7 of the International Covenant on Civil and Political Rights (1966), by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1984), by Article 19 of the Convention on the Rights of the Child (1989) and by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

It also notes that the protection of the rights listed in Article 4 of the Charter of Fundamental Rights has recently been improved at the international level by the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002) although this instrument is not in force yet.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 18 Member States still have to sign the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Belgium, Cyprus, Czech Republic, Estonia, Germany, Greece, Hungary, France, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia and Spain. Malta and the United Kingdom are the only Member States that have ratified it.

To ensure a minimal level of protection of the right guaranteed in Article 4 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- The conditions in which asylum-seekers are detained or in which aliens are forcibly removed still constitutes an important source of concern in a number of Member States. In Austria, the conditions of detention pending deportation of illegal immigrants in old police jails, which sometimes certainly come close to inhuman treatment, have been the continuous object of criticism by the Human Rights Advisory Board in 2003. The "Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 15 December 2000" (CPT/Inf.(2003) 20) deals among others with complaints of excessive use of force by the police during the forcible removal of foreigners. In France, the introduction of the new article 35bis in the Order of 1945 (Ordonnance de 1945) provides for a notable extension of the length of the administrative detention of undocumented foreigners, which raises concern with respect to the difficult conditions of detention in these centers. In Greece, similar concerns are pointed out regarding ill-treatment of asylum-seekers and detained foreigners.

- After its visit to Hungary in 1999, the European Committee for the Prevention of Torture had remarked that being infected with HIV is not to be used as a justification for separating people and it recommended that Hungarian authorities bring their HIV policy into line with relevant international standards in this regard (§§ 121-122 of the Report to the Hungarian Government on the visit to Hungary carried out by CPT in 1999). The Network regrets that these findings are still valid today.

- Serious overcrowding in prison remains a source of concern under Article 4 of the Charter in Portugal, Poland, France and Cyprus. Moreover, the size of cells in Latvia falls below international standards.

- The Network has serious concerns about the situation of persons detained pursuant to the Anti-terrorism, Crime and Security Act 2001, ss 21-23 in the United Kingdom, as this Act provides for an indefinite period of detention for foreigners believed to pose a

risk to national security and suspected of being international terrorists who, for legal or practical reasons, cannot be removed from the United Kingdom. The Network shares the view of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that steps be taken to ensure that, in case of any further detentions pursuant to the Act that the right of access to a lawyer be guaranteed from the very outset (Report (CPT/Inf (2003) 18). It encourages the United Kingdom to follow upon the recommendations of the CPT for a review of the situation of detained persons as regards access to activities, the imposition of further limitations on the out-of-cell time because of 'operational requirements', the ability to receive only a limited number of radio stations and none in Arabic, the fact that they have not been accused or convicted of any concrete criminal offence and that their detention is indefinite.

- The use of cage-beds in the Slovak Republic is not fully abolished. Although the use of cage beds is now prohibited in social care service homes, this prohibition does not cover mental hospitals.

- Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (1984) provides that each State Party shall ensure that all acts of torture are offences under its criminal law. However, the reports on Latvia, Sweden, Italy and Slovenia underline that torture does not constitute a specific criminal offence under their national criminal code, however forthcoming reforms are expected in the last two States. In its 2003 Conclusions on Belgium, the UN Committee against Torture expressed its concern about certain lacunae in the Belgian law regarding the incrimination of torture (CAT/C/CR/30/6).

- The lack of independent monitoring bodies on allegations of torture and of allegations of violence by the police is pointed out by certain reports. In Sweden for instance, there is still no independent monitoring body in existence for the inspection of patients' care placed in psychiatric establishments or in institutions for young persons. The same remarks are equally relevant for homes for drug addicts and other substance abusers. The UN Human Rights Committee recommended that Estonia guarantee the independence from police authorities of the newly created police control department, which is responsible for carrying out investigations of abuses committed by the police (CCPR/CO/77/EST). The Network welcomes the fact that legislative proposals seeking to replace in Ireland the Garda Siochana Complaints Board with a Garda Inspectorate having powers akin to that of a Police Ombudsman are to be brought forward in 2004, however expresses the hope that this new collegiate body will have the requisite degree of autonomy and independence.In Lithuania, the Committee against Torture criticised the situation that investigations into allegations against police officers are not conducted by a body independent of the Police.

- The Network encourages the Slovak Republic to take measures to eradicate all forms of police harassment and ill-treatment during police investigations of the Roma, including prompt investigations, prosecutions of perpetrators and the provision of effective remedies to the victims. It also regrets that, in this same country, the adopted prohibition of cage or net beds use does not cover all cases of using these beds in the Slovakia, as it relates only to the social services facilities operating under the provisions of the Act on Social Assistance supervised by the Ministry of Labour, Social Affairs and Family, and does not cover mental hospitals under supervision of the Ministry of Health.

- The rates of domestic violence are very high in most Member States. Concerns are raised by many reports regarding the need to improve policy and legal frameworks to

combat domestic violence and to take appropriate preventive measures in order to give the required assistance to the victims.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights has identified a trend towards the introduction in the criminal law of a specific incrimination of female genital mutilation. In **Cyprus**, Law 48 (I) 2003 provides for this incrimination which is to be applied extra-territorially, i.e., also with respect to such offences committed abroad by Cypriot nationals or individuals permanently residing in Cyprus; the law specifies that the consent of the women involved does not constitute a defence nor a mitigating factor. In **Spain,** Law 11/2003 provides for a specific penalty for female genital mutilations as well as for the loss of parental authority where the parents are held responsible of the mutilation. In the **United Kingdom**, the Female Genital Mutilation Act 2003, like the new legislation in Cyprus, provides that offences connected with female genital mutilation apply not only to acts committed by anyone within the United Kingdom but also to those committed elsewhere by a UK national or permanent resident.

The Network also notes with interest that in the **Netherlands,** the *Wet internationale misdrijven* [International Crimes Act] entered into force in 2003 (Staatsblad 2003, 270; Kamerstukken 28 337), It welcomes the extension of the incrimination of genocide, crimes against humanity and war crimes, to acts committed outside the Netherlands, irrespective of the nationality of the suspect, although where the suspect does not have Dutch nationality, criminal proceedings can only be brought if he is present in the Netherlands.

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights has identified a number of good practices aiming at the protection of the victims of domestic violence. **Spain** has decided to grant independent residence permits to foreigners victims of domestic violence (Organic Law 14/2003). This measure however has been criticized because it only applies once an order of protection has been ordered thus once the violence has occurred. **Luxembourg** has adopted the Law of 8 September 2003 on Domestic Violence, which sets up measures for the expulsion of the perpetrator of the violence from the family home as well as measures of assistance for the victims. In **Sweden**, the Government has allocated budget to sheltered housing and other measures for people at risk of honour-related violence. Acting on government instructions, the Swedish Integration Board, in cooperation with other institutions, has highlighted good examples and methods for preventing conflicts between the individual and the family that may be caused by ideas about honour. In **Ireland**, a new program has been set up aimed at preventing domestic violence by integrating the work of criminal justice system with that of victims support agencies.

The Network also notes with interest the solution adopted by *Rechtbank* [Regional Court] of The Hague in the case of Mr Lorsé, whose conditions of detention had been found by the European Court of Human Rights to be incompatible with Article 3 ECHR. Despite the absence of a formal legal basis, the *Rechtbank* decided that the seriousness of the violation of Article 3 justified a reduction of 10% of the prison sentence, a solution which the *Hoge Raad* [Supreme Court] approved of in its judgment of 31 October 2003. The Network observes that, according to the *Hoge Raad,* Mr Lorsé was entitled to compensation after the European Court of Human Rights had found a violation of Article 3 in his case, and that, although compensation may take the form of a pecuniary amount, it may also take other forms, such as early release. This conclusion was not altered by the fact that the judgment imposing a prison sentence on Mr Lorsé was final and that the State authorities were obliged to comply with that judgment as well.

*The Network notes with satisfaction that, f*ollowing several negative reports of national as well as international institutions for the protection of human rights, and in the framework of the approved UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (G.A. Res. A/RES/57/199 adopted on 18 December 2002 at its 57th session), the **Czech Republic** envisages to amend the Law on Public Protector of Rights (Zák. č. 349/ 1999 Sb. o Veřejném ochránci práv, ve znění pozdějších předpisú (Law No. 34/ 1999 Coll. Of Laws on the Public Protector of Rigts, as amended by later laws) to extend the scope of the competence *rationae materie* and *rationae personae* of the Czech Ombudsman, to authorize the Ombudsman to carry out regular inspections in all places of detention of persons or de facto restriction of their freedom.

Article 5. Prohibition of slavery and forced labor

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that in accordance with Article 52(3) of Charter of Fundamental Rights, paragraphs 1 and 2 of this provision of the Charter corresponds to Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 8 of the International Covenant on Civil and Political Rights (1966), by the Slavery Convention (1926), by the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956), by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950), by Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (1979), by Articles 32, 34 and 35 of the Convention on the Rights of the Child (1989), by the Convention against Transnational Organised Crime supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) and the Protocol Against the Smuggling of Migrants by Land, Air and Sea (Smuggling Protocol) (2000), by Article 9 of the Convention on Cybercrime (2001), by ILO-Convention (n° 29) concerning Forced or Compulsory Labour (1930), by ILO-Convention (n° 105) concerning the Abolition of Forced Labour (1957) and by ILO-Convention (n° 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour (1999).

It notes that the protection of the rights listed in this provision of the Charter of Fundamental Rights has recently been improved at the international level by the adoption of by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) It also notes that the Convention on the Elimination of All Forms of Discrimination against Women has recently been reinforced by the adoption of an Optional Protocol (2000), which should be also taken into account when interpreting this provision of the Charter.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that all Member States have ratified the Slavery Convention, with the exception of Luxembourg, Lithuania and Slovenia. It notes that Estonia and Lithuania have not signed the Supplementary Convention on the Abolition of Slavery. It notes that 10 Member States have not signed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: Austria, Germany, Greece, Estonia, Ireland, Lithuania, Malta, the Netherlands, United Kingdom and Sweden, Denmark has signed it but it has not ratified it.

It notes that Czech Republic and Lithuania still have to be sign the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. 18 Member States have signed this Protocol but still have not ratified it: Austria, Belgium, Cyprus, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, United Kingdom, Slovak Republic, Slovenia and Sweden.

It notes that all Member States have signed both the Convention against Transnational Organised Crime and the Supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. 11 Member States have ratified the Convention namely Cyprus, Denmark, Estonia, Finland, France, Latvia, Lithuania, Malta, Poland, Slovak Republic and Spain. All Member States have signed its Supplementing Trafficking Protocol but only 7 Member States have ratified it: Cyprus, Denmark, Estonia, France, Malta, Lithuania and Poland. All Member States have signed its Supplementing Smuggling Protocol but only 7 Member States have ratified it: Cyprus, France, Latvia, Lithuania, Malta, Poland and Spain.

It notes that 3 Member States still have to sign the Convention on Cybercrime: Czech Republic, Latvia and Slovak Republic. The only Member States that have ratified this instrument are Estonia, Hungary and Lithuania. It notes that Latvia is the only Member State that has neither signed nor ratified both ILO Convention (n° 29) concerning Forced or Compulsory Labour and Convention (n° 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour.

To ensure a minimal level of protection of the right guaranteed in Article 5 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- Forced prostitution, as a contemporary form of slavery, deserves to be combated as a serious violation of human rights. The prostitute should be treated as a victime in need of protection, rather than as a criminal, and this should be seen as a condition for the effective fight against coerced prostitution and the trafficking of human being for sexual exploitation. The Network notes the widely diverging approaches of the Member States with regard to prostitution which is freely entered into, ranging from de-criminalisation or regulation of the purchase of sexual services to their prohibition. Although it acknowledges that the choices made by States differ on this issue, the Network notes that these differences between the Member States must be reconciled with the freedom to provide services within the European Union.

- Forced labour remains a matter of concern relayed by certain national reports. In this regard, the report on the **Slovak Republic** raises concerns regarding the working conditions of unqualified or low skilled / seasonal / immigrant workers in the field of construction industry or agriculture. In **Ireland**, the principle that the working permits attaches to an employer and not to an employee has the effect of restricting the employment choice of migrant workers and could constitute a form of bounded servitude. In **Portugal**, the employment of regular immigrants implies the requirement of a valid employment contract for the annual renewal of their ‘permission to stay’,

which strengthens the position of employer, particularly given the average length of employment contracts.

- Article 5(3) of the Charter says that trafficking of human beings is prohibited, however the Network notes that a number of gaps remain in the domestic legislation of a number of Member States, and that the implementation of the international and European standards in this field continues to diverge. It encourages States to speed up the process of ratification of the international and European instruments mentioned above. It recalls the need to adopt a broad definition of trafficking that explicitly covers trafficking of women, men and children, that includes the "intra-country trafficking" of persons and that does not only incriminate trafficking for the purpose of sexual exploitation but also for purposes of forced or exploitative labour or the removal of body organs. It is also essential to provide measures of protection of the victims in these cases.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the adoption by the Justice and Home Affairs Council of a directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities. It also encourages the adoption by the European Community of the Convention against transnational organised crime and of its additional protocols to prevent, suppress and punish trafficking in persons, especially women and children (Trafficking Protocol) and against the smuggling of migrants by land, air and sea (Smuggling Protocol).

Positive aspects and good practices

The Network welcomes the initiatives adopted in the **Czech Republic** in order to improve protection of persons, especially women and children against exploitation of prostitution and child pornography. it notes in particular that the Penal Code of the Czech Republic (Law. No. 134/ 2002 Coll. of Laws) was amended to introduce the concept of "trafficking in persons for the purpose of sexual intercourse" regardless the quality of the victim (women, men or children), and to widen and improve the definition of child pornography and make distribution, publication, production, import, transit and export of the child pornography a criminal offence.

The Network notes with satisfaction that in Greece, a presidential decree of 2003 implements and completes the Law n° 3064/2002, seeking to combat and punish the trafficking in human beings, in order to offer a more precise definition of the notion of victims of trafficking in human beings, in the meaning of the Penal Code, and to create a system of assistance to those victims. In Italy, the Law of 11 August 2003, n° 228 (J.O. of 23.8.2003), details and reinforces the incrimination of reduction into, or maintenance in, slavery, trafficking in human beings, trade in slaves. The law includes in the notion of reduction into slavery the fact to maintain a person in a state of continuous intimidation by obliging that person to perform a certain labour, sexual acts, mendicity or any kind of service which includes a form of exploitation. The law also reinforces the possibilities to combat organized criminality with a view to committing such criminal acts. The Network notes with interest that the law will create a Fund for the assistance and social integration programmes in favor of the victims of trafficking in human beings and the social protection programmes in favor of exploited migrants who are threatened because they denounce those committing exploitation (Art. 18 of the Immigration Law n° 286/1998),. The Fund will be financed by the revenues from confiscated goods of criminal organisations implicated in the trafficking in human beings.

The Network has noted with interest that for the first time in **Sweden**, a judgment from the District Court in Gothenburg (Case No B 7477-03 *Internationella åklagarkammaren v.*

L.Stojko and K.Dupski, 15 October 2003) convicted two persons for trafficking in human being.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that in accordance with Article 52(3) of Charter of Fundamental Rights, this provision of the Charter corresponds to Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance to the requirements formulated by both Article 9 of the International Covenant on Civil and Political Rights (1966) and Article 37 of the Convention on the Rights of the Child (1989).

All the Member States are parties to these instruments.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- Although Recommendation Rec(2003)20 addressed by the Committee of Ministers of the Council of Europe to the Member States on 24th September 2003, regarding new methods for dealing with juvenile delinquency and the role of justice for minors, shows the direction to be followed in the future, the EU Network of Independent Experts notes a range of problems regarding the administration of juvenile justice and the adoption of measures, including detention, against young offenders. It regrets that in **Ireland,** Shanganagh Castle has been closed, although this was the only open detention centre for young offenders in the State and although there is no proposal for a replacement facility, despite the fact that Shanganagh Castle had provided an essential and appropriate platform for rehabilitative and educational approaches for convicted 16- to 21-years-old In Latvia, the law and the practice concerning juvenile offenders continues to be a source of concern, as detention measures and prison terms are commonly used where other measures would appear more appropriate. In **Austria,** the increase of juvenile offenders sent to jail linked to the practice of jailing foreign juveniles for petty crimes is a cause for serious concern, with the situation being worst in Vienna where in 3 years the rate of new inmates under the age of 21 has risen by 74% above-average. In **Belgium** the law of 1 March 2002, the implementation of which has created in Everberg the Centre for the temporary placement of young offenders, has not solved the problem of the lack of adequate facilities for the accommodation of young offenders. Moreover the implementation of the law of 1 March 2002 has highlighted several difficulties: whereas the placement in the closed centre of Everberg shall in principle be decided only for want of alternative solution for the placement of the young offender, many judicial decisions bring to the fore the difficulty of determining the number of places available in the public institutions for the protection of youth (I.P.P.J.). Besides whereas the law of 1 March 2002

subordinates the young offender's deprivation of liberty to the existence of serious indicia of guilt, this requirement is not always respected in practice.

- The detention of minor asylum-seekers, whether accompanied or not, constitutes a specific problem. In **Belgium**, since the Royal Order of 2 August 2002 setting the conditions and rules of the functioning of the detention centres for foreigners does not provide any remedy to this issue, on several occasions the Belgian jurisdictions were led to find that this form of detention was incompatible with the requirements of the International Convention on the Rights of the Child of 20 November 1989. The UN Committee against Torture also expressed its concerns regarding the detention – sometimes for long periods – of unaccompanied foreign minors in Belgium (CAT/C/CR/30/6). Despite this, at the end of 2003 no concrete measure had been adopted to bring to an end this kind of detention considered contrary to the international undertakings of Belgium. In the **Netherlands** also, concerns have been voiced as to the accommodation of unaccompanied minor asylum-seekers in two 'campuses' with a very strict regime : the Network notes that in April 2003 a court, in interim proceedings brought by a number of non-governmental organisations, held that the regime in the campus was incompatible with Article 31 of the Convention on the Rights of the Child, and also concluded that an independent complaints commission must be set up within one month. In **Sweden,** the current state of the law with respect to the detention of children pending enforcement of refusal-of-entry or expulsion orders is clearly unsatisfactory since there is at present, no regulation of the length of time that a child taken into detention in accordance with the 1991 Act of Special Control of Aliens can be kept in detention. These examples are by no means isolated. On the contrary, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States (OJ n°L31 of 6.2.2003, p.18) and providing a certain number of specific measures in favour of minor asylum seekers, also provides the possibility of detaining minor asylum seekers in non-specific centres, which could be considered contrary to Articles 3 § 1 and 37, b of the International Convention on the Rights of the Child of 1989..

- Foreigners may be detained to prevent unauthorised entry into the country or with a view to effectuating the expulsion. However a number of problems are noted in this field. In **Hungary**, under Article 46.1 of the 2001. *évi XXXIX. törvény a külföldiek beutazásáról és tartózkodásáról* [Act No. XXXIX of 2001 on the Entry and Stay of Foreigners], the regional alien policing authority may place a foreigner who is subject to expulsion in detention in order to ensure the implementation of the expulsion. In the absence of interpreters, the asylum seekers arrested are not informed in time of the essential legal and factual grounds of their arrest, which constitutes a violation of Article 5(2) of the European Convention on Human Rights. Moreover where the lawfulness of the detention of illegal foreigners without a legal status is reviewed by the competent courts, this review is mostly formal, and the level of scrutiny particularly low. As a result, it is not unusual for aliens in this situation to have to spend the maximum possible time (12 months) in the detention centers. In **Latvia**, although the new Immigration Law (*Imigrācijas likums, 31.10.2002, Latvijas Vēstnesis, No. 169, 20.11.2002*) provides for the possibility to challenge the detention in the centre for illegal immigrants, the uncertainty concerning the legal status of the temporary detention centres for immigrants seems to prevail : indeed, the Network notes that the Ministry of Justice argues that, even if the court finds the detention unlawful, the right to compensation is not granted because immigration proceedings are not part of criminal proceedings. In **Lithuania**, the Law on Foreigners Legal Status does not contain safeguards against arbitrary detention and foreigners could be detained for unlimited period and without being provided legal assistance. The Network shares the concerns expressed about **Belgium** by the UN Committee against Torture, regarding the possibility of extending the length of the detention of foreigners

as long as they refuse to collaborate to their repatriation (Concluding Observations of 14 May 2003, CAT/C/CR/30/6). Another important source of concern expressed by the Committee against Torture in the same conclusions relates to the information received by the Committee according to which asylum-seekers formally released from detention had been transferred into a transit zone of the airport, without being authorized to leave that zone, and without being afforded any assistance (Committee against Torture, 30th session, Conclusions of 14 May 2003 relating to Belgium, CAT/C/CR/30/6). The Network regrets that, during the year 2003, the Foreigners' Office (Office des étrangers) has repeatedly resorted to this practice, in instances where a competent court had ordered that an end be put to the deprivation of liberty of the alien. In the **Czech Republic**, despite the fact that the detention of foreigners for the purpose of administrative expulsion or transfer is not a sanction measure, the special institutions where this detention takes place are similar to prisons. In **Italy** and **Luxembourg**, serious concerns are also raised in this field. In **France**, the law regarding immigration and sray of foreigners in France (Law n°2003-1119 of 26 November 2003) has extended the period of detention of foreigners for the purpose of their expulsion. It is notable that this extension was justified by the fact that, prior to this modification, the maximum length of detention was one of the shortest in the Union, which illustrates the risk of a lowering of the guarantees in the Member States of the Union in the presence of instruments which, at European level, prescribe only minimal guarantees. Moreover the French law authorises the transfer of the detained person during the all period of detention to other closed centres, which could in practice hinder the foreigner from having proper legal counseling. In **Hungary**, asylum seekers having entered the country illegally are routinely placed in alien policing detention and detained as foreigners subject to expulsion or extradition: if they are unable to manage to apply for refugee status at one of the reception stations for refugees before they are found by border guards or by the police, they will have to stay in alien policing detention centers until their application for asylum is decided. In **Cyprus,** the Council of Europe Commissioner for Human Rights has emphasised that asylum seekers, whose applications have been rejected, should not be kept at the central prisons since they are not criminals. Serious criticisms have been addressed both by the Council of Europe Commissioner for Human Rights (Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his visit to the Czech Republic from 24 to 26 February 2003, Srasbourg, 15 October 2003) and by the European Committee for the Prevention of Torture on the basis of its visit to Czech Republic of 21 – 30 April 2002 on the situation and conditions in detention centres for aliens in the process of removal in the **Czech republic**, where they are deprived of their liberty in prison-like conditions. The Network also shares the concerns expressed by the Council of Europe Commissioner for Human Rights with respect to the situation and conditions of detention of asylum seekers in **Malta**. It recalls that the Commissioner for Human Rights had called for urgent action to be taken by the State authorities to remedy this.

The EU Network of Independent Experts in Fundamental Rights notes in this context that, according to Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951, the asylum seeker shall not been considered as being guilty of a criminal offence on account of his or her illegal entry or presence on the territory and restrictions to his or her freedom of movement shall apply only when necessary. It also would insist on the importance of the Recommendation Rec(2003)5 adopted on 16 April 2003 by the Committee of Ministers of the Council of Europe, on measures of detention of asylum seekers. It recalls that according to this Recommendation, the exclusive grounds on which asylum seekers can be detained are the following ones: when their identity, including their nationality, is questioned and requires to be checked in particular in the case of when the asylum seekers has destroyed his or her travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state; when elements on which the asylum claim is based have to

be determined and cannot be determined without this measure of detention; when a decision has to be made regarding their right to enter the territory of the State concerned or when the protection of national security or public order requires it.

- With regard to the detention of persons after a criminal conviction, the Network has identified a number of difficulties in the Member States. The Network is concerned that in **Cyprus**, because of the lack of a Parole Board examining the individual cases of life detainees with the prospect of their release, "life sentence" in this State effectively means the imprisonment of a detainee for the rest of his life. In **Latvia** also, the judicial review procedure of a detention appears still not to comply with requirements of Article 5 of the European Convention on Human Rights. The Network notes that violations of Article 5(4) of the European Convention on Human Rights were found in respect of the **United Kingdom** on account of the fact that that the continued detention of prisoners subject to mandatory sentences of life imprisonment after the expiry of the tariff period was subject only to reviews by a body - the Parole Board - which did not have any power to order their release but could only make recommendations to the Secretary of State and which did so without any oral hearing or opportunity to cross-examine witnesses (Eur.Ct.H.R., Von Bülow v United Kingdom, 7 October 2003 and Eur.Ct.H.R., Wynne v United Kingdom (no 2), 16 October 2003). The Network is aware that the Secretary of State announced interim measures applicable to the release of mandatory life sentence prisoners applicable to reviews from 1 January 2003, however it is of the view that more structural reform is required. It welcomes in this respect the reform in Scotland effected by the Criminal Justice (Scotland) Act 2003.

- The Network has serious concerns, which has already expressed previously, about the continued and indefinite nature of the detention without trial being used in the **United Kingdom** in respect of certain suspected terrorists, particularly given the possibility of using less restrictive surveillance techniques, and also the limited scope for challenging the evidence used to justify this detention in individual cases.

- The insufficiency of the guarantees afforded to persons detained in psychiatric institutions appears also in a number of reports. In the **Czech Republic,** the procedural rights of ill persons detained in a psychiatric or other health care institution are weaker in comparison with persons subject to criminal prosecution. In its Concluding Comments on **Estonia,** the Human Rights Committee expressed its concern at some aspects of the administrative procedure related to the detention of a person for mental health reasons, in particular the patient's right to request termination of detention, and, in the light of the significant number of detention measures that had been terminated after 14 days, the legitimate character of some of these detentions (CCPR/CO/77/EST). Similarly in **Greece,** it seems necessary to amend the existing regulation of the detention of persons for mental health reasons in order inter alia, to further strengthen the judicial review of their detention.

- In **Cyprus,** the prospect of imprisonment of a debtor due to his/her inability to pay the fixed monthly instalments, poses issues of compatibility with Article 11 of the International Covenant of Civil and Political Rights and Article 1 of Protocol N°4 of the European Convention of Human Rights that lay down the prohibition of deprivation of liberty on the ground of inability to fulfil a contractual obligation.

Positive aspects and good practices

The Network notes with interest that the **Netherlands** have organized a "detainees survey", the results of which were published in November 2003, with thhe aim of identifying differences between institutions and – following new surveys in the future – to map out trends. This survey involved some 10,000 detainees, from among the entire prison population, who were asked questions concerning their well-being.

The Network notes with satisfaction that in **Lithuania**, the new Code of Criminal Procedure and the new Criminal Code came into force on 1 May 2003, providing for better safeguards against arbitrary detention, and limiting the number of crimes for which imprisonment could be imposed, with a view to reducing overcrowding in prisons.

The Network also notes with interest the judgment n° 253 of 2 July 2003 of the Constitutional Court in **Italy**, which finds Article 222 of the Penal Code to be unconstitutional, to the extent that this provision imposed on the judge to order the detention of any person acquitted on the basis of a finding of mental illness, thus creating an obstacle to the adoption of other protective measures provided in the law and which could facilitate the provision of appropriate care to the person subject to mental health problems.

The Network welcomes the fact that in **Hungary**, the new Act on Criminal Procedure provides for a relative maximum duration of the pre-trial detention, and also guarantees the possibility of appeal against all decisions extending the duration of pre-trial detention [Article 131.3 of the Act].

The Network also welcomes the fact that the **Czech Republic** has followed upon the recommendations of the Committee of the Rights of the Child expressed on the second periodic report on the Czech Republic (CRC/C/83/Add.4) at its 852nd and 853rd session, held on January 2003 and at its 862nd session held on 31 January 2003, by creating a specialized juvenile judiciary in the Law on Juvenile Judiciary (Zák. č. 218/ 2003Sb. o soudnictví ve věcech mládeže (Law No. 218/ 2003 Coll. of Law on Juvenile Judiciary)), and by providing that these specialised tribunals should give priority to prevention and rehabilitation. .

The Network also wishes to acknowledge the steps which have been taken by the authorities of the **Czech Republic** to improve the conditions under which aliens are held in specific detention centres. The Network notes in particular that the procedural rights of aliens – right to obtain information about the asylum or/and expulsion process – have been expanded; that their dietary needs are better respected; and they are provided with extended time of walkouts. Moreover, the amendment to the Law on Stay of Aliens (Law No. 222/ 2003 Coll. of Laws) has repealed the provision of the Law according to which all aliens who could not be identified were placed under the strict regime of detention. These are important steps in the good direction.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights emphasizes that the time limits indicated in Article 17 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190 of 18.7.2002, p. 1) should not lead the authorities of the executing State to limit the rights guaranteed to the individual concerned by Article 5 of the European Convention on Human Rights, the primacy of which on any conflicting obligation imposed by the Framework Decision is reaffirmed by Article 1(3) of that instrument. Moreover, the EU Network of Independent Experts on Fundamental Rights proposes that, when the evaluation of the European arrest warrant will be led in 2004 (Article 34(3) of the Framework Decision of 13 June 2002), the Commission envisage to modify Article 5 of the Framework Decision to include the possibility for the executing State to

condition the surrender of a person to the guarantee that he/she shall not be detained in conditions which have been found by the European Committee for the Prevention of Torture or by the European Court of Human Rights to fail the standards imposed by Article 3 of the European Convention on Human Rights.

Article 7. Respect for private and family life

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 17 of the International Covenant on Civil and Political Rights (1966), Article 16 of the Convention on the Rights of the Child and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

All the Member States are parties to these instruments.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights expresses the following concerns with respect to the right to family life:

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251 of 3.10.2003, p.12) provides a number of exceptions or safeguard clauses, the implementation of which could prejudice the right to respect to family life in the case of when the family life cannot continue elsewhere than in the host Member State. In this way, Article 8(2) of the Directive provides the possibility that, when a Member State legislation regarding family reunification is in force on the date of adoption of the Directive and takes into account the State's reception capacity, this Member State can provide a waiting period of no more than three years between the submission of the application for family reunification and the issue of a residence permit for the family members: this constitutes a disproportionate delay where in the absence of the possibility for the family life to continue elsewhere, the absence of family reunification constitutes an interference into the right to respect to family life. Article 14(2) of directive 2003/86 says that « Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity ». This could lead to a form of indirect discrimination against women, as in statistically the most frequent cases the wife would be arriving to join her husband. Article 4(1) of directive 2003/86/EC provides that « where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive ». However, where the family life cannot be pursued elsewhere, the State must put forward compelling reasons for denying family reunification under Article 8 ECHR, and the lack of integration would not seem to qualify as such a reason : as a result, in relying upon this provision, the Member States may commit a disproportionate interference with the right to respect of family life.

For all these reasons, the EU Network of Independent Experts on Fundamental Rights invites the Commission to monitor closely the implementation measures adopted by the Member States. It recalls that, when implementing EC Law, the Member States are bound to respect the EU Charter of Fundamental Rights and the other fundamental rights which are part of the general principles of EU Law. It also recalls that the fact that Directive 2003/86/EC provides explicitly for certain exceptions which the States may choose to rely on, cannot be interpreted as meaning that any measure complying with the limit of such exceptions would be, per se, in compliance with the fundamental rights recognized in European Union law. Therefore, whichever the outcome of the action lodged with the European Court of Justice for the annulment of directive 2003/86/EC, the Network stresses that a close surveillence of the implementation of this instrument by the Member States will be required, and should include a verification of the compliance of the implementation measures with fundamental rights: even if the directive is held to be compatible with fundamental rights, this by no means implies that any national implementation measures will present the same compatibility.

- The EU Network of Independent Experts on Fundamental Rights considers that the risks to the right to respect of family life entailed in the implementation of Directive 2003/86/EC by the Member States are especially high in the present context, where a number of Member States have imposed more stringent conditions on the right to family reunification : this is the case in **France**, where the Immigration Law imposes on spouses two years of common life in order to have the right to a resident card (Article 65 of the Law). Moreover the law subordinates the delivery of such a document to the "republican integration" ("intégration républicaine") of the card-seeker (Article 21 of the Law). In **Spain** the organic law 14/2003 modifying the organic law 4/2000 regarding the rights and freedoms of foreigners in Spain and their social integration, changes the system of family reunification for foreigners in particular, in limiting the possibility of the so-called 'chain reunification'; in the **Netherland**s, where the rise of the fees for the delivery of residence permits has led to fears that it might ion certain cases constitute a disproportionate interference with the right to family life ; in **Portugal**, where the decree law 34/2003 of the 25 February 2003 limits the right to family reunion to those foreigners in possession of a "valid residence permit" for at least one year, whilst foreigners in possession of a "permission to stay" may apply fo a "residence permit" only after 5 years of legal residence in Portugal, so that newly arriving immigrants will have to wait for six years before they may invoke a right to family reunion ; in **Hungary**, where the practical application by the authorities of Article 14 of the 2001. évi XXXIX. törvény a külföldiek beutazásáról és tartózkodásáról [Act No. XXXIX of 2001 on the Entry and Stay of Foreigners], which lists the requirements in order for family members to acquire permission to stay in Hungary, leads to important problems and, indeed, in some instances to a violation of the right to family life ; in **Lithuania**, where the Law on Foreigners Legal Status does not exclude that even persons who have a right to get a residence permit in Lithuania because of family links, may be deported and therefore would have to apply for the residence permit from abroad, which may result in the family life being interrupted for long periods or even indefinitely. In **Austria**, the Constitutional Court had to declare in a judgment of 8 October 2003 (VfGH G 119/03 and G 120/03) that sections 18(1)(3) and 22 of the Aliens Act 1997 in their original form were unconstitutional and in violation of the European Convention on Human Rights, because these provisions, relating to the immigration quota limiting the number of foreigners who may be admitted in Austria ruled out the possibility of new arrivals after the quota was exhausted, without making an exception for cases of family reunification.

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights expresses the following concerns with respect to the right to respect for private life:

- In the **Czech Republic**, under the Law on protection of secrete information (Zákon č. 148/1998 Sb., o ochraně utajovaných skutečností, ve znění pozdějších předpisů [Law No. 148/1998 Coll., on Protection of Secrete Information, as amended by later laws]), the refusal by the National Security Authority of security clearance, necessary for a number of functions and jobs in the civil administration and in the Army, may only be challenged through a complaint to the Panel (Collegium) of state attorneys from the Attorney-General Office. There appears to be no possibility of appeal to an independent and impartial tribunal.

- In **Spain**, the changes brought to the system of interceptions of communications following the case of *Valenzuela Contreras v. Spain* of the European Court of Human Rights appear insufficient to provide these interceptions with the legal framework they require from the point of view of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). (Eur. Ct. H. R., *Prado Bugallo v. Spain* judgment of 18 May 2003).

- In **Estonia,** the Telecommunications Act provides for access to state security officials to telecommunications system in order to listen to private conversations, under conditions which appear not to comply with the requirements of Article 8 of the European Convention on Human Rights.

- In **Lithuania**, the draft law on amendment of Article 46 of the Law on Education (Svietimo istatymas) and the Law on Control of Precursors of Narcotic Drugs and Psychotropic Substances intends to introduce a possibility to test pupils on whether they use alcohol, narcotic or psychotropic substances or other substances. This may constitute a disproportionate interference with the right of the child to privacy.

- In **Malta**, despite the judgment of the Constitutional Court delivered on 10 May 2003 in the case of *Joseph Hili v. Avukat Generali*, the law still has not been amended to authorize the Director of Public Registry to modify the birth certificate of transsexual persons. Furthermore, the national law still distinguishes between legitimate and illegitimate children creating negative legal effects on those born out of wedlock including participation in all aspects of family life.

- The Network notes that, in the **United Kingdom**, stop and search powers are disproportionately used against persons belonging to ethnic minority groups.

- In **Latvia,** legislation does not envisage any provision of information to third persons that their names have come up in criminal proceedings or operative investigations because of telephone tapping or the opening of correspondence. This is especially problematic since information gathered as part of operative investigation becomes State secret with no rights of access and claim.

- Unresolved legal issues concerning access to abortion services in **Ireland** remain a cause of ongoing concern with a case involving a pregnant 14-year old girl in care being reported in December 2003 as a result of the District Court granting permission to travel to the United Kingdom for the purpose of obtaining an abortion in the twenty-third week of pregnancy.

- The Network also notes that serious concerns have been expressed by a large coalition of Irish NGOs (CADIC) and the Irish Human Rights Commission about plans to deport non-national families whose rights of residence in **Ireland** have been weakened since the Supreme Court decision in *Lobe & Osayande v. Minister for Justice*, Equality & Law Reform [2003]. Previously, such families enjoyed a right of residence deriving from the citizenship of their Irish-born children resulting from the application of the *jus soli* principle in Irish citizenship law. While citizenship still remains an automatic entitlement of birth (as a matter of Irish Constitutional Law) it is now possible to deport families containing Irish citizen children and the deportation of such families is proceeding apace despite reassurances in the immediate aftermath of the Supreme Court decision that mass deportations would not ensue. The Network recalls that any such deportation may only take place if it does not lead to violations of the right to family and private life.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the, the EU Network of Independent Experts on Fundamental Rights has noted with interest that in Belgium, the Law of 28 January 2003 regarding medical exams in the context of employment (M.B., 9 April 2003) provides that "Biological tests, medical examinations or the collection of medical information on the state of health or information on the heredity of a worker or of a candidate to work shall not been undertaken for purposes other than those inferred from his present abilities and from the specific characteristics of the post at stake". In principle the law forbids the predictive genetic examination and the human immuno-deficiency virus screening test. This prohibition may be extended to other biological tests and medical exams. The law of 28 January 2003 also provides the conditions under which possible biological tests and medical exams may be required and carried out. The non-respect of these conditions is criminally sanctioned. The Law moreover imposes an obligation to provide the employee or the candidate employee with the information about that is searched, which examinations are foreseen and the grounds which justify it. Similarly in Greece, Article 8 of the Law n° 3144/2003 (Νόμος 3144/2003, «Κοινωνικός διάλογος για την προώθηση της απασχόλησης και την κοινωνική προστασία και άλλες διατάξεις», ΦΕΚ Α' 111 [Law 3144/2003, « Social dialogue for the promotion of employment and social protection and other provisions » J.O. A' 111]) protects the privacy of employees by prohibiting any mention, in the « individual booklet of professional risk », of data other than the results of the medical examinations prescribed in the relevant legislation, and by strictly defining the conditions under which the medical examinations may be performed by occupational physicians.

The Network has also identified a number of positive developments and good practices which concern the right to respect for family life :

- In **Belgium**, a Bill seeking to complete the Civil Code with provisions relating to "social parenthood" ("parenté sociale") (Chambre, sess. extraord., 2003, Doc. Parl., 51 0393/001) is based on the idea that a growing number of children are educated in recomposed families, and proposes to create an appropriate legal framework to regulate the relationship between those children and their "social parents", which will often be the new partners of their biological father or mother. The Bill in particular contains provisions concerning joint authority on the children, the obligation to support and the measures which should be taken where the relationship between the partners breaks down.

- In **Spain**, the Law n° 40/2003 of 18 November 2003 on the protection of large families (Ley 40/2003, de 18 de noviembre, de Protección a las Familias Numerosas, BOE of 19th November 2003) has extended the protection of large families to new situations

such as the monoparental large family either of origin or ensuing from separation, death or divorce of one of the parents. The Law guarantees the protection of different kinds of filiations as well as to situations of guardianship or receipt. The law, which sets up a new and larger system of public aids, also applies to foreign legal residents.

- Still in **Spain** law 42/2003 of 21 November 2003 modifying both the civil code and the law on civil procedure in the field of family relations of grandchildren with their grandparents (Ley 42/2003, de 21 de noviembre, de modificación del Código Civil y de la Ley de Enjuiciamiento Civil en materia de relaciones familiares de los nietos con los abuelos, BOE of 22nd November 2003) tackles the issue of the status of grandparents with regard to their grandchildren. This law provides that the convention regulating the effects of a separation or a divorce can also regulate the organisation of the communications and visits of grandparents to their grandchildren.

- The EU Network of Independent Experts in Fundamental Rights welcomes the **Spanish** Supreme Court decision that grants to a woman, after the cessation of the common life with her partner, a third of the goods previously acquired together with her non-married partner. This has been decided even if the goods have been registered solely in the name of this latter (STS of 26 January 2003). The couple had lived together for 20 years and had two children. The Court considered that, after such a long period of common life, one of the parties cannot remain in an absolutely unfavourable situation with regard to the other, as if the other party had not contributed to the household by his or her work, including the work at home.

- Finally, the Network notes that in **Germany**, in a case where the constitutionality of sections 1600 and 1685 Civil Code was challenged in this respect, the Federal Constitutional Court (decision of 9 April 2003 – 1 BvR 1493/96 u.a. –, NJW 2003, 2151) has confirmed the position of the biological father by considering that under certain conditions he must have the right to contest the paternity of an other man and that he must have the right to personal access with his child, if it serves the well-being of the child.

Article 8. Protection of personal data

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter corresponds to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 17 of the International Covenant on Civil and Political Rights (1966), by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and by the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding Supervisory Authorities and Transborder Dataflow (2001, not yet in force).

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 7 Member States still have to be sign the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding Supervisory Authorities and Transborder Dataflow: Estonia, Hungary, Latvia, Luxembourg, Malta, Slovenia and Spain. 14 Member States have signed this instrument but have not ratified it: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal and the United Kingdom. The Network notes

however that chapters IV and VI of Directive 95/46/EC of the European Parliament and the Council 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 (OJ L 281 of 23.11.1995) already contain the guarantees enumerated in this Additional Protocol.

The Network also notes that the Amendements to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data authorizing the accession of the European Communities have been adopted by the Committee of Ministers of the Council of Europe at its 675th meeting, on 15 June 1999. It would welcome the notification by the States parties to that Convention of their acceptation of these amendments, opening the possibility for the European Communities to accede to the Convention.

To ensure a minimal level of protection of the right guaranteed in Article 8 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In its first report on the implementation of Directive 95/46/EC (COM(2003) 265 final, 15.5.2003), the Commission has identified three interrelated difficulties which may explain in certain cases, countries or sectors, a low level compliance with the requirements of data protection law, as listed in the national legislation implementing Directive 95/46/EC. First, it notes "under-resourced enforcement effort and supervisory authorities with a wide range of tasks, among which enforcement actions have a rather low priority » ; second, there is « patchy compliance by data controllers, no doubt reluctant to undertake changes in their existing practices to comply with what may seem complex and burdensome rules, when the risks of getting caught seem low » ; third, the Commission is confronted with an « apparently low level of knowledge of their rights among data subjects ». The Network recalls in this regard that the EC Treaty (Art. 10 EC) imposes on the Member States an obligation to contribute faithfully to the implementation of EC Law. This must necessarily include, for instance, an obligation to ensure an adequate financing of the independent control authorities created according to Article 28 of Directive 95/46/EC, and required under Article 8(3) of the Charter of Fundamental Rights. These authorities should be given the means necessary for their effective functioning, in budgetary terms and by providing them with the needed personnel. This is indispensable not only for their independency, but also for the very possibility for these authorities to adequately perform the missions assigned to them, in particular by using their investigatory powers (which may comprise in situ inspections conducted without prior announcements) and their powers to engage in legal proceedings where they find privacy regulations to be violated. In the view of the Network, the financing of these authorities must not only be ensured and maintained, it must be improved, in line with the extension of the supervisory functions of these authorities, which is in proportion to the development of technologies processing personal data, for example biometrics as a means of identification.

- The Network notes with regret that the concerns expressed by the European Commission in the evaluation report on Directive 95/46/EC three years after the implementation measures should have been adopted, would also apply to the new

Member States of the Union. For instance, the amendments made in 2003 to the Law on Legal Protection of Personal Data of Lithuania. (Asmens duomenu teisines apsaugos istatymas), although they provide that the supervising authority (State Data Protection Inspectorate of Lithuania, Valstybinė duomenų apsaugos inspekcija) is independent (Article 30), at the same time maintains its legal status of a governmental institution ; appointed by the government, its director remains accountable to the Prime Minister, and the decisions of the Inspectorate may be abrogated if they are considered to contradict the Constitution, international agreements, laws or other acts adopted by the Parliament, as well as governmental by-laws or presidential decrees. In **Slovenia**, apart from certain difficulties entailed by the overlapping of functions between the Inspectorate for the Protection of Personal Data and the Ombudsman, which since 2001 has been conducting the role of independent institution for the protection of personal data, neither of these institutions seem to have the sufficient number of employees needed to carry out their functions properly.

The Network notes that a number of recent developments have taken place concerning the constitution of "blacklists", especially in the banking and insurance sector (health insurance and motor insurance), where data files are being constituted by financial credit institutions or insurers, to limit the risks they take in granting financial loans or in agreeing to insure certain persons. In Belgium, despite the critiques opposing the creation by a private company of a data file of tenants having defaulted in their payments and the negative opinion delivered by the Commission for the protection of privacy (Avis n°52/2002 du 19 décembre 2002 relatif à la constitution d'un fichier externe des locataires défaillants), this datafile has become operational. In **Lithuania**, a novel regulation of processing personal data for the assessment of creditworthiness and debt management has been included in the Law on Personal Data Protection (*Asmens duomenu teisines apsaugos istatymas*). In **Poland**, the Law on Disclosing Economic Information of 14 February 2003 seeks to regulate the release of information concerning payment credibility of consumers to third parties, however "blacklists" of unreliable customers still are published on the web. In the **Czech Republic**, the amendment (Law No. 126/2002 Coll.) to the Law on Banks (*Zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů* [Law No. 21/1992 Coll., on Banks, as amended by later laws]) authorize banks to collect and process personal data, including sensitive data on natural persons, which are needed in order to enable the realization a bank transaction without disproportionate legal and material risks for the bank, in conditions which appear not to be in confomity with the requirements of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. In the **Slovak Republic**, various institutions, particularly banks or insurance companies, exchange lists of "unreliable" persons (e.g. insolvent clients, debtors, etc.) which they exchange among themselves. Despite the fact that directive 95/46/EC imposes minimal safeguards with respect to the constitution of such data files, the diverging approaches adopted to this question suggest that there may be a need to clarify the applicable rules, taking into account the important risk of discriminatory practices, for the acquisition of goods or the provision of services which in many cases are essential for the social and professional integration of the individual.

The Network is concerned that in the **Czech Republic**, controversies over the so-called Lustration Law (*Zákon 451/1991 Sb., kterým se stanoví některé další předpoklady pro výkon některých funkcí ve státních orgánech a organizacích, ve znění pozdějších předpisů* [Law No. 451/1991 Coll., on some additional conditions for exercise of certain functions in state organs and organizations, as amended by later laws]) bars access to certain public functions and employment for persons who were before 1989 (under communist regime) members of the secret services, their agents and collaborators, high ranking officials of the Communist Party of Czechoslovakia, students at the police schools in the former USSR and some other categories of persons, under conditions which could be in violation of Article 8 of the European Convention on Human Rights as interpreted by the European Court of Human Rights in the case of *Rotaru v. Romania* (judgment of 4 May 2000, Appl. n° 28341/95).

Indeed, the certificates required for access to certain functions or types of employment are based on data established by the former communist secret police, rather than on publicly available documents relating to the activities led by an individual in the open (comp. Eur. Ct. HR, partial admissibility decision of 6 March 2003, *Zdanoka v. Latvia*, Appl. n° 58278/00). Although an individual has a right to challenge the certificate by a law suit against the Ministry of Interior, the court judgment cannot order the deletion of the name from the data file. Moreover, in spite of the prohibition to publish any data from the certificate or related materials without a consent of the concerned person in Sec. 19 of the Law 451/1991 Coll., the breach of this provision does not entail any sanction.

The Network notes the tendency towards an increased used of biometric identifiers, justified in most cases by the need to improve security. Taking into account the increased risks of abuse and dissemination linked to the storage of biometrical cata in centralized databanks, it insists on the need to precisely identify the aim of such use of biometric elements and to assess strictly the proportionality of such a restriction imposed on the right to private life, in accordance with the justification put forward. In particular, referring to the position of the Working Party on Personal Data on this subject (Working document on biometrics adopted on 1 August 2003 by the Data Protection Working Party instituted under Article 29 of Directive 95/46/EC (WP 80, 12168/02)), the Network insists that a clear distinction be made between the use of biometrics for *authentification* purposes (to verify whether the document holder is indeed the person to whom the document was delivered) and the use of biometrics for identification purposes (to verify whether a person is already identified in a system storing the biometric information concerning a large set of persons) : only for the latter purpose will storage of reference data in a centralized database in principle be necessary. The Network welcomes in this respect the decisions adopted by the Greek Data Protection Authority on the use of biometric identifiers in certain settings (Decision n° 52/2003, of 5 November 2003, and Decision n° 9/2003, of 31 March 2003).

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights wishes to express its concern about the transmission of Passenger Names Records (PNR) by airline companies operating transatlantic flights to the United States Bureau of Customs and Border Protection. It considers this to be in violation of Article 6, d), of Council Regulation (EEC) n° 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems, which provides that « personal information concerning a consumer and generated by a travel agent shall be made available to others not involved in the transaction only with the consent of the consumer », because of the conditions under which the passenger is informed of the transmission of his/her pesonal data, and his/her consent sought. It notes that, until the agreement between the European Community and the United States announced by the 16 December 2003 Communication from the Commission to the Council and the Parliament “Transfer of Air Passenger Name Record (PNR) Data : A Global EU Approach” (COM(2003)826 final) is in force, any such communication of PNR data is illegal, in the absence of any adequate legal framework. Finally, the EU Network of Independent Experts on Fundamental Rights insists on the need for a thorough evaluation of the respect by the United States party of its undertakings under the agreement. Such an evaluation should include an independent audit of the implementation of the agreement.

Positive aspects and good practices

The Network welcomes the improvement brought about in **Belgium** by the Act of 26 February 2003 (Loi du 26 février 2003 modifiant la Loi du 8 décembre 1992 relative à la protection de la vie privée à l’égard des traitements de donnés à caractère personnel et de la Loi du 15 janvier 1990 relative à l’institution et à l’organisation d’une Banque carrefour de la sécurité sociale en vue d’aménager le statut et d’étendre les compétences de la Commission de la protection de la vie privée, M.B., 26 juin 2003), stupulating that the Commission for the

protection of privacy – currently attached to the Ministry of Justice (Service public fédéral de la Justice) – will now be constituted under the House of Representatives (Chambre des représentants), and will comprise sectoral committees, having the competence to instruct and decide on requests concerning the processing and communication of data under specific legislations. It also welcomes the launch by the Information Commissioner in the **United Kingdom** of a project which seeks to identify ways of simplifying data protection regulation since its complexity is seen as getting in the way of ensuring that real protection is achieved in practice. The aim is to look for changes in policy and procedure, as well as revisions to secondary legislation, which add up to fewer burdens on business but better protection for ordinary people. The Network also welcomes the fact that in **Austria**, better protection of the private sphere as against other individuals and compensation also for immaterial damages will be guaranteed by a new law as of 1 January 2004. Victims of private eavesdropping, wire-tapping, outing of their sexual orientation, unwanted snapshots and the like will then be equipped with better tools of redress. The Network also notes with interest that, in **Hungary**, the right to privacy of students has been improved by the adoption of 2003. *évi LXI. törvény [Act No. LXI of 2003] modifying 1993. évi LXXIX. törvény a közoktatásról* [Act No. LXXIX of 1993 on Public Education], requiring teachers as a general rule to keep all information and data about the student secret, although this obligation does not apply to secrecy towards parents, if the student empowered the teacher in writing to forward information to his or her parents; and it does not apply towards third persons if both the student and his or her parent agreed in writing to the transfer of information.

Article 9. Right to marry and right to found a family

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter has the same meaning than the corresponding Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) although its scope may be extended.

It notes that this provision of the Charter must be read in accordance to the requirements formulated by both Article 23 of the International Covenant on Civil and Political Rights (1966) and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962).

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 8 Member States still have to be sign the Convention on Consent to Marriage: Belgium, Estonia, Latvia, Lithuania, Luxembourg, Malta, Portugal and Slovenia. 3 Member States have signed this instrument but still have not ratified it: France, Greece and Italy.

To ensure a minimal level of protection of the right guaranteed in Article 9 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251 of 3.10.2003, p.12) provides that States may refuse the right to family reunification or refuse to renew the residence permit of the spouse, if it appears that the marriage is simulated and has been contracted for the sole purpose of benefiting from the family reunification (Article 16, §§ 2 and 4 of the Directive). It will be necessary to be particularly attentive to the investigations aiming at identifying the fraud to the law in order to make sure that they do not lead to disproportionate intrusions into the right of respect to private and family life of the persons targeted by that measure. In particular, the restrictions imposed by Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience (OJ n° C 382 , 16.12.1997, p. 1), should be scrupulously respected.

- This aspect of the implementation of directive 2003/86/EC should be closely monitored, as there appears to be a general tendency to adopt measures against the risk of fraud to marriage, for the sake of benefitting from the existing provisions on family reunification. This tendency, already identified in the developments monitored by the EU Network of Independent Experts in Fundamental Rights in 2002, has continued during the period under scrutiny. In **France** the law regarding immigration and stay aimed at establishing a presumption according to which the marriage concluded by a foreigner illegally staying on the territory would constitute a faked marriage. Moreover the law instituted an obligation for the public prosecutor of the Republic to transmit to the *préfet* a decision of opposition to such marriage (Article 76). The *Conseil constitutionnel* has now invalidated this law on the grounds that the provisions at stake were contrary to the constitutional principle of freedom of marriage (Decision n° 2003-484 DC of 20th November 2003, Recitals 94 to 97). In **Poland,** registrar offices in many cases give incorrect instructions and refuse to accept the certificates of marriage from foreigners who are in Poland illegally, although they fulfil all conditions listed in the Law on the acts of marital status of 29 September 1986 (Ustawa z dnia 29 września 1986r. Prawo o aktach stanu cywilnego, Dz.U. z 1986 r. nr 36, poz. 180 [The Official Journal of 1986 No. 36 item 180]).

- In **Cyprus**, as a result of the Law 120 (I) of 2003 providing for the application of the Marriage Law 2003 to the Turkish Cypriot Community which considers that the provisions of the Turkish Family Law (Marriage and Divorce) Law (Cap.339) and the Turkish Communal Courts Law are suspended due to the "irregular situation" created by the Turkish invasion of 1974, a vacuum exists in regards to the execution of valid religious marriages of the Turkish Cypriot Community within the area of the Republic of Cyprus. This is a discriminatory situation, considering that section 3 (1) of The Marriage Law 104 (I)/2003 provides that 'marriage' for the purposes of this law means the agreement towards the union in marriage concluded between a man and a woman and executed by a marriage officer or by a registered priest according to the Regulations of the Greek Orthodox Church or of the dogmas of the Constitution Religious Groups recognized by the Constitution (Latins, the Armenians and the Maronites).

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights welcomes the entry into force in **Belgium**, on 1 June 2003, of the Act of 13 February 2003 opening marriage to persons of the same sex (*M.B.*, 28 February 2003), and it notes with satisfaction that, since the circulaire of 24 January 2004 replacing a previous circulaire of 8 May 2003 on the Law of 13 February 2003 opening up marriage for persons of the same sex and amending certain provisions of the Civil Code, same-sex marriage is available in Belgium to all couples providing one of the partners has the nationality of, or is

habitually residing in, a country which recognizes same-sex unions (M.B., 24.1.2004). The EU Network of Independent Experts on Fundamental Rights notes with interest that in **Sweden**, same-sex couples registered in a formal, legally recognised partnership may now apply to become adoptive parents under the same conditions as those for heterosexual couples. This constitutes also a progress in **Spain** with the law 3/2003 of 7th May 2003 regarding non-married couples (BOPV of 23rd May 2003), which has been adopted by the autonomous community of the Basque country in order to regulate the rights and obligations of non-matrimonial steady unions, including homosexual couples. Moreover, also in **Sweden**, the new Cohabitees Act (*Sambolag*, SFS 2003:376) which entered into force on 1 July 2003 extends the legal protection to various forms of joint households, including registered partners.

Article 10. Freedom of thought, conscience and religion

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that paragraph 1 of this provision of the Charter corresponds to Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 18 of the International Covenant on Civil and Political Rights (1966).

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- The status of conscientious objectors choosing a form of alternative service to military service remains a matter of concern in certain States. In **Cyprus**, conscientious objectors who refused to perform reservist exercise have been prosecuted and convicted. In **Estonia**, the Human Rights Committee expressed its concern about the duration of alternative service for conscientious objectors may be up to twice long as the duration of regular military service (Concluding Observations on Estonia 2003-CCPR/CO/77/EST). In **Latvia**, alternative service is up to two times longer than military service (Alternative Service Law -2002). In **Lithuania**, alternative service last longer than military service and in practice, conscientious objectors have to serve in the system of the Ministry of National Defence, they have to wear military uniforms and live in military premises. In **Poland**, the choice to perform an alternative service is weakened because the Ministry of Economic Affairs, Employment and Social Policy does not ensure enough employment possibilities for the persons enlisted for alternative service.

- Many reports underline ongoing debates and issues regarding the wearing of headscarf and the limits of the freedom of religion. The Network is aware that restrictions imposed on the wearing of headscarves are motivated, not by an intention to discriminate against a particular religion or to restrict religious freedom, but by a desire to favor equal treatment between women and men and the emancipation of muslim women. However, it would emphasize that the existing case-law of the European Commission of Human Rights or the European Court of Human Rights, because it developed under the specific circumstances of a predominantly islamic country (Eur. Commiss. HR, inadmissibility decision of 3 May 1993, *Karaduman v.*

Turkey, Appl. n° 16278/90) or concerned a specific position where the applicant could have influenced young schoolchildren (Eur. Ct. HR, inadmissibility decision of 15 February 2001, *Dahlab v. Switzerland*, Appl. n° 42393/98), cannot be read as excluding that the prohibition of headscarves in education or employment are a violation of Article 9 of the European Convention on Human Rights. The Network notes the important differences between domestic laws and regulations in this field. With respect to the fields of employment and education however, where the wearing of headscarves in mainly discussed, the Network wishes to draw attention to the fact that the ban of the headscarf in employment could lead to a violation of the provisions on non-discrimination on the ground of religion under Council Directive 2000/78/EC of 27 November 2000 establishing a General Framework for Equal Treatment in Employment and Occupation, and that with regard to the wearing of the headscarf in schools, such a prohibition could in practice constitute an obstacle to the free movement of persons within the European Union.

Article 11. Freedom of expression and of information

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter corresponds to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) without prejudice to any restrictions which Union law may impose on Member States' rights to introduce the licensing arrangements referred to in the third sentence of Article 10 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that this provision of the Charter must be read in accordance to the requirements formulated by both Article 19 of the International Covenant on Civil and Political Rights (1966) and Article 13 of the Convention on the Rights of the Child (1989).

All the Member States are parties to these instruments.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In **Italy,** the Parliament has approved on 2 December 2003 a draft law proposed by the government regarding the "Norms of principle governing the audiovisual system and the system of the RAI-Italian Radiotelevision SA, as well as the delegation to the government of the power to adopt a unified text on audiovisual [services]". This text provides an important reform of the Italian legislation in the audiovisual field (radio and television). The EU Network of Independent Experts in Fundamental Rights notes that this reform aims at modifying the principles established both in the Constitutional Court Decision n°466 of 2002 and in the Constitutional Court Decision n°225 concerning the modes of nomination of the members of the Board of Directors of the RAI in the perspective of its privatisation. The Network is concerned by the absence of any remedy to the problem posed by the organisation of audiovisual media in Italy with regard to the requirement to respect pluralism of the media enshrined in Article 11(2) of the Charter of Fundamental Rights of the European Union. This problem has already been identified in both Council of Europe Parliamentary Assembly Recommendation 1589 (2003) on "Freedom of Expression in the Media in Europe"

and in the European Parliament Resolution on Television without Borders adopted on 4th September 2003 (A5-0251/2003 2003:2033(INI)). The Network also is concerned about the absence of any solution to the situation of conflict of interests created by the private activities of the president of the Council (Prime Minister) in the field of the media. The bill on conflict of interests, approved by the Chamber of Deputies on 22 July 2003 and currently in discussion in the Senate, does not appear to bring to this question a satisfactory answer.

- The question of pluralism in the media is not limited to **Italy**. The report on **Portugal** highlights the growing inter-media concentration in the hands of the same economic groups. The Report on **Austria** draws the attention to the fact that the complete revision of the Press Funding Act, which generally allows for more flexibility in the distribution of funds, was not used to extend state subsidies also to other media than the traditional press.

- The Network recalls that, for the press to effectively perform its function in a democratic society, it must be able to criticize the way the government or its individual members exercise their functions and to scrutinize the acts of elected politicians. As ilustrated by the case of *Scharsach and News Verlagsgesellschaft v. Austria* in which the European Court of Human Rights found that Austria had violated Article 10 of the European Convention on Human Rights (Appl. no. 39394/98, judgment of 13 November 2003), a regime offering a high decree of protection of the right to reputation of individuals may conflict with the freedom of expression of journalists, especially where this protection benefits public figures and politicians.

- With regard to the monitoring and control mechanisms over medias, it has to be noticed that such control procedures are not provided in all Member States. Moreover when they are provided, their independence and impartiality are not always properly ensured. In **Poland** for instance, questions are raised regarding the independence and impartiality of the National Council for Radio and Television. In **Ireland**, the setting up of a Government-appointed statutory Press Council has been denounced for another reason, as creating the risk of interference with editorial integrity and the right to freedom of expression. In that same country moreover, the Freedom of Information (Amendment) Act, 2003 was passed amid considerable public controversy amending, in a number of significant respects, the Freedom of Information Act, 1997. The changes introduced remain a cause of acute concern - especially to the media - and are believed to have had an adverse impact on the use of the legislation by interested parties. This is disappointing as the original legislation was recognised as providing for a progressive regime of freedom of information by comparison to that of many other European countries.

- In **Spain**, concerns are raised regarding the threats to journalists in the Basque Country and complaints have been raised about the difficulty for journalists to investigate on the banning of the Batasuna party and on the ecological disaster of the *Prestige*. In **Poland,** there is a worrying number of prosecutions against journalists revealing economic scandals and corruption affairs. The Network is also concerned that in the **Slovak Republic**, the Act on Periodic Press provides press-publishing conditions and the need for an approval by the competent State authority, an obligation which is imposed upon foreigners (both natural persons and legal entities) and not upon Slovak citizens and legal entities incorporated in the Slovak Republic. In **Italy**, the report highlights pressures exercised by authorities over journalists concerning certain satiric and anti-governmental broadcasts. In the **Slovak Republic**, the Act on periodic press requires a registration process carried out by the Ministry of Culture for press publishing. Only Slovak citizens and legal entities incorporated in the Slovak Republic

have the right to press publishing provided that they meet conditions laid down by law. Non-Slovak citizens and foreign legal entities must apply for an approval to the competent state authority, which in its discretion may, but does not have to, grant an approval for press publishing.

- Finally, the Network notes with respect to **Belgium** that the judgment delivered by the European Court of Human Rights in the case of *Ernst and Others v. Belgium* illustrates the need to better protect the right of the journalists to preserve the confidentiality of their sources, in conformity with what is proposed by Recommandation R(2000)7 on the right of journalists not to reveal their sources of information addressed by the Committee of Ministers of the Council of Europe to the Member States of the organisation on 8 March 2000.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights has identified with interest that :

- In **Denmark** and in the **Czech Republic**, initiatives have been taken to better preserve the pluralism in the media: in **Denmark**, *Act (2002 :1052)* and *Order (2003 :1024)* prevents automatic State grant to local radios or televisions in order to offer the possibility to the competent boards to take into account certain criteria such as the question whether the media at stake has a broad contact to the local society or contributes to local media political goals such as democratic debates ; in the **Czech Republic**, a recent law on Broadcasting providing that the broadcaster is obliged to offer a balanced programme for all inhabitants without discrimination.

- In **Finland**, the new law on the freedom of expression (Act. No. 460 of 2003) applies to both the traditional media and to publishing on Internet, which demonstrates a willingness to identify the specific problems created – for instance in the relationship between freedom of expression and the right to private life – by the new media.

- The **United Kingdom** has introduced a requirement to control consolidation of media ownership insofar as reasonable and practicable to ensure a sufficient plurality of views in each market for newspapers in the country (or part thereof), as well as to ensure a sufficient plurality of persons with control of the media enterprises serving a particular audience and the availability of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests.

- With effect of 1 January 2004 a revised Press Funding Act will come into force in **Austria** that focuses not only on the quantity of daily newspapers and weekly journals but also on their quality. Funding will be newly organised under three headings and transferred from the Federal Chancellery to the Austrian Communications Authority (KommAustria), being the supervising media authority.

- The Network also notes with interest that in **Latvia**,the Constitutional Court found that Article 271 of the Criminal Law providing for imprisonment term for a slander of a State official is contrary to the *Satversme* insofar as the definition of a ‘state official’ in the article was overbroad, creating therefore the possibility of arbitrary interference with freedom of expression.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the conclusion that the institutions of the Union, and in particular the Commission, if they consider it desirable, have the required powers to formulate rules imposing on the Member States to take measures ensuring that pluralism in the media is respected. It notes that amending Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities would constitute the most economical way to do so. It notes that a revision of this instrument, in order to fulfil the requirement of Article 11(2) of the Charter of Fundamental Rights, could also lead to inserting into Directive 89/552/EEC a provision taking into account Article 9(4) of the Framework Convention for the Protection of National Minorities, and the interpretation given to that clause by the Advisory Committee for the Framework Convention, that States should ensure that minority languages and national minorities should be reserved a sufficient quota on the public radio and television.

Article 12. Freedom of assembly and of association

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that in accordance with Article 52(3) of Charter of Fundamental Rights, paragraph 1 of this provision of the Charter has the same meaning than the corresponding Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) although its scope is extended to include the exercise of this right at the European level.

It notes that this provision must be read in accordance with the requirements formulated by Articles 21 and 22 of the International Covenant on Civil and Political Rights (1966), by Article 8 of the International Covenant on Economic, Social and Cultural Rights (1966), by ILO Convention (n° 87) concerning Freedom of Association and Protection of the Right to Organise (1948), by ILO Convention (n° 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1949), by ILO Convention (n° 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (1971), by ILO Convention (n° 154) concerning the Promotion of Collective Bargaining (1981) by Article 5 of the European Social Charter (1961) and by Article 5 of the Revised European Social Charter (1996) .

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 15 Member States still have to be sign ILO Convention (n° 154) concerning the Promotion of Collective Bargaining: Austria, Czech Republic, Denmark, Estonia, France, Germany, Ireland, Italy, Luxembourg, Malta, Poland, Portugal, United Kingdom, Slovak Republic and Slovenia. It notes also that 3 Member States still have to be sign ILO-Convention (n° 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking: Belgium, Ireland and Slovak Republic.

The Network notes that both Article 5 of the European Social Charter (1961) and Article 5 of the Revised European Social Charter (1996) regarding the right to organise, have the same content. It notes that 5 Member States have not signed the Revised European Social Charter: Germany, Hungary, Latvia, Malta and Poland. 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. Nevertheless the 5 Member States that have not signed the Revised European Social Charter and the 10 Member States that have signed but not ratified this instrument have signed and ratified the European Social Charter of 1961. It notes that Greece has declared not

to be bound by Article 5 of the European Social Charter of 1961 and that Spain made a declaration with regard to Article 5 of the European Social Charter of 1961.

To ensure a minimal level of protection of the right guaranteed in Article 12 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights wishes to express its concern about the various limits imposed upon the freedom of assembly and association. In **Poland**, the Law of 23 July 2003 on the amendment of the Law on road traffic significantly limits the freedom of assembly when the proposed assembly risks to impeding the traffic on roads. This law requires a consent for the organisation of certain types of assembly and imposes the fulfillment of a number of conditions by the organisers, which may in practice render the legal organisation of mass street demonstration impossible. In **Hungary**, a number of demonstrations have been banned during the period under scrutiny, particularly under Article 8.1 of the 1989. évi III. törvény a gyülekezési jogról [Act No. III of 1989 on the right to assembly] which enables the Police to ban a demonstration if it "would cause disproportionate disorder to the traffic". According to the Deputy Commissioner for Civil Rights, the application of the Act No. III of 1989 on the right to assembly can lead to uncertainties related to the recognition of the freedom of assembly, which does not fit the requirement of legal certainty and does not comply with the constitutional scope and conditions of the realization of the relevant basic rights. In **Latvia,** both the need for a written notification of the planned assembly and the need for a written authorisation for the proposed event may hinder, in practice, the exercise of the freedom of assembly. In **Ireland** the European Committee on the Prevention of Torture drew attention to allegations of use of excessive force by the police during a demonstration in Dublin on 6 May 2002 and, more particularly, to claims, apparently supported by video footage, that persons who had already been brought under control were repeatedly struck with batons in a potentially dangerous manner. Seven police officers are facing charges in relation to the assault. Such allegations of police violence during demonstrations are not specific to Ireland. In the **United Kingdom**, a specific concern is the use of baton rounds for crowd control purposes.

Having examined the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights wishes to express its concern that in **Denmark,** the Government's intervention with the clauses of the collective agreements on part-time work by adopting Act on amendment of act on implementation of the part-time directives violates ILO Conventions (n° 87) and (n°98) on the freedom of association and collective bargaining, as the Freedom of Association Committee of the ILO found in March 2003.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights has noted with interest that in **Portugal,** Law 34/2003 recognised the popular activities and associations (namely cultural, recreative and sport associations) as "social partners", which will most probably enable them to participate in the preparation of the legislation and the public policies that concern them.

Article 13. Freedom of the arts and sciences

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by both Article 19(2) of the International Covenant on Civil and Political Rights (1966) and Article 15 of the International Covenant on Economic, Social and Cultural Rights (1966). Moreover, it notes that this provision of the Charter may be subjected to the limitations authorized by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

All Member States are parties to these instruments.

Areas of concern

The Network did not adopt any conclusions under this provision of the Charter.

Article 14. Right to education

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that paragraphs 1 and 3 of this provision of the Charter have the same meaning than the corresponding Article 2 of the First Protocol to the Convention for the protection of Human Rights and Fundamental Freedoms (1952) although their scope may be extended.

It notes that Articles 14(1) and 14(2) of the Charter must be read in accordance with the requirements formulated by Articles 6(2) and 13 of the International Covenant on Economic, Social and Cultural Rights (1966), by Article 28 of the Convention on the Rights of the Child (1989) and by Article 17 of the Revised European Social Charter. With respect to the right to vocational training, Article 14(1) of the Charter must be read in accordance with the requirements formulated by Article 10 of the European Social Charter or Article 10 of the Revised European Social Charter.

It also notes that, with respect to children who are members of national minorities, Articles 12(3) and 14(1) and (2) of the Framework Convention for the Protection of National Minorities (1995) should be taken into account since these provisions extend the protection provided by the Charter. Finally, for the interpretation of Article 14(3) of the Charter, Article 13 of the Framework Convention for the Protection of National Minorities should also be taken into account since it extends the protection provided by the Charter.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 5 Member States have not signed the Revised European Social Charter, and therefore are not bound by the right to education as provided in Article 17 of that instrument: Germany, Hungary, Latvia, Malta and Poland. 10 other Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. Moreover, it notes that although it has ratified the Revised European Social Charter, Cyprus has not agreed to be bound by Article 17 of that instrument, which guarantees the right of children and young persons to social, legal and economic protection. Moreover, Article 10 of the European Social Charter and of the Revised Charter guarantee the right to vocational training, and as such should be taken into consideration in the interpretation of Article 14(1) of the EU Charter of Fundamental Rights. However Estonia has not agreed to be bound by

Article 10(2) and Article 10(5) of the Revised European Social Charter (1996), detailing certain aspects of the right to vocational training, and Article 10 as a whole has not been accepted by the Czech Republic, Hungary and Latvia, in the framework of the European Social Charter (1961). Finally, also under the European Social Charter, Germany has not accepted Article 10(4), concerning certain measures to facilitate the exercise of the right to vocational training.

It also notes that France still has to be sign the Framework Convention for the Protection of National Minorities. 5 other Member States have signed this instrument but have not ratified it: Belgium, Greece, Latvia, Luxembourg and the Netherlands.

To ensure a minimal level of protection of the right guaranteed in Article 14 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to accept to be bound by Article 10 of the European Social Charter, or by Articles 10 and 17 in the framework of their undertakings under the Revised European Social Charter, or to explain their reasons for not doing so and examine whether these explanations are still valid. They are also encouraged to sign and ratify the Framework Convention for the Protection of National Minorities.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- Access to education for Roma Children is an important source of concern in **Slovenia**, where Romani children are still segregated in education (put in classes of children with special needs or separate classes) despite recent efforts to operate desegregation, and in **Hungary** where approximately 20% of Romani children are put in special schools designated for children with a slight mental disability and where in 120 schools across the country Roma children are taught in separate classes. In the **Slovak Republic**, the UN Human Rights Committee is concerned about the grossly disproportionate number of Roma children assigned to special schools designed for mentally disabled children, which causes a discriminatory effect, in contravention of article 26 of the International Covenant on Civil and Political Rights and about the segregation of Roma children in the educational (*CCPR/O/78/SVK, point 18*). The Committee on Economic, Social and Cultural Rights also is alarmed about the low rate of primary school enrolment and the high drop out rates at secondary schools among Roma children (*E/C.12/1/Add.81, point 18*). The European Commission against Racism and Intolerance (ECRI) included in its subjects of concern with regard to the implementation of right to education in **Sweden** both the problems faced by children of immigrant origin in accessing education and the fact that Roma children seem to still be marginalised and very few of them complete secondary education (*ECRI, Second report on Sweden, CRI(2003)7, §§ 46 and 61*). In the **Czech Republic**, the education of Roma children has become a priority although Roma children are still placed in special schools aimed at children with disabilities and pupils with difficulties. In **Spain** and **Greece**, the reports mention a high dropout rate and absenteeism for Roma children.

- The European Committee of Social Rights concluded in 2003 that the situation in the **Netherlands**, the **Slovak Republic**, the **United Kingdom**, **Denmark**, **Belgium** and **Finland** does not comply with Article 10(4) of the European Social Charter or Article 10(5) of the Revised European Social Charter, to the extent that, with respect to financial assistance for vocational training, these States do not guarantee the equal treatment with nationals of non-nationals who have the nationality of States Parties to

the 1961 European Social Charter or the Revised Charter lawfully resident or regularly working in these countries.

- The Network is also concerned that in the **United Kingdom**, the arrangements for the education of children in prison and belonging to certain minority groups may be inadequate.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the, the EU Network of Independent Experts on Fundamental Rights has noted with interest the following developments :

- Encouraging results have been attained in **Poland** by programmes seeking to desegregate education of Roma children and encourage the attendance of integrated classes with complementary teaching. Steps have been undertaken in order to improve the access to education of Roma children also in the **Slovak Republic**. There, a Commission for Codification of Romani Language has been set up under the Office of the Plenipotentiary of the Slovak Government for Roma Communities. The codification should improve the preservation and the further development of Romani culture and it also could be helpful in the realisation of Roma-assistants project at primary schools. Moreover Romani language education has been introduced in programmes such as pre-school grades at elementary schools, teacher's assistants for Roma pupils have been recruited. In the **Czech Republic,** various programmes of affirmative action have been organised in order to achieve integration of Roma children in mainstream schools.

- Considering the importance of access to education for the integration of newly arrived third country nationals, the Network notes with interest that in **Belgium**, a decree of the French Community organises the inclusion of newly arrived pupils by creating so-called “footbridges classes” (“classes passerelles”) in the schools that welcome at least 12 of these pupils. The decree understands the “newly arrived pupils” as referring to any minor residing since less than one year on the Belgian territory, who has not finished his or her secondary education and who is either an asylum seeker, or stateless or a national of a developing country or of a country in transition officially recognized by the OECD Development Assistance Committee. The decree also provides the creation of an Integration Board in every school concerned, which is enabled – in the absence of proof returned by the newly arrived person regarding his or her school year attendance – to deliver an admissibility certificate for the appropriate school year. The Integration Board also decides on the duration of the attendance by the pupil concerned of the “footbridge class”. Supplementary means are granted to these schools to this end. The Network takes note with satisfaction of this initiative, although it is aware that several difficulties still exist in practice and that an adequate follow-up of the efficiency of this measure must be ensured.

- Again with respect to **Belgium**, the Network also notes with satisfaction that in implementation of the decree on equal opportunities in education (*Decreet betreffende Gelijke onderwijskansen* I of 28 June 2002), supplementary financial means are granted in the Flemish Community to schools for the support of the pupils having most difficulties ; moreover, from 1 September 2003, under the decree “health coordination” (« zorgcoordinatie ») (*Gelijke onderwijskansen II*), each school offering classses at the fundamental level will benefit from a helath policy via the “health coordinator” who will offer help to children having emotional or psychological difficulties.

- In **Sweden**, Article 5 of the Equal Treatment of Students at Universities Act (enacted on 1/07/2003) provides that each institution of higher education shall annually prepare an action plan containing, inter alia, a review of the measures required to promote the equal rights of students irrespective of their sex, ethnic belonging, sexual orientation or disability and in order to prevent and preclude harassment.

- In **Malta**, the Employment and Training Corporation has been set up with the objective of facilitating the finding of employment for persons depending on the demand of the market and the personal circumstances of the applicant. Several schemes have been put in place to assist both employers and employees to find the right placement of work and the right person for the job. Schemes of training for employees are also subsidised by the Government so as to provide persons with skills sufficient to fill in the demands of the market. An Employment Training Placement Scheme (ETPS) has also been set up to assist employers to provide the necessary training to unemployed persons during the probationary period. The scheme also provides the opportunity for the unemployed to upgrade their skills or acquire new skills that are relevant to the present labour market.

- *The Network also notes with interest that, in **Hungary**, 2003. évi LXI. törvény [Act No. LXI of 2003] modifying 1993. évi LXXIX. törvény a közoktatásról* [Act No. LXXIX of 1993 on Public Education] prohibits any discrimination among children, and details this requirement ; furthermore the new Law prohibits illegal segregation or forcing someone attending an educational institution that does not correspond to his or her needs.

- The Network also notes with satisfaction that, during the period under scrutiny, the **Czech Republic** took further measures to improve the socio-economic situation and social integration of the Roma minority, with a particular effort being made in the field of educational opportunities. Noting that there still is a high percentage of Roma pupils (disproportionate to their number of population) placed in special schools, the Network encourages the continuation of these efforts, particularly through the implementation of affirmative action programmes, programmes aimed at reintegration of Roma pupils from special schools for general elementary schools, and participation of pedagogic assistants from Roma community. The Network notes the initiatives taken in this field by the **Slovak Republic**, especially by the introduction of programmes such as pre-school grades at elementary schools, the inclusion of Romani language education, and positions of teacher's assistants for Roma pupils. It also welcomes the creation of the Commission for codification of Romani language set up under the Office of the Plenipotentiary of the Slovak Government for Roma Communities. The codification should improve the preservation and the further development of Romani culture and it also could be helpful in the realisation of Roma-assistants project at primary schools.

Article 15. Freedom to choose an occupation and right to engage in work

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision must be read in accordance to the requirements of Article 6 of the International Covenant on Economic, Social and Cultural Rights (1966), of Article 1(2) of the European Social Charter and of Article 1(2) of the Revised European Social Charter. Since Article 1(2) of the European Social Charter regarding the effective exercise of the right to work is identical to Article 1(2) of the Revised European Social Charter and since no specific declarations have been made with regard to these two provisions, all Member States are bound by their content.

To ensure a minimal level of protection of the right guaranteed in Article 15 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to accept to be bound by Article 1(2) in the framework of their undertakings under the European Social Charter, or to explain their reasons for not doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In 2002, in its conclusions relating to the **United Kingdom** and to **Belgium**, the European Committee on Social Rights considered that sanctions imposed upon unemployed persons for refusing to take up certain employment that does not correspond to their educational qualifications would be in violation of Article 1(2) of the European Social Charter (Concl. XVI-1 (2002), p. 11 and p. 98). The Network considers that the Decree of 4 June 2003 on the Flemish policy of integration by work (M.B., 30 June 2003) adopted in Belgium by the Flemish Region should be carefully evaluated in the light of these conclusions and the interpretation they offer of Article 1(2) of the European Social Charter. Indeed, if this decree organizes for the benefit of "long-term immigrants" (residing since a long period in Belgium) and "newly arrived in Belgium" (with the exception of EU citizens) who have insufficient knowledge of Dutch or a weak socio-economic position, a specific training and accompanying measures, in the form of a "integration by work" programme, with a view of obtaining a durable employment, the person concerned who refuses to take part in the programme of integration by "appropriate employment" or whose negative attitude leads to the interruption of the programme, may be sanctioned, as this information will be transmitted to the competent service for the allocation of unemployment benefits or of social integration income. This tendency to "activate" social benefits to encourage participation in the labor market is widespread. In **Poland** however, the amendment to the Law of 20 December 2002 on employment and the fight against unemployment, which came into force on 6 February 2003, imposes on the State the duty to support persons who remain unemployed not only by means of unemployment benefits but also by directing certain persons to intervention. However any person, who for no apparent reason refuses to participate in intervention works or public works, loses the status of an unemployed person for six months (Dz.U. z 2003 r. nr 6, poz. 65 [The Official Journal of 2003, No. 6 item 65]). In **Austria** also, the criteria for a "reasonable job" may soon be tightened following a basic agreement of the social partners presented to the Government this year. The period in which the unemployed person has the right not to accept an offered job which is different from the one last practised shall be reduced from one year to the first 100 days of unemployment. After that period the refusal to take up an employment that the placement service considers to be adequate regularly entails cut backs of unemployment benefits. In the **Slovak Republic**, according to the Employment Act, the right to unemployment benefits depends on the co-operation with the Labour Office and the acceptance of the offered employment or training courses. The failure of the job seeker to satisfy aforesaid requirements may result into the loss of unemployment benefits. Apart from the question of the compatibility of this system with Article 1(2) of the European Social Charter, this leads to a risk of abuse : according to certain reports, some employers in the Slovak Republic request payments for their written confirmation that the unemployed person has visited their premises and asked for a job. The Network encourages the public authorities to take initiatives to eliminate these practices.

- In a number of Member States, there are findings of widespread abuse of, and discrimination against, foreign workers, especially residing illegally in the country, where the forms of abuse are most widespread and most serious. In **Ireland**, the Immigrant Council of Ireland stated at the launch of its Handbook on Immigrants' Rights and Entitlements in Ireland on 1 July 2003 that exploitation of *migrant workers* is quite widespread and that official information about their rights and entitlements is not accessible. Where the migrant worker depends upon having an employment contract for the renewal of his/her working permit, the risk of abuse by the employer is higher. The Network notes that in **Portugal** for instance, a current work contract is required for the annual renewal of "permission to stay" permits, a situation which places considerable pressure on immigrant workers. In such a situation, it could be envisaged either to extend the renewal period to at least two years to grant more time to those losing their jobs to find alternative employment; or, alternatively, to allow for a period of grace following the loss of employment, which might extend beyond the formal expiry date of the "permission to stay" permit.

- In **Sweden** the majority of employers have still to take specific steps to actively promote ethnic diversity in working life. The validation of qualifications obtained abroad continues to be problematic in Sweden. Some non-citizens are requested, without sufficient obvious justification, to pass additional tests to validate their vocational qualifications.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the, the EU Network of Independent Experts on Fundamental Rights has notes with interest that certain initiatives have been taken to better protect foreign workers from abuse or discrimination. In **Finland** for instance, the Parliament has been presented with a bill that seeks to promote the equal treatment of foreign workers in working life and increase the possibilities of occupational safety authorities to supervise the equal treatment of foreign workers (HE 151/2003). The bill proposed the insertion in the Penal Code of a new penal provision on extorting work discrimination, where the foreigner's ignorance or weaker position has been taken advantage of, is proposed for the Penal Code. However, such initiatives for the protection of the foreign workers should not imposed administrative burdens on the employers discouraging them to recruit foreign workers.

Article 16. Freedom to conduct a business

The Network did not adopt any conclusions under this provision of the Charter.

Article 17. Right to property

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter corresponds to requirements formulated by Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1952), to which all the Member States are parties.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights notes the following :

- The large number of judgments the European Court of Human Rights has adopted against **Greece** during the period under scrutiny call for an urgent adaptation of the procedures on the deprivation of property in the public interest.

- In **Cyprus**, the system set up by the Cyprus Government since 1991 for the management of the properties left behind by Turkish Cypriots as a result of the 1974 Turkish invasion by the appointment of a custodian of such properties is a source of concern, as it may lead to violations of Article 1 of Protocol n°1 to the European Convention on Human Rights.

- In **Latvia**, a ceiling is imposed on the compensation for the property which was restituted but subsequently expropriated in the public interest, set at the prices on the day the property was nationalized by the Soviet regime, i.e., in 1940. Such an approach may be contrary to the principle of reasonable compensation under Article 1 of Protocol 1 of the ECHR. The Network is aware that Latvia has entered a reservation excluding the application of this provision to the restitution processes in Latvia. However, the Network does not see this as constituing an obstacle to identifying the present situation as a source of concern under Article 17 of the EU Charter of Fundamental Rights. Similarly, the Network has concerns about the situation in **Lithuania** as illustrated by the judgement adopted by the European Court of Human Rights in *Jasiuniene v. Lithuania* (Appl. No.41510/98, judgment of 6 March 2003), with regard to the failure to enforce the judgement of the court on the restitution of property. It notes with interest the proposals to improve the regulation and implementation of property rights set forth in September 2003 by the Lithuanian Free Market Institute (*Laisvos rinkos institutas*) in co-operation with the Lithuanian Centre for Human Rights (*Lietuvos zmogaus teisiu centras*).

- Finally, the Network is concerned that issues connected with the land rights and the hunting and fishing rights for the Sámi population in **Sweden** are still unresolved.

Positive aspects and good practices

The Network notes with interest that in **Malta**, the amendments introduced to Chapter 88 of the Laws of Malta seek to hasten the procedure by which compensation is issued to the individual after confiscation of property by a public authority, and give the individual a right of access to the competent Tribunal to seek the liquidation of such compensation.

Article 18. Right to asylum

State of ratifications

The EU Network of Independent Experts in Fundamental Rights notes that this provision contains an explicit recognition that the European Union considers itself bound by the rules of both the Convention relating to the Status of Refugees (1951) and the New York Protocol relating to the Status of Refugees (1967). *It also notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 22 of the Convention on the Rights of the Child.*

All the Member States are parties to these instruments.

Areas of concern

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All the Member States are parties to these instruments.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights notes with concern, first, that there is a general tendency to limit the possibilities for potential asylum-seekers to effectively lodge a claim to asylum, either upon arriving at a border-crossing point (where the officers in some cases refuse to register a claim to asylum and deny entry to persons seeking asylum, as in **Lithuania** or **Austria**, or because of a lack of sufficient means to adequately process asylum claims, as in **Cyprus,** or based on the safe country of origin as in a number of States), or when they seek to reach a maritime port of a Member State (where the vessels suspected of transporting illegal migrants and potential asylum-seekers are intercepted and escorted to the port of origin, as in the Ulysses project of joint patrolling in the Mediterranean by **Spain**, **France**, **Italy**, **Portugal** and the **United Kingdom** to intercept vessels transporting irregular migrants, or as recently stipulated in by **Italy** by the decree of the Ministry of Home Affairs of 14 July 2003 regarding the "Provisions for combating illegal immigration" (*Gazzetta Ufficiale* 22.9.2003, n° 220)), or even before potential asylum-seekers can leave the territory of their State of origin (by the imposition of sanctions upon carriers transporting undocumented aliens or by the presence of liaison officers in the ports from where asylum-seekers originate, and which are therefore sensitive : specific concerns have been expressed in this regard with respect to **Finland**, **Portugal** and **Sweden**, however this practice is not limited to those States). The Network is also concerned by the use by the **United Kingdom** of a pre-entry clearance immigration control where the refusal of applications by Roma was disproportionately high. These practices are well documented in a number of reports submitted to the Network. However, the consequence of obstructing the right to asylum seekers to access territory, is to force illegal entry and reliance on criminal networks not only by illegal migrants who are not fearing persecution and therefore would not qualify as refugees, but also by genuine refugees seeking protection from persecution. The undifferentiated application of migration control mechanisms on asylum-seekers and refugees undermines the right to seek asylum could be in violation of the *non-refoulement* provision of Article 33 of the Geneva Convention relating to the Status of Refugees (1951). The EU Network of Independent Experts on Fundamental Rights recalls that upon a proposal of its Committee on Migration, Refugees and Population, the Parliamentary Assembly of the Council of Europe on 28 January 2004 approved a recommendation "Access to assistance and protection for asylum seekers at European seaports and coastal areas" where it states that "in the context of their responsibilities for immigration control, [the State authorities should] conduct sea patrolling operations in such a way as to fully comply with the 1951 Refugee Convention and the 1950 European Convention on Human Rights, by avoiding that people are returned to countries where they would be at risk of persecution or human rights violations".

Another major source of concern to the EU Network of Independent Experts on Fundamental Rights are the procedures for the determination of the claim to asylum. Particularly worrying

appears to be an increased reliance on so-called "accelerated procedures", leading to the adoption of decisions concluding to the manifestly ill-founded character of asylum claims with, in many cases, no appeal possible, or only an appeal without a suspensive effect, and therefore lacking the effectiveness required by Article 13 of the European Convention on Human Rights. The EU Network of Independent Experts on Fundamental Rights notes for instance that :

- In **Austria**, Parliament voted in November 2003 for an amendment to the Asylum Act 1997 (*Asylgesetz*) that is intended to speed up the asylum proceedings and will be applicable as from 1 May 2004. Within 72 hours at the latest the Asylum Authority shall then decide on the admissibility of an application in Austria. In many instances the possibility to present new evidence and grounds for refuge to support one's case on appeal is ruled out. Moreover, an appeal to the Independent Federal Asylum Tribunal (*Unabhängiger Bundesasylsenat*) regularly does not carry suspensive effect, meaning that deportation can be effected before a decision on the refugee status becomes final. The appeals tribunal may grant suspensive effect, though, if the appeal does not seem futile and public interest so permit and if it is quick enough to issue its decision within seven days despite being considerably overloaded with cases.

- Regarding the situation in **Finland**, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern about the "accelerated procedure" that could lead to the immediate expulsion of the asylum-seeker as it may be enforced within eight days irrespective of an appeal. In the Committee's opinion, such narrow time limits may not allow for the proper utilization of the appeal procedure available and may result in an irreversible situation even if the decision of the administrative authorities were overturned on appeal. This has also been the opinion of the Council of Europe Commissioner for Human Rights Mr Alvaro Gil-Robles in his Opinion issued on 17 October 2003 (CommDH(2003)13) where he expressed serious criticism against the Government Bill for a new Aliens Act. (HE 28/2003vp) which would confirm the "accelerated procedure". The view of the Commissioner for Human Rights is that the timeframe of seven days for deciding upon applications involving "safe countries" should be extended to allow sufficient time to assess all facts pertaining to the case and to analyse them in light of international human rights obligations and information about the situation of the country; that the timeframe of eight days for the execution of the decision on refusal of entry order should be extended in order to give sufficient time and facilities for the preparation of the applicant's appeal, including appropriate legal and linguistic assistance; that it should be ensured that a decision on refusal of entry not be executed as long as the time limit for appeal is not exhausted; finally, in accordance with the case-law of the European Court of Human Rights, the Commissioner for Human Rights considers that it should be ensured that the appeal be given an automatic effect of suspending the execution of the decision on refusal of entry, unless the court seized with the appeal decides otherwise.

- The European Commission against Racism and Intolerance (ECRI) recently urged **Sweden** to ensure that "the apparent trend [in this country] towards a tightening-up of asylum policies does not lead to a weakening of the rights of asylum seekers to obtain a full and fair consideration of their application" (ECRI, Second Report on Sweden ECRI (2003)7, § 40, p. 15). Current Swedish administrative practice reveals in particular that Roma have been regularly precluded from access to substantive asylum-procedure. Their applications for asylum have been considered "manifestly unfounded", which entails non-eligibility for asylum under Swedish law.

- The Network also has concerns about Article 19(3) of the new Asylum Law (*Patvēruma likums*) adopted in **Latvia** which provides for an accelerated procedure : it

shares the view expressed by the UNHCR that "the State party should ensure that the time limits under the accelerated asylum procedure be extended, in particular for the submission of an appeal" (CCPR/CO/79/LVA, point 9).

- In the **Netherlands**, more and more cases are dealt with in accordance with the versnelde procedure in het aanmeldcentrum or 'AC procedure' [accelerated procedure in reception centres] initially designed to pick out manifestly ill-founded cases (in which asylum seekers will obtain a negative decision within four to five days after they lodged a request): in 2000 16% of all applications for asylum was rejected within 5 days, in 2001 the figure was 22%, in 2002 it was 45% and by the end of 2002 even as many as 60%. The procedures leave a lot to be desired: a lack of time for the newly arrived asylum seeker to get accustomed to his new environment and to understand the procedure that he is going through; defective communication between the asylum seeker and the official; growing distrust between them as a consequence of the way in which the interviews are organised; very limited legal assistance. Although over 30 percent of child asylum seekers have their claims reviewed in the cursory AC procedure, it has been found that interviews of children are often conducted in a manner inappropriate for their age and maturity and without the benefit of consistent assistance from a lawyer or guardian. A separate but related issue is the lack of suspensive effect in AC procedures. Whereas the institution of judicial remedies normally has suspensive effect (meaning that the asylum seeker can stay in the Netherlands pending the procedure), this is different for asylum seekers rejected in the accelerated procedure (Article 82 Aliens Act 2000).

- In **Malta**, an "accelerated procedure" according to Article 18 of the Refugees Act. applies to those applicants whose application appears prima facie to be manifestly unfounded, or if he/she is a national or citizen of a safe country of origin, or has a right of residence in a country and has no serious risk of persecution, or if the applicant has already been recognised as a refugee in a safe third country or where he/she had the opportunity to apply there for refugee status before coming to Malta and there is clear evidence of his admissibility to that third country. If both the Refugee Commissioner and the Chairman of the Refugee Appeals Board independently come to the same conclusion that is that the applicant falls within any of these circumstances, the applicant will be rejected and this decision will be "final and conclusive and notwithstanding the provisions of any other law no appeal or action for judicial review shall lie before the Refugee Appeals Board or before any other court of law." (Article 18(8) Refugee Law).

The EU Network of Independent Experts on Fundamental Rights notes that, in many cases, such "accelerated procedures", based on a presumption of inadmissibility of the claim to asylum, are relied upon when the asylum-seeker is considered to arrive from a "safe country of origin". However, the use of this notion is contestable, insofar as it could lead to discriminations between different categories of asylum-seekers, in violation of Article 3 of the Geneva Convention on the Status of Refugees. The Network notes in this regard that in its concluding observations on the second periodic report of **Estonia** (CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 13), the Human Rights Committee was concerned that the application of the principle of "safe country of origin" may deny the individual assessment of a refugee claim when the applicant is considered to come from a "safe" country. The Committee reminded Estonia that in order to afford effective protection under articles 6 and 7 of the Covenant, applications for refugee status should always be assessed on an individual basis and that a decision declaring an application inadmissible should not have restrictive procedural effects such as the denial of suspensive effect of appeal (articles 6, 7 and 13 of the CCPR).

The EU Network of Independent Experts on Fundamental Rights is concerned that, in a number of Member States, asylum-seekers are not guaranteed adequate legal representation. In **Cyprus** for instance, asylum-seekers are not entitled to a free legal advice, and very few of them have the capacity to refer to a private lawyer, while the UNHCR funded legal aid project implemented in co-operation with KISA (local NGO) has made available only one legal advisor. It is observed that in Cyprus there is an evident general ignorance of solicitors and other persons involved in procedures related to asylum-seekers of international refugee law, EU asylum acquis, and international human rights standards. Access to legal aid is also a difficulty for asylum-seekers in **Germany**, where they only have access to free legal aid after a negative administrative decision on their asylum claim. Legal aid generally is only granted if the judge deciding on the action or appeal holds that it is likely to be successful.

The EU Network of Independent Experts on Fundamental Rights has serious concerns about the material conditions under which asylum-seekers find themselves while their application is being examined. In the **Netherlands**, some groups of asylum-seekers (esp. those awaiting the outcome of an appeals procedure following rejection of their request in the accelerated procedure), are denied a right to basic material support, including food and housing. This leaves asylum-seekers, including families with children, entirely dependent on charity and tacit support by municipalities. In **Cyprus**, to this day, a significant number of asylum-seekers have to find themselves accommodation. The Reception Centre in Kofinou village, can only deal with the most urgent accomodation needs. In its second report on **Slovenia**, the European Commission Against Racism and Intolerance expressed its concern about the situation regarding the accommodation of asylum seekers, who are placed in overcrowded centres where the conditions of life are particularly harsh. In **Austria**, a 2002 ministerial decree containing directives concerning the federal care for asylum seekers denied access to the Federal caretaking programme for asylum seekers from certain countries the Ministry deemed stable and safe enough, who therefore had little prospect of actually being granted refugee status. Throughout the year 2003, the rights to shelter, food clothing and social security have been denied to a considerable number of asylum seekers in need, who had to be taken care of by private charity institutions. Only a last minute compromise on the split of costs for the caretaking of asylum seekers between the Federation and the Provinces prevented the worst case scenario of thousands of applicants being left uncared on the streets over the winter months. The EU Network of Independent Experts in Fundamental Rights considers that such situations are intolerable. It therefore welcomes the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31 of 6.2.2003), and in particular its chapter II concerning the conditions of reception of asylum seekers.

Finally, the EU Network of Independent Experts on Fundamental Rights is concerned about the low number of recognitions of refugees in many Member States. In **Germany** for example, many genuine refugee groups such as for example Afghans, minorities from Kosovo or Iraqis are not granted protection under the Geneva Convention on the status of refugees, because of an overly restrictive interpretation of the definition of “refugee” under Article 1, A, 2°, of that instrument, which excludes victims of persecution by private agents. The Network also notes with concern the particular low level of recognition of the status of refugee in Greece : the percentage of claims to asylum which were finally approved in 2003 was around 0,3 %, when the average in the EU Member States is 15,8 %. The Network notes that in its report published in October 2003, the UNHCR office of Athens has encourage Greece to reform its legislation on asylum and to identify practical solutions for the incoming asylum-seekers. The low level of recognition of asylum-seekers is even more problematic in countries which do not have a status of subsidiary protection, to cover those persons which can neither be recognized as refugees under the Geneva Convention, not be returned to their State of origin or another State. This is the case in Belgium, where neither the practice of the General Commissioner to Refugees and Stateless persons to accompany its decisions refusing to grant the status of refugee, nor the authorization to stay on the basis of exceptional

circumstances of an humanitarian nature (Article 9 alinea 3 of the Law of 15 December 1980) – which is granted on a discretionary basis and leaves the person concerned in a particularly precarious situation –, may be seen as substitutes for the status of subsidiary protection which is still lacking. The Network considers that it should be remedied urgently to this lacuna of the Belgian legislation.

Positive aspects and good practices

The Network welcomes the fact that, in the **Czech Republic**, the procedural rights of the asylum seekers have been addionally strengthened, as a result of the entry into force of the new *Judicial Code on Administrative procedure (Zák. 150/ 2002 Sb. Soudní řád správní* (Law. No. 150/ 2002 Coll. of Laws on the Judicial Code of the Administrative Procedure), and of the amendment of the Asylum Law (Law. No. 519/ 2002 Coll. of Laws). The Network also welcomes the adoption in that State of the Law on Temporary protection of Aliens (*Zák. č. 221/ 2003 Sb. o dočasné ochraně cizinců* (Law No. 221/2003 Coll. of Laws on Temporary protection of Aliens)). It notes with interest that this law improves the position of persons granted with temporary protection in the field of employment, as they now have she same access to employment as persons with permanent residence permit in the Czech Republic, as well as in the field of health care, as these persons now have right to payment of their health insurance from the state budget.

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

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that Article 19(1) of the Charter corresponds to Article 4 of Protocol n° 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1963) and that Article 19 (2) corresponds to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

It notes that Article 19(2) of the Charter must be read in accordance to the requirements formulated by Articles 7 of the International Covenant on Civil and Political Rights (1966), by Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1984) and by Article 33 of the Convention relating to the Status of Refugees (1951).

It also notes that the protection of the individual from removal, expulsion or extradition has been developed in Article 13 of the International Covenant on Civil and Political Rights (1966), Article 1 of Protocol n° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1984), Article 19(8) of the Revised European Social Charter (with respect to nationals from States parties to the Revised European Social Charter) and Article 19(8) of the European Social Charter (1961) (with respect to nationals from States parties to the European Social Charter (1961)), which states that the Parties to this instrument undertake to secure that migrant workers lawfully residing within their territories will not be expelled unless they endanger national security or offend against public interest or morality.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that Greece still has to sign the Protocol n° 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Spain and the United Kingdom have signed this instrument but have not ratified it. It notes that Belgium and the United Kingdom still have to be sign the Protocol n° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. 4 other Member States have signed it but have not ratified it: Germany, the Netherlands, Portugal and Spain.

Article 19(8) of the European Social Charter (1961) and Article 19(8) of the Revised European Social Charter have the same content. Among the Parties to the Revised European Social Charter, Lithuania has declared not to be bound by Article 19(8). Among the Parties to the European Social Charter, 7 Member States of the EU have declared not to be bound by Article 19(8) of the European Social Charter of 1961: Austria, Czech Republic, Denmark, Hungary, Latvia, Malta and Slovak Republic.

To ensure a minimal level of protection of the right guaranteed in Article 19 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- **Belgium** still has not executed the judgment of the European Court of Human Rights in the case of *Conka v. Belgium*, delivered on 5 February 2002. The Network finds, indeed, that the Law of 15 December 1980 on the access to the territory, stay, establishment and removal of foreigners does not formally impose an obstacle to an alien being removed from the territory while the action for annulment of the expulsion order he or she has lodged with the Conseil d'Etat is still pending before this jurisdiction, even where the action has been accompanied with an urgent request to suspend the execution of the expulsion order. Moreover, a foreigner may be removed from the country even before the committals division of the competent First Instance Court has been given an opportunity to decide on the proceeding filed against the decision to deprive him or her from his or her liberty with a view to ensuring the removal, although the lack of such a safeguard has been found to be incompatible with Article 5(4) of the European Convention on Human Rights.

- In **Italy**, the Law n°189/2002 on the forced removal of expelled foreigners by the adoption of an executive order does not offer sufficient guarantees against the risk of refoulement to States where the death penaly could be applied, or where the person deported risks to be subjected to torture or to inhuman or degrading treatments or punishments. Indeed, the execution of the executive order to remove a person from the territory may not be suspended by the introduction of an action seeking the annulment of such an order, a situation which does not ensure the effective protection of the right of the foreigner not to be subjected to such risks in the state of return.

- The state of the legislation in the **Slovak Republic** appears to be incompatible with the guarantee provided by Article 19(2) of the Charter of Fundamental Rights : while the paragraph 2 of Section 47 of the Act on Asylum does not allow to expel a person to an unsafe territory in any way, and constitutes the absolute prohibition of expulsion in the case of "torture, cruel, inhuman or degrading treatment or punishment", the paragraph 1 of Section 47 of the Act on Asylum allows expelling a person to "the territory of the country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion", provided that such a person "can be reasonably regarded as a danger to the security of the Slovak Republic or who has been convicted by a final judgement of a particularly serious crime constituting a danger to the society."

- In **Portugal**, potential asylum seekers are increasingly being returned immediately upon arrival, in violation of the first essential dimension of the *non-refoulement* principle: "non-rejection" at entry. The violation of the *non-refoulement* principle, however, also results from the tendency already evoked in these conclusions (under Article 18 of the Charter) to deny to potential asylum-seekers the possibility to lodge a claim to asylum, thereby making it possible to immediately return foreign nationals to the country they arrive from, without having to examine their claim to asylum or without verifying whether their life or security is at risk in the State of destination. This appears to be the case, for instance, in **Italy**, where the Decree of the Minister of the Interior of 14 July 2003 creates a risk of refoulement and moreover could be considered to amount to a collective expulsion of foreigners, in the absence of an individualized examination of the situation of each person arriving at the border.

- The European Commission against Racism and Intolerance (ECRI) has criticized the fact that in **Sweden**, certain rejected asylum-seekers were removed against their will to countries unknown to them because of difficulties in establishing their nationality (ECRI, Second Report on Sweden, CRI(2003)7, § 39, p. 15).

- In **Austria**, the forcible return of 74 Chechnyan asylum seekers to the Czech Republic did not only deprive these persons of their right to seek asylum but also interfered with the principle of *non-refoulement*.

- In **Sweden**, no legal changes have been undertaken during 2003 with reference to the European Committee of Social Rights' conclusions and recommendations of 2002, namely that the situation in Sweden cannot be judged as compatible with Article 19 Section 8 of the Revised European Social Charter, on the grounds that migrant workers who are citizens of States Parties to the treaty in question and against whom an expulsion order has been issued on account of their posing a threat to national security have no right of appeal to an independent body (European Committee of Social Rights, Conclusions 2002 (Sweden), p.17).

- The Network also received information according to which inadequate time was being allowed in the **United Kingdom** for persons being removed to collect belongings and settle their affairs.

- As regards the situation created in **Ireland** after the decision of the Supreme Court in the case of *Lobe & Osayande* [2003] on the position of non-national families of Irish-born children whose right of residence is no longer considered to be 'automatic', the Network refers to its conclusions adopted under Article 7 of the Charter.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights considers that, under Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, the transit Member State has a duty under the international law of human rights and under Article 19 of the Charter of Fundamental Rights to examine whether the removal would put the person subject to deportation at risk, even in situations where the appreciation of the authorities of the transit State differs from the appreciation of the authorities of the requesting State. If it appears to the transit State that the removal would be in violation of its international obligations, the transit autorisation should be revoked and the person readmitted in the requesting State at the cost of that State.

The EU Network of Independent Experts on Fundamental Rights also has noted recent initiatives concerning the joint organisation of common flights for the removal of foreigners

illegally present on the territory of Member States, and which should be returned to a same destination. The EU Network of Independent Experts on Fundamental Rights reiterates in this respect its fear that where one or more States announce their intention to return a group of persons to a certain destination, they may be tempted to only summarily check each individual situation, or even to proceed on the basis of characteristics such as nationality, ethnic origin or religion, either in the determination of the asylum claims, or in the adoption of orders to leave the territory as such. This would constitute a collective expulsion of aliens, in the meaning of Article 4 of Protocol n°4 ECHR and in the meaning of Article 19(2) of the Charter of Fundamental Rights.

Positive aspects and good practices

The EU Network of Independent Experts in Fundamental Rights welcomes the adoption of the law on granting protection to foreigners on the territory of the Republic of **Poland** introducing the institution of tolerated residence for a foreigner who cannot be expelled to his/her country, in particular when this expulsion could only be to a country where he or she could be subject to torture or inhuman or degrading treatment or punishment, be compelled to work, be deprived the right of a fair trial, or be punished without legal grounds in the meaning of the European Convention on Human Rights; or when this foreigner is a spouse of a Polish national.

The Network also notes with interest that in Belgium, a bill proposes the insertion in the Law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners, of a series of guarantees relating to the adoption and execution of orders to leave the territory. It is proposed that the concerned foreigner and the person assisting him or her be warned 48 hours in advance of the effective execution of the order, to avoid any surprise effect which could prejudice the interests of the foreigner. It is also proposed that the Minister could authorize certain private and public services ensuring the defence of the rights of foreigners to observe the removal, so that they can verify that all the guarantees are indeed compled with. Finally, no forced removal could take place, under the proposed bill, unless voluntary repatriation has clearly been proposed to the alien as an alternative (Proposition de loi modifiant la Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Sénat, sess. extraord., 2003, *Doc. Parl*., 3-70).

CHAPTER III : EQUALITY

Article 20. Equality before the law

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (1966) and by Article 14 the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), with respect to the rights and freedoms guaranteed in that instrument. The Preamble of the European Social Charter (1961), stating that the rights listed in that instrument should be recognised without discrimination, as well as Article E of the Revised European Social Charter, should also be taken into account. All the Member States are parties to the first two instruments and to either the European Social Charter or the Revised European Social Charter.

The Council of Europe Framework Convention for the Protection of National Minorities guarantees the members of national minorities a right to equality before the law (Article 4(1)).

To ensure a minimal level of protection of the right guaranteed in Article 20 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the Framework Convention for the Protection of National Minorities, or to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In **Austria**, it is still impossible under section 53(1) of the Industrial Relations Act (*Arbeitsverfassungsgesetz*), for non-EEA foreign workers to be elected to work councils under section 53(1) of the Industrial Relations Act (Arbeitsverfassungsgesetz), as noted by the Committee of Experts on the Application of Conventions and Recommendations of the International Labor Organisation, although this situation led the UN Human Rights Committee in 2002 to find a violation of Article 26 of the International Covenant on Civil and Political Rights in this respect and despite the fact that the European Commission had initiated proceedings against Austria before the European Court of Justice for failure to fulfil an obligation with regard to the eligibility of foreign employees in work council elections.

- In **Estonia**, foreigners cannot become members of political parties, a situation which triggered the concern of the Human Rights Committee in its final conclusions on Estonia released on 15 April 2003. The Network notes however that, after the accession of Estonia to the Union, EU citizens will have the right to become members of political parties in Estonia.

- In **Poland**, persons of Polish origin living permanently on the territory of the European part of the Russian Republic before the Law of 9 November 2000 on repatriation came into force are discriminated under this law, in comparison with persons of Polish origin living permanently in other areas.

Article 21. Non-discrimination

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (1966), by Article 2 of the International Covenant on Economic, Social and Cultural Rights (1966), by the International Convention on the Elimination of All Forms of Racial Discrimination (1965), by Article 7 of the International Convention on the Rights of All Migrant Workers and Members of their Families (1990) (with regard to the rights recognised to migrant workers and the members of their families under this instrument), by ILO Convention (n°111) concerning Discrimination in Respect of Employment and Occupation (1958), by Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), by Protocol n° 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2000, not yet in force), by Article 11 of the Convention on Human Rights and Biomedicine (1997) (with regard to discrimination based on genetic features) and by Article 4 of the Framework Convention for the Protection of National Minorities (1995).

It also notes that, to the extent Article 21 of the Charter of Fundamental Rights prohibits any discrimination on the ground of membership of a national minority, Article 27 of the International Covenant on Civil and Political Rights (1966) should be taken into account in the interpretation of this provision, as well as provisions from the Framework Convention for the Protection of National Minorities (1995) other than Article 4.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that no Member State has signed the International Convention on the Rights of All Migrant Workers and Members of their Families. It notes that Estonia has not ratified ILO Convention (n°111) concerning Discrimination in Respect of Employment and Occupation. It recalls that France still has to be sign the Framework Convention for the Protection of National Minorities. 5 Member States have signed this instrument but still have not ratified it: Belgium, Greece, Latvia, Luxembourg and the Netherlands. It notes that 6 Member States still have to be sign the Convention on Human Rights and Biomedicine: Austria, Belgium, Germany, Ireland, Malta and the United Kingdom. 8 Member States have signed this instrument but have not ratified it: Finland, France, Italy, Latvia, Luxembourg, Poland, the Netherlands and Sweden.

It recalls that 8 Member States still have to be sign Protocol n° 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms: Denmark, France, Lithuania, Malta, Poland Spain, Sweden and the United Kingdom. It notes that Cyprus is the only State that has ratified it.

To ensure a minimal level of protection of the right guaranteed in Article 21 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- With respect to the **Czech Republic** (concluding observations of the Committee for the Elimination of All Forms of Racial Discrimination (CERD), 18 August 2003), to **Finland** (concluding observations of the Committee for the Elimination of All Forms of Racial Discrimination (CERD), 22 August 2003), to **Poland** ((concluding observations of the Committee for the Elimination of All Forms of Racial Discrimination (CERD), 21 March 2003), to the **United Kingdom** (concluding observations of the Committee for the Elimination of All Forms of Racial Discrimination (CERD), 10 December 2003), the socio-economic situation of the Roma minority has been considered to be unsatisfactory under the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

- The concerns raised by the socio-economic state of the Roma are not limited to those countries. In **Hungary**, the life expectation of Roma is 8 to 10 years lower than the average population. In the **Slovak Republic**, the United Nations Committee on Economic, Social and Cultural Rights has expressed its concern about the insufficiency of the legislative and administrative measures adopted to improve the socio-economic condition of the Roma people and Roma appear to be in need of a better protection from racial violence, to which the reactions of the local law enforcement officers have been in certain instances unsatisfactory.

- In **Cyprus** (in the settlement of Makounta) and in **Greece** (in the settlements of Aspropyrgos and Spata), as in **Italy** (as found by the Advisory Committee of the Framework Convention for the Protection of National Minorities : ACFC/INF/OP/I(2002)007, 14 September 2001, para. 25), the conditions of life in Roma settlements are particularly difficult, and sometimes, due to the lack of affordable public transportation, of health care institutions and of accessible public education, may lead to a violation of the right to health or of the right to education.

- **In Ireland**, the denial by the Irish Government in its first draft submission under International Convention on the Elimination of All Forms of Racial Discrimination that the Traveller Community may constitute a distinct ethnic minority rather than simply a group characterised by the "social origin" of its members has given rise to understandable concerns expressed by, among others, the National Consultative Committee on Racism and Inter-Culturalism (NCCRI); moreover the transfer of discrimination cases against publicans and hoteliers away from the Equality Tribunal and into the District Courts (section 19 of the Intoxicating Liquor Act 2003) could also result in diminishing that protection, especially taking account the consistent resistance of the licensed trade to the effective implementation of the Equal Status Act 2000. In this same Member State moreover, the accommodation needs of members of the Traveller Community are not adequately met. Virtually all local authorities have failed to fulfil their statutory obligations in relation to Traveller accommodation under the Housing (Traveller Accommodation) Act, 1998. The Network notes that this problem has been exacerbated by the implementation of the Housing (Miscellaneous Provisions) Act, 2002 which criminalises trespass on private and public lands and is being used to evict Traveller families from campsites many of whom are awaiting housing provision by local authorities.

- In **Slovenia**, the specific protection benefitting the recognized autochtonous Italian and Hungarian minorities (including all the rights enumerated in Article 64 of the Constitution) is still not extended to the national communities from the former Republic of Yugoslavia (Croats, Serbs, Bosnians, Kosovar Albanians), despite the fact that they are numerically more important; and the legislation called for by Article 65 of the Constitution still has not been adopted, although it should improve the legal framework benefitting the Romani community. However, the new legislation secured the Romany community the right to elect their own representatives in 20 municipal councils in those municipalities where Romany are autochthonous and permanently settled.

- In the **Slovak Republic**, Act n°74/1958 Coll. on permanent settlement of nomadic persons, as amended, constitutes an important and unjustifiable restriction on the traditional lifestyle of Roma and should be abolished.

The Network regrets that, although the deadlines for the implementation of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180 of 19.7.2000) and of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2.12.2000) have expired respectively on 19 July 2003 and 2 December 2003, the implementation of these Directives by the Member States is still largely incomplete, despite the fact that a number of States have taken initiatives in 2003 to fulfill their obligations in this respect.

The EU Network of Independent Experts on Fundamental Rights also notes that :

- In **Cyprus**, homosexuality is treated as a psychiatric condition leading to exemption from military service, which in turn leads to denial of employment or, for instance, the obtention of a driving license. Such a situation is unacceptable and must cease immediately.

- In **Cyprus**, the partial opening of check points between the two parts of the island in April 2003 has led to an increase of employment in the South of Turkish Cypriots residing in the North, but the risks of discrimination by Greek Cypriot employers of this category of workers are particularly high and should be closely monitored.

- In **Finland**, the compatibility of the new Act on the Knowledge of Languages Required of Personnel in Public Bodies (n°424/2003), according to which all civil servants are to know both Finnish and Swedish, with the prohibition of discrimination against nationals from other EU Member States, has been questioned before the Constitutional Law Committee, despite the fact that the Act (sect. 9) provides for the possibility of a dispensation from the language requirement in each individual case.

- In **Greece**, concern has been raised regarding the fact that the Greek criminal law penalizing, among others, incitement to hatred or discrimination on racial grounds is not applied in practice and does not offer a sufficient protection to certain groups, especially the Roma minority. Greece, moreover, is one of the Member States which have not complied with the deadlines for the implementation of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

- In **Malta,** children born out of wedlock are disadvantaged vis-à-vis legitimate children for the purpose of for example inheritance rights. Although the courts in Malta have on occasion declared that this was an unconstitutional discrimination, it is urgent that the law is modified in this regard to remove any remaining legal uncertainty.

- In **Sweden**, a large number of ethnic and linguistic groups living in Sweden are still not considered to be covered by the Framework Convention for the Protection of National Minorities.

- In **Ireland**, the Government has made the announcement that the Equality Authority and ODEI-Equality Tribunal were to be "de-centralised" or re-located from Dublin to Roscrea, a town in Co. Tipperary. The Network shares the concerns which have been expressed that this may impact adversely on the accessibility afforded to claimants and respondents alike by having the ODEI-Equality Tribunal located in the capital city as well as on the centrality and proximity of the Equality Authority vis-à-vis other policy-making agencies located in Dublin.

- In a number of States, an increase of prejudices against the Muslim community has been reported. In the **Netherlands**, various statistics – which may only represent the 'tip of the iceberg' according to the EUMC – suggest a high number of both islamophobic and anti-Semitic incidents.

- The European Commission against Racism and Intolerance commended **Sweden** in its second report on Sweden in 2003 for recent initiatives to combat racism and discrimination but it noted the increase in the number of islamophobic incidents,

including the difficulties faced by women wearing the hijab in finding employment (ECRI, Second Report on Sweden, CRI(2003)7, § 56, p. 20). The Committee on the Elimination of Racial Discrimination, in its Concluding Observations on the **United Kingdom** (CERD/C/63/CO/11, 10 December 2003, § 21), was concerned about reported cases of Islamophobia following the 11 September attacks and also regretted that incitement to racially motivated religious hatred was not outlawed. The European Commission against Racism and Intolerance in its second report on Luxembourg (ECRI, Second Report on **Luxembourg**, CRI(2003)38) noticed a decrease of tolerance by the media following 11 September events that finds expression in an increase of prejudices and stereotypes against Muslims.

- In **Estonia**, the 162 890 "non-citizens" represented 12 % of the total population, on 31 October 2003. Out of a total 1 356 045 inhabitants living in Estonia on that date, another 80,6 % (1 092 633 persons) are Estonian citizens, 6,5 % (88 202 persons) are Russian citizens, and 0,9 % (12 320 persons) have the nationality from another country. The Network notes that non-citizens in Estonia cannot take part in parliamentary elections, however, they can vote and run in elections for local municipalities. It also notes that state education is provided in Russian at the elementary and secondary school level (the Estonian language being then taught as one of the subjects), although the Estonian parliament has decided on a timetable for a bigger share of subjects in Russian secondary schools to be taught in Estonian language in the future.

The Network notes that in its final conclusions published on April 15, 2003 following the second periodic report submitted by Estonia, the UN Human Rights Committee expressed its concern at the high number of stateless persons in Estonia and the comparatively low number of naturalizations, and it recommended that Estonia reduce the number of stateless persons, with priority for children, *inter alia* by encouraging their parents to apply for Estonian citizenship on their behalf and by promotion campaigns in schools. The Network shares this view. Although including a language test requirement as a naturalization condition cannot be criticized as such, provided that such a test is organized in conditions which are transparent and non-discriminatory, the Network takes the view that Estonia should send a more clear signal to its non-citizens that citizenship is both worth acquiring and acquirable. Information campaigns for the non-citizens to encourage them getting citizenship are desirable. Estonia should also make further efforts in making the study of Estonian language accessible in all regions of the country. In this respect, the Network encourages the recent campaign that the state gives back the money spent for a language course if the person has succeeded in the citizenship exam.

The Network notes that a similar problem exists in **Latvia**, where there are 494 319 non-citizens residing among a population of 2 324 183. The Network welcomes the fact that although they have not completely disappeared yet, differences of treatment based on the status of non-citizens nevertheless are increasingly considered with suspicion. This trend should be encouraged and any remaining discrimination removed. The Network also encourages Latvia to follow upon the recommendation of the Committee for the Elimination of Racial Discrimination that non-citizens be allowed to take part in local elections (CERD/C/63/CO/8, 22 August 2003, point 15). The Network emphasizes that such a participation could create a greater sense of belonging to the Latvian community and therefore constitute an incentive for the acquisition of the Latvian citizenship.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the fact that, in conformity with its communication on "Better monitoring of the application of Community Law" (COM(2002)725 final, of 20.12.2002), where it states that it will afford a high level of priority to pursuing the infringments of EC

law which are "violations of the human rights or fundamental freedoms enshrined in substantive Community law" (point 3.1.), the European Commission has closely monitored the transposition directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000 based on Article 13 EC, and will launch infringment proceedings against the Member States where the transposition remains unsatisfactory. At the same time, the EU Network of Independent Experts on Fundamental Rights notes that certain aspects of the abovementioned directives may require clarification, for instance by the adoption of an interpretative communication. The single most important issue in this regard concerns the relationship between the need to combat indirect discrimination or to adopt certain positive action measures, and the protection of sensitive data relating in particular to race or ethnic origin, or religion.

However, considering the specificity of the situation of the Roma, whose socio-economic condition requires not only protection from discrimination but also affirmative desegregation in employment, housing, and education, the EU Network of Independent Experts on Fundamental Rights invites the European Commission to consider proposing a directive based on Article 13 EC and specifically aimed at improving the situation of the Roma population. This directive should be based on the studies documenting the situation of the Roma population, and take into account the relevant rules of the Council of Europe Framework Convention on the Protection of National Minorities as well as the interpretation of this instrument given by the Advisory Committee established under its Article 26. It should provide that effective accommodations will be made to ensure the Roma will be able to maintain their traditional lifestyle, when they have chosen the nomadic or semi-nomadic mode of life, without being forced into sedentarisation. It should take account the need to effectuate the desegregation of the Romani communities, where this is required, especially in employment, housing and education (see the concerns expressed in these conclusions under Article 14 of the Charter of Fundamental Rights). It should address the question of the inaccessibility of certain social and economic rights due to the administrative situation of Roma to whom administrative documents are denied or who are considered stateless. The EU Network of Independent Experts on Fundamental Rights recalls in this respect that such an initiative may be called for by the European Parliament (Article 192, al. 2 EC).

The Council of the European Union is also encouraged to resume the discussions on the adoption of a Framework Decision on combating racism and xenophobia, as proposed by the Commission (COM(2001)664 final) and as advocated by the European Parliament. The EU Network of Independent Experts on Fundamental Rights notes in this regard that, in its concluding observations of 10 December 2003 concerning the **United Kingdom**, the Committee for the Elimination of All Forms of Racial Discrimination (CERD) has insisted that the obligations of the States parties under Article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination should not be read too restrictively, and that these obligations should not be seen as limited by the need to respect freedom of expression, as freedom of expression does not extend to incitement to racial hatred or discrimination. It also notes that the Advisory Committee on the Framework Convention for the Protection of National Minorities insists in its opinions on an effective protection of minorities from ethnically motivated crime (see e.g. concerning **Sweden**, where Chapter 16 Section 8 of the Penal Code (BrB) which tackles racially motivated crimes appears to be lacking effective application, ACFC/INF/OP/I (2003)006, 25th of August 2003, § 23), and that the European Commission on Racism and Intolerance has also clearly advocated this in its General Policy Recommendation n°7 on national legislation to combat racism and racial discrimination (CRI(2003)8, 13 December 2002). The EU Network of Independent Experts on Fundamental Rights invites the European Parliament to address the appropriate recommendations in this regard to the Member States, acting under the powers recognized to it by Article 39(3) EU.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights has identified the following positive developments and good practices:

- In the **Czech Republic**, the adoption of the Law on Rights of Persons belonging to National Minorities (n° 273/2001) and the creation of the Government Council for National Minorities as well as the Government Council for Roma Community Affairs, has facilitated a systematic monitoring of the impact of legislation and policies on the situation of minorities.

- In **Greece**, specific services have been set up to ensure that the Roma minority can have facilitated access to public and social services, in the areas where their presence is significant.

- In **Latvia**, the Center for Human Rights and Ethnic Studies has produced in August 2003 a Report on the situation of Roma in Latvia, which sheds light on the situation of the 13 to 15,000 Roma of the country and constitutes the first step towards the adoption of remedial measures.

- In **Estonia**, the Legal Chancellor Act was modified in 2003 giving the Legal Chancellor a new competence to arbitrate cases concerning discrimination on sexual, national or any other basis, from 1 January 2004.

- In 2003, certain Member States have reinforced their criminal legislation against racial discrimination or incitement to racial hatred : this was the case in **Belgium** (Law of 25 February 2003), in **Malta** (Act III of 2002 introducing a new section 82A in the Criminal Code), in **Cyprus** (Law 84 (I)/2003 including a new section 47 in the Penal Code), in **Hungary** (where the Criminal Codes Amendments (2003) should ensure a stricter criminalisation of hate speeches, when they will have entered in force), in the **Netherlands** (Law of 20 November 2003 increasing penal sanctions for diverse forms of discriminatory acts or incitement to discriminate on the basis of race, religion, belief, sexual orientation), or in **France** (loi n° 2003-88 du 3 février 2003 visant à aggraver les peines punissant les infractions à caractère raciste, antisémite ou xénophobe).

- The Office of Communications in the **United Kingdom** includes in its requirements for the delivery of licences the promotion of equality of opportunity in relation to employment with the licence holder; these conditions must promote equality between men and women and between different races. Licensees must also be required to promote the equalisation of opportunities for disabled persons.

- Certain Member States have taken initiatives to favor the promotion of integration. In **Austria** for example, the Provincial Government of Tirol has engaged in developing guiding principles for the integration of migrants under the EQUAL programme of the European Union. Involving a wide range of different actors from politics, non-governmental organisations and all administrative levels, the 2-year process will be fully operational in 2004 and is intended to produce model guidelines on how to address the issue of integration of migrants, thereby raising the general awareness for the situation of foreigners living in Austria. In **Germany,** the "Alliance for Democracy and Tolerance – against Extremism and Violence" ("Bündnis für Demokratie und Toleranz – gegen Extremismus und Gewalt"), created in 2000 and now comprising 800 organisations, plays an important role as a network of state and non-governmental

projects and initiatives for the prevention and combating of rightwing-extremist, xenophobic, anti-Semitic violence. In **Hungary**, 107/2003 (VII. 18.) Korm. rendelet [107/2003 (VII. 18.) Government Decree] created the post Minister without portfolio tesponsible for Equal Opportunities, whose activities include the fight against the exclusion of people being disadvantaged, and the realization of human dignity and equal treatment. The Network also has paid careful attention to the efforts made by the **Slovak Republic** with respect to the integration of the Roma, as through the adoption of resolution No. 278 of 23 April 2003 according to which supplementary financial means will be made available for the permanently sustainable plan concerning the systematic education of selected professional groups oriented on the prevention of all forms of discrimination, racism, xenophobia, anti-Semitism, and other demonstrations of intolerance in the period of 2004 – 2010, the setting up of regional offices of the Commission for the solution of the problems concerning racially motivated violence, the support from the Minister of Economy to the development of small and medium enterprises within the Roma communities, the improved accessibility of health care for the marginal Roma community, the reinforcement of the secretariat of the Plenipotentiary of the **Slovak** Government for Roma minority, and the establishment of the Office for the integration of Roma communities. These are good practices which could inspire similar initiatives in other Member States. The adoption in the **Czech Republic** of the National Strategy for Work of the Police in Relation to National and Ethnic Minorities (Usnesení vlády č. 85 ze dne 22.ledna 2003 k Národní strategii pro práci Policie ČR ve vztahu k národnostním a etnickým menšinám (Government Resolution No. 85 of 22 January 2003, on the National Strategy for the Work of the Police in Relation to National and Ethnic Minorities)), focusing on both Czech citizens belonging to minorities (especially the Roma minority) and various categories of aliens, also goes in the right direction.

The Network also welcomes the fact that in **Poland**, the Labour Code, amended by the *Sejm* on 14 November 2003, provides for the broadest prohibition of discrimination in employment referring not only to sex, age, disability, race, nationality and convictions but also religion, trade union affiliation, sexual orientation and full-time and part-time employment and for a defined and undefined period. The Network notes that the new legislation affirms the principle that everyone has the right to equal remuneration for equal work or for work of equal value. In **Hungary**, the new Act on equal treatment and the promotion of equal opportunities was adopted by Parliament in 29 December 2003.

Finally, the Network notes with interest that in **Latvia**, the Supreme Court and the Court of first instance found that a pre-election advert of a political party, running for the seat in the Parliament and advocating disrespectfully against the forth-coming flow of immigrants from Africa and Asia, constituted a fact of discrimination and therefore violated the honour and dignity of the two African actors and third parties affected by the advert.

Article 22. Cultural, religious and linguistic diversity

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter should be interpreted taking into account in particular Article 27 of the International Covenant on Civil and Political Rights (1966), ILO Convention (n°169) concerning Indigenous and Tribal Peoples in Independent Countries, the European Charter for Regional or Minority Languages (1992) and the Framework Convention for the Protection of National Minorities (1995).

The EU Network of Independent Experts notes in this regard that Denmark and the Netherlands are the only two Member States that have ratified ILO Convention n°169. It notes that 7 Member States still have to be sign the European Charter for Regional or Minority Languages: Belgium, Estonia, Greece, Ireland, Latvia, Lithuania and Portugal. 6 Member States have signed this instrument but have still not ratified it: Czech Republic, France, Italy, Luxembourg, Malta and Poland. It notes that France still has to be sign the Framework Convention for the Protection of National Minorities. 5 Member States have signed this instrument but have not ratified it: Belgium, Greece, Latvia, Luxembourg and the Netherlands.

To ensure a minimal level of protection of the right guaranteed in Article 22 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights would note in particular that in spite of clear progress in the protection of the rights of the indigenous Sami in **Finland** and **Sweden**, there are areas of concern, in particular the issue of land rights and the use of territory in general in the traditional areas of the Sámi, since reindeer herding, fishing and hunting are of central relevance to the protection of their culture and identity as indigenous peoples. The Network encourages Sweden to follow upon the recommendations made on this issue by the Advisory Committee on the Framework Convention for the Protection on National Minorities (Opinion on Sweden, ACFC/INF/OP/I(2003)006, § 29, p. 9), and it encourages Finland to take into account the observations of the UN Committee for the Elimination of Racial Discrimination (Concluding Observations on Finland (CERD/C/63/CO/5)).

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights has identified a limited number of good practices which all the Member States are encouraged to seek inspiration from in formulating a fundamental rights policy in their jurisdiction :

- In **Finland**, the Sami Language Act (n° 1086/2003) has created incentives to civil servants who wish to study the Sami language; it guarantees the right to use the Sami language in dealing with public authorities in certain areas; and knowledge of Sami language is considered a special merit in recruitment to public office, even where it is not a condition of recruitment.

- In **Portugal**, a network of socio-cultural mediators has been established since 2001 to liase between parents of Roma origin and schools and, thus, to improve access to education of Romani children; however the Network notes in 2003 that more resources should be allocated to this network, for it to function effectively.

- In **Latvia**, the government created a post of a Minister for Integration Affairs, thus signifying to the minority population that the government is committed to the goal of integration at the highest level.

- In **Greece**, the creation of specific services has been announced to ensure that the Roma community can have facilitated access to public and social services, in the areas where their presence is significant.

Article 23. Equality between man and women

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Articles 2(1), 3 and 26 of the International Covenant on Civil and Political Rights (1966), by Articles 3 and 7, a), i) of the International Covenant on Economic, Social and Cultural Rights (1966), by the Convention on the Elimination of All Forms of Discrimination against Women (1979), by ILO-Convention (n° 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951), by ILO Convention (n° 111) concerning Discrimination in Respect of Employment and Occupation (1958), by Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), by Article 5 of Protocol n° 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1984), by Protocol n° 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2000, not yet in force), by Article 8 of the European Social Charter, by Article 1 of the Additional Protocol of the European Social Charter of 1961 (1988), and by Articles 8 and 20 of the Revised European Social Charter.

It also notes that the Convention on the Elimination of All Forms of Discrimination against Women has recently been reinforced by the adoption of an Optional Protocol (2000), which improves the international protection of rights which are equivalent to those of Article 23 of the Charter.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 4 Member States still have to be sign the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Estonia, Latvia, Malta and the United Kingdom. 3 other Member States have signed it but have not ratified it: Belgium, Lithuania and Slovenia.

It notes that Estonia has not ratified ILO Convention (n° 111) concerning Discrimination in Respect of Employment and Occupation.

It notes that Belgium and the United Kingdom still have to be sign Protocol n° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. 4 Member States have signed this instrument but have not ratified it: Germany, Portugal, Spain and the Netherlands. It also recalls that 8 Member States still have to be sign the Protocol n° 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms: Denmark, France, Lithuania, Malta, Poland, Spain, Sweden and the United Kingdom. Cyprus is the only Member State that has ratified it.

The Network notes that 4 of the Member States which are not bound by the Revised European Social Charter have not ratified the Additional Protocol to the European Social Charter (1988), and thus are not bound by its Article 1, which guarantees the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination based on sex. These States are the United Kingdom, Hungary, Malta, Poland, Germany, Austria, Luxembourg, and Latvia, although the 4 latter States have signed this instrument. With regard to Article 8 of the Revised European Social Charter (1996), it notes that: Cyprus does not consider itself bound by its paragraphs 4 and 5; Finland does not consider itself bound by its paragraphs 1 and 3; Ireland does not consider itself bound by its

paragraph 3; and Sweden does not consider itself bound by its paragraphs 2, 4 and 5. All the States that are parties to the Revised European Social Charter have agreed to be bound by Article 20 of this instrument. With regard to Article 8 of the European Social Charter (1961), Denmark does not consider itself bound by its paragraphs 2, 3 and 4; Germany does not consider itself bound by paragraphs 2 and 4; and the United Kingdom does not consider itself bound by paragraphs 2, 3 and 4.

To ensure a minimal level of protection of the right guaranteed in Article 23 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provisions of the European Social Charter or the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In a large number of Member States, the remuneration gap between men and women remains important, even when the factors not directly related to gender (posts held, age, experience, full-time/part-time, etc.) are taken into account.

- In **Belgium**, where the dismissal appears to be motivated by reprisals following a complaint against an alleged instance of discrimination, the reintegration in his/her position of the employee is left to the discretion of the employer. This situation is incompatible with Articles 4(3) and 8(2) of the European Social Charter, as the European Committee on Social Rights found on its last two control cycles (Conclusions *XVI-2 2003 (t. 1), et Conclusions XV-2 2001 (t. 1)).*

- In **Estonia**, the proposed Gender Equality Act still has not been adopted, although the instruments the Act seeks to implement are part of the acquis communautaire.

- In the **Netherlands**, 15% of the collective labor agreements do not apply to employees working less than 12 hours a week, which has a disproportionate impact upon a women, who are an overwhelming majority in that category of workers.

- In **Ireland**, the scarcity and cost of childcare is one of the most important barriers to women progressing in education or employment: according to the draft response of the Women's Human Rights Project to the Irish Government's submission to the Committee on the Elimination of All Forms of Discrimination against Women, which the Network was able to consult, Irish parents pay on average 20% of their earnings on childcare, compared to 8% for their EU counterparts; a similar difficulty exists in **Austria**. Even apart from the impact on the professionnal integration and promotion of women, such a situation is problematic in its own right, under Article 18(3) of the Convention on the Rights of the Child.

- In **Ireland**, just 15 of almost 4,000 new apprentices trained this year by the State's training and *employment agency, FÁS,* were female. The agency reported 3,943 new apprentices up to the end of August 2003, and the 15 females represent just 0.38 per cent of that total. There are currently only117 women among the 25,615 'live' apprenticeships, where recruits could be in any of the four years of their training.

- In the **Slovak Republic,** substantial progress still has to be made as regards the representation of women in the politics and in leading positions, and there remains a large disparity in wages between men and women.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the, the EU Network of Independent Experts on Fundamental Rights has noted with interest that in **Spain**, Law n°30/2003 of 31 October 2003 provides for a systematic evaluation of impact on gender of the normative provisions adopted by the government ; such a systmatic impact assessment, however, will only be fully effective when statistical data will be more systematically gender-specific. The Network also welcomes the fact that in **Italy,** Article 51 of the Constitution has been amended, introducing a constitutional basis for affirmative actions that foster the representation of women in the elective bodies. In **Poland**, the Council of Ministers adopted on 19 August 2003 a *National Action Programme for women – the 2nd implementation stage*, covering the years 2003-2005. Finally, the Network notes with satisfaction that in **Greece**, two legislative amendments adopted in 2003 have abrogated the limitative quotas previously restricting the admission of women in police and fire-fighters' schools or in the body of border-guards. Moreover, the Councl of State has concluded to the constitutionality of positive action measures in favor of women, also in the domain of political rights, by application of Article 116(2) of the Constitution, as amended in 2001, a provision which is directly inspired by Article 23(2) of the Charter of Fundamental Rights.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the proposal of the European Commission, based on Article 13 EC, to extend the requirement of equal treatment between women and men in the access to, and the provision of, goods and services (COM(2003)657 final). It would however encourage an explicit acknowledgment in the directive that statistical data may lead to a suspicion of indirect discrimination against women or men, and impose of the author of the measure, criterion or practice to justify that the measure, criterion or practice has been adopted in pursuance of a legitimate objective and by reasonable and necessary means.

The EU Network of Independent Experts on Fundamental Rights takes note of the judgment delivered on 9 September 2003 by the European Court of Justice in the case of *Rinke* (C-25/02), and invites the Commission to consider defining the limit imposed on the Member States by the principle of equal treatment between men and women in the implementation of Article 5 of Council Directive 86/457/EEC of 15 September 1986 on specific training in general medical practice (OJ 1986 L 267, p. 26), now incorporated as Article 34 of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1), which states that training in general medical practice, although it may be organized on a part-time basis, must at least comprise a period during which it is full-time.

Article 24. The rights of the child

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that Article 24(1) of the Charter must be read in accordance to the requirements formulated by Article 24(1) of the International Covenant on Civil and Political Rights (1966) and by Articles 3(2) and 12 of the Convention on the Rights of the Child (1989). It notes that Article 24(2) of the Charter must be read in accordance to Article 3(1) of the Convention on the Rights of the Child and that

Article 24(3) of the Charter must be read in accordance to Article 9 of the Convention on the Rights of the Child (1989) and to the right to respect for family life recognized in Article 8 of European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

All the Member States of the European Union are parties to these instruments.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- The Network has serious concerns about the low age of criminal responsibility in the **United Kingdom**, as well as the use made of prison for children there and the adequacy of the educational provision for those held in them.

- The Network is concerned about the continuing lack of special provisions governing the treatment of unaccompanied minor immigrants and refugees in **Austria**.

- Finally, the Network regrets that although **Malta** has signed the Convention on the Rights of the Child, the Children's Act which should implement this Convention still could not be approved and enter into force.

Positive aspects and good practices

The Network welcomes the establishment in the **United Kingdom** of the post of Commissioner for Children and Young People, with the general function of promoting and safeguarding the rights of children and young people in Scotland. It also welcomes the adoption and implementation by **Austria** of the national plan of action implementing the UN Young Rights Action Plan to foster the rights of children and adolescents as laid down in the Convention on the Rights of the Child. The Network also notes that in Greece, the Law n° 3189/2003 has brought imortant improvements to the criminal law relating to minors, and moreover the Law n° 3094/2003 has entrusted the Office of the Ombudsman with the mission of protection and promoting the rights of the child, which led to the creation of new section in the Office. Finally, it notes with satisfaction that, following the recommendations made by the Committee of the Rights of the Child at its 852nd and 853rd session ((CRC/C/83/Add.4), held on January 2003 and at its 862nd session held on 31 January 2003 (CRC/C/83/Add.4), the **Czech Republic** has adopted the Law on Juvenile Judiciary (*Zák. č. 218/ 2003Sb. o soudnictví ve věcech mládeže* (*Law No. 218/ 2003 Coll. of Law on Juvenile Judiciary*)), creating a specialized juvenile judiciary which should give priority to prevention and rehabilitation.

Article 25. The rights of the elderly

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and by Article 23 of the Revised European Social Charter, or by Article 4 of the Additional Protocol to the European Social Charter of 1961 (1988), which has the same content.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that both Article 23 of the Revised European Social Charter and Article 4 of the Additional Protocol to the European Social Charter of 1961 (1988) regarding the right of elderly persons to social protection, have the same content. It notes that 5 Member States have not signed the Revised European Social Charter: Germany, Hungary, Latvia, Malta and Poland. 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. Moreover none of the 5 Member States that have not signed the Revised European Social Charter has ratified the additional Protocol of 1988 to the 1961 European Social Charter, although this Protocol has been signed by Germany and Latvia. 7 of the 10 States which have signed the Revised European Social Charter but have not ratified it, are parties to the Additional Protocol of 1988 : the remaining 3 States are the United Kingdom, which has not signed the Additional Protocol, and Austria and Luxemburg, which have not ratified it.

However, even among the States parties to the additional Protocol of 1988, Belgium and the Netherlands have declared not to be bound by Article 4 of the additional Protocol. The Network also notes that, among the States parties to the Revised European Social Charter, Cyprus, Estonia and Lithuania have declared not to be bound by Article 23 of that instrument.

To ensure a minimal level of protection of the right guaranteed in Article 25 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the European Social Charter and the Revised European Social Charter or, if they have considered such ratifications and acceptations but rejected them, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights considers that in **Poland**, supplementary assistance should be given to relatives who, although they are not self-reliant, care for the elderly at home; such assistance could include medical and legal assistance and equipment where required. It also finds that in **Portugal**, the level of some pensions is extremely low, with a result that many elderly are living in extreme poverty, especially in the interior of the country. Moreover, there still exist illegal foster homes for the elderly, deprived of basic hygiene and living conditions. The Network considers that it is crucial to keep on inspecting these situations and to better regulate their activities.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, the EU Network of Independent Experts on Fundamental Rights welcomes the publication in **Sweden**, in October 2003, of the report by the special investigative Committee (SOU 2003:91, *Äldrepolitik för framtiden, 100 steg till trygghet och utveckling med en åldrande befolkning*) which contains a number of constructive proposals on how to increase the chances of elderly people to live a life in dignity in Sweden. The Member States of the Union should be encouraged to make such investigative studies at a time where the right of the elderly to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able has gained increasing importance and widespread recognition.

Article 26. Integration of persons with disabilities

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Articles 2 and 23 of the Convention on the Rights of the Child (1989), by Articles 2 and 26 of the International Covenant on Civil and Political Rights (1966), by Article 2 of the International Covenant on Economic, Social and Cultural Rights (1966), by Article 1 of ILO-Convention (n°111) concerning Discrimination in Respect of Employment and Occupation (1958), by Articles 3, 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), by the Protocol n° 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000 - not in force) and by Article 15 of the Revised European Social Charter.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that that Estonia has not ratified ILO-Convention (n°111) concerning Discrimination in Respect of Employment and Occupation. It notes that 8 Member States still have to be sign the Protocol n° 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms: Denmark, France, Lithuania, Malta, Poland, Spain, Sweden and the United Kingdom. It notes that Cyprus is the only State that has ratified it.

It notes that 5 Member States have not signed the Revised European Social Charter : Germany, Hungary, Latvia, Malta and Poland. 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. There are no specific declarations on Article 15 of the Revised European Social Charter regarding the right of persons with disabilities to independence, social integration and participation in the life of the community.

To ensure a minimal level of protection of the right guaranteed in Article 26 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the European Social Charter or the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In **Cyprus,** the Committee on the Rights of the Child is concerned by the broad scope of special schools which are intended for children with physical, mental or emotional needs, which does not go in the direction of their integration into mainstream schools.

- In **Ireland**, the Irish Human Rights Commission and the National Disability Authority have raised concerns about certain aspects of the Education for Persons with Disabilities Bill published on 16 July 2003, which purpose is to make detailed provisions through which the education of children who have special educational needs because of disabilities can be guaranteed as a right enforceable in law.

- In **Latvia**, more efforts need to be done to improve the access to education for children with disabilities, their integration in mainstream schools, their access to higher education and the quality of the education provided when education is made available : more financial resources are required, to ensure that teachers and schools staff receive the appropriate training and that public buildings are made accessible to students with disabilities.

- In **Sweden**, although the right to education is granted to children with special needs such as children with functional impairment, the right to choose schools for these children is still unsufficiently guaranteed, as not all institutions are accessible to children with disabilities.

- In **Poland**, 16,1 % of persons with disabilities between 15 and 64 years of age were employed, in comparison to 51,1 % of persons with no disability. This gap should be narrowed by the reform of the system under which financial assistance is provided to employers recruiting disabled persons in their workforce.

- In **Portugal**, many architectonical barriers remain, including for acceding public buildings. Construction products should be monitored closely, so that they can guarantee the autonomy of disabled people. Modern assistive technology should be made more affordable. Moreover, employers who hire disabled people should be aided by the State, without too many – sometimes unsurmountable – bureaucratic hurdles.

Positive aspects and good practices

The EU Network of Independent Experts on Fundamental Rights is encouraged by the finding the the European Year of Persons with Disabilities 2003 has led in the Member States to wide societal debates on the best means to achieve the social and professional integration of persons with disabilities. Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union, it has identified the following positive development and innovative practices :

- In **Belgium**, the decree on the recognition of signs language adopted on 22 October 2003 by the French-speaking Community (*décret relatif à la reconnaissance de la langue des signes adopté le 22 octobre 2003 par la Communauté française* (M.B., 25 November 2003)) recognizes the signs language of French-speaking Belgium, as the visuo-gestual language specific to the community of deafs of the *Commuauté française*. The Network welcomes this initiative, and it expresses the hope that the implementation measures required to facilitate the use of signs language in the different domains belonging to the competences of the *Communauté française* will be adopted within a reasonable time.

- In **Luxemburg**, the Law of 12 September 2003 on persons with disabilities (Mém. A, 2003, 2938) reinforces the rights of disabled persons by providing for supplementary social rights and by encouraging their integration on the ordinary labour market.

- In **Portugal**, the new Act on Television (n° 32/2003, 22 August 2003) imposes specific obligations on public television to ensure that programmes can be followed by persons with hearing impairments; the EU Network of Independent Experts on Fundamental Rights welcomes this development, and it also welcomes that, in order to facilitate access to justice by persons with a hearing impairment, a protocol has been signed between the Ministry of Justice and the Portugese Federation of Persons with a hearing disability providing for the presence of an interpreter of gesture language at any judicial act, in which a person with such a disability takes part.

- In **Portugal**, a growing number of Universities seek to facilitate access to higher education of students with a disability, by the creation of a specialized service within the University structure ensuring that the special needs are known, understood, and met.

- According to the National Plan for Disability Policy adopted in **Sweden** (prop. 1999/2000:79, *Nationell handlingsplan för handikappolitiken*) a number of measures should be taken in that State before the end of 2005 at the latest with the aim that the disability perspective shall permeate all sectors of society with the requirement of accessibility to persons with disabilities, and public transportation services should be made fully accessible to persons with functional impairment by 2010.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, and recalling in this regard its Report on the situation of Fundamental Rights in the European Union and its Member States in 2002, the EU Network of Independent Experts on Fundamental Rights would welcome a proposal for a directive based on Article 13 EC specifically aimed at protecting persons with disabilities from discrimination, beyond the areas of employment and occupation which are already covered by Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. It notes the importance in this respect of ensuring an adequate participation of persons with disabilities in the preparation of such an instrument, in accordance with Article 15(3) of the Revised European Social Charter. It also notes that, in accordance with the understanding developed by the European Committee on Social Rights of Article 15(1) of the Revised European Social Charter which obliges the parties to that instrument to take measures to provide persons with disabilities with education in the framework of general schemes wherever possible, whilst the directive should encourage the inclusion of children with disabilities in mainstream education, however, the normal curriculum should be adjusted to take account of disability; individualized educational plans should be crafted for students with disabilities; resources should follow the child, by provision of support staff and other technical assistance; testing or examining modalities should be adjusted to take into account the disability, without this being revealed to third parties; the qualifications recognized should be the same for all children and rated the same after the child leaves the educational system. The EU Network of Independent Experts on Fundamental Rights also considers that it follows from the requirement of non-discrimination on the grounds of disability in education that where special education is provided where this cannot be avoided, it should lead to qualifications which are recognized and may give access to vocational training or employment on the open labour market.

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Articles 21 and 29 of the Revised European Social Charter and by Article 2 of the Additional Protocol to the European Social Charter of 1961 (1988).

Austria, Germany, Hungary, Latvia, Luxemburg, Malta, Poland, and the United Kingdom are bound neither by Article 21 of the Revised European Social Charter, nor by Article 2(1) of the Additional Protocol to the European Social Charter of 1961 (1988), which have the same content regarding workers' right to information and consultation. Although they are parties to

the Revised European Social Charter, Cyprus and Ireland have declared not to be bound by Article 21 of this instrument. The Network also notes that Cyprus does not consider itself bound by Article 29 of the Revised European Social Charter regarding the right to information and consultation in collective redundancy procedures; Denmark made a reservation with regard to this provision.

To ensure a minimal level of protection of the right guaranteed in Article 27 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the European Social Charter or the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Positive aspects and good practices

The Network welcomes the adoption by **Greece** of Law 3144/2003 (Νόμος 3144/2003, «Κοινωνικός διάλογος για την προώθηση της απασχόλησης και την κοινωνική προστασία και άλλες διατάξεις») [Law 3144/2003, « Social dialogue for the promotion of employment and social protection and other provisions »] which sets up a National Commission for Employment, aiming both to promote social dialogue for the development of employment policies and to deliver opinions on the establishment, the monitoring of the follow-up and the assessment of the National Action Plan for Employment. It also sets up a National Commission for Social Protection, which is in charge of promoting social dialogue in order to fight poverty and social exclusion. It also aims to develop a network for social protection and social integration and to give opinions on the establishment, the monitoring of the follow-up and the assessment of the National Action Plan for Social integration.

Article 28. Right of collective bargaining and action

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 8 of the International Covenant on Economic, Social and Cultural Rights (1966), by the ILO Convention (n° 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1949), by the ILO Convention (n° 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (1971), by the ILO Convention (n° 154) concerning the Promotion of Collective Bargaining (1981), by Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), by Article 6 of the European Social Charter and by Article 6 of the Revised European Social Charter.

The Network notes in this regard that all Member States have ratified ILO Convention n° 98. It notes that Belgium, Slovak Republic and Ireland still have to be sign ILO Convention n° 135. 15 Member States still have to be sign ILO Convention n° 154: Austria, Czech Republic, Denmark, Estonia, Germany, France, Ireland, Italy, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia and the United Kingdom.

Article 6 of the Revised European Social Charter and Article 6 of the European Social Charter regarding the right to bargain collectively, have the same content. The Network notes the declaration of Portugal with regard to Article 6 of the Revised European Social Charter. With regard to Article 6 of the European Social Charter of 1961, it notes that the following States – which have either not ratified the Revised European Social Charter or not accepted its Article 6 in full – do not consider themselves bound by its paragraph 4: Austria, Luxembourg, the

Netherlands and Poland. Greece does not consider itself bound by the provision as a whole. It also notes the declaration of Spain with regard to this provision.

To ensure a minimal level of protection of the right guaranteed in Article 28 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights identified a number of concerns with respect to the right of workers and employers, or their respective organisations, to take collective action to defend their interests, including strike action, which is recognized by Article 28 of the EU Charter of Fundamental Rights :

- In **Austria**, which did not accept to be bound by Article 6(4) of the European Social Charter, there is moreover no explicit provision in the Austrian domestic legal order concerning the right to strike and to take collective actions. A legislative initiative therefore would be highly desirable (Streikgesetz) to clarify the many unsolved issues rather than leaving them for the courts to decide on a case-by-case basis.

- In an Individual Observation concerning the application by the **United Kingdom** of ILO Convention (No 87) on Freedom of Association and Protection of the Right to Organise released in 2003, the Committee of Experts on the Application of Conventions and Recommendations remarked about sections 64-67 of the Trade Union and Labour Relations (Consolidation) Act 1992, which prevented trade unions from discipline their members who refused to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action, that unions should have the right to draw up their rules without interference from public authorities and so to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take lawful industrial action. As sections 223 and 224 of the same Act have resulted in an absence of immunities in respect of civil liability when undertaking sympathy strikes, the Committee recalled its previous observation that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute and that they should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful. The importance of this freedom had previously been underlined on account of employers commonly avoiding the adverse effects of disputes by transferring work to associated employers, restructuring their businesses in order to make primary action secondary.

- In the **Netherlands**, the provisions of the Working Hours Act on the so-called "flexibility regulations" do not contain sufficient guarantees for collective bargaining in order to protect workers and are thus not in conformity with Article 2(1) of the European Social Charter, according to the reading of the European Committee on Social Rights.

- With respect to **Poland**, the EU Network of Independent Experts on Fundamental Rights notes that the Report of the Commissioner for Human Rights of the Council of Europe on his visit to Poland 18-22 November 2002 for the Committee of Ministers

and the Parliamentary Assembly (Strasbourg 19 March 2003, CommDH(2003)4)) emphasises the information he received from the representatives of trade unions on the limitation or blocking of the activities of trade unions in the private sector, e.g. in supermarket chains.

- Regarding the **Slovak Republic**, the legislative measures in place concerning the right to strike may be too restrictive. The Network shares in that respect the views expressed by the Committee on Economic, Social and Cultural Rights in its conclusions (E/C.12/1/Add.81., point 14.), where it recommends the Slovak Republic to revise its legislation on the right to strike, in line with Article 8 of the International Covenant on Economic, Social and Cultural Rights (1966) and the relevant Conventions of the International Labour Organization (E/C.12/1/Add.81., point 27). The Network notes that the same concerns have been expressed by the European Committee of Social Rights (Conclusions XI-2 [2003]), which concluded that the situation in the **Slovak Republic** is not in conformity with Article 6(4) of the European Social Charter because strikes are not permitted if they are not related to the negotiation of a collective agreement or the amendment of an existing agreement, provided that this latter possibility is explicitly stated in the agreement itself; and because groups of workers have no right to call a strike.

- In **Lithuania**, although the new Labour Code (*Darbo kodeksas*), adopted on 4 June 2002, entered to force on 1 January 2003, replacing the 1992 Law on the Settlement of Collective Disputes, the definition of essential services remains unchanged under the new legislation. As a result, a general prohibition of strikes is imposed on the system of internal affairs, the defence and national security sectors, the electricity generating, heating and gas supply companies and in emergency medical services. As remarked by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its individual observation concerning International Labour Organisation Convention No.87 on freedom of association and protection of the right to organise, published in 2003, this imposed a far too broad restriction on the right to strike : a system of minimum service in certain cases is more appropriate than an outright ban on strikes, which should be limited to essential services in the strict sense of the term, namely those where the life, personal safety and health of the whole or part of the population may be endangered ; moreover, an independent and impartial body should have the competence to make a final ruling on the definition of a minimum service, rather than this definition being left to the unilateral determination by the Government.

- The European Committee of Social Rights noted already in 2002 that the situation in **Belgium** was incompatible with Article 6(4) of the European Social Charter (Conclusions XVI – I, (vol.1)) because on the one hand, penalty payments are imposed against strike actions including in cases of peaceful strike pickets and on the other hand, when the judge considers that the harmful effects of a strike are disproportionate or that the strike could be organised at a less damaging time, judicial decisions forbid the strike itself considering that it constitutes an abuse of rights. This situation remains topical. Similarly in **Greece** the Network is concerned by the fact that certain strikes have been considered to be abusive and were therefore forbidden although these prohibitions have not always been respected. The Network notes that the **French** courts consider – on the basis of the constitutional value of the right to strike – that the powers granted to the judge where imminent damages are feared following the exercise of the right to strike do not include the power to impose the requisition of employees on strike (Cass. soc, n°505 FS-P+B+R+I, 25 février 2003, Syndicat CFDT santé sociaux de la Haute-Garonne c. Association MAPAD de la Cépière).

- In a number of Member States, limitations are imposed on the right to strike as a result of the need for endorsement of the strike by the unions : in **Sweden**, only trade unions have the right to call a strike and in addition that the National Mediation Office may impose fines for failure to observe notice rules and postponement orders, the amount of which is excessive; in **Cyprus**, a decision to strike both in the private and public sector has to be approved by the executive committee of the related trade union, as this would ensure that the results of the action produce effects that have the notion of collective benefits to the trade unions; in **Denmark**, a duty (a far-reaching "peace obligation") is imposed on the trade union which is party to a collective agreement, and often also its members (the individual workers), not to take industrial action (strike, lock-out, blockade, etc.), when a collective agreement is in force; in **Ireland**, a clause of absolute social peace has been included within the Social Partnership Agreement 2003-2005 which precludes strikes or other forms of industrial action by trade unions, employees or employers in respect of any matters covered by the Agreement. Such limitations to the right to strike could be in violation of Article 6(4) of the European Social Charter, which was a source of inspiration of Article 28 of the EU Charter of Fundamental Rights (see Concl. II, p. 27, and Concl. XIV-1, p. 319 (Germany); Concl. XV-1, p. 355 (Iceland)). The EU Network of Independent Experts on Fundamental Rights notes with interest, in this respect, that the Constitutional Court in **Portugal** concluded in its Decision 306/2003 that Article 606 of the original version of the new Labour Code was unconstitutional, as it was in violation of the right to strike guaranteed in Article 57 of the Constitution. Indeed, Article 606 of the original version of the new Labour Code foresaw that collective conventions could establish, for the period of their validity, limitations on the right of Unions to declare strike – which could go as far as renouncing to it – for reasons relating to the content of the collective convention. In that case, the majority considered that although it is up to the trade unions to declare strike, the fundamental right to strike belongs to the individual worker and the representation of the latter at the table of negotiations of a collective convention is not a sufficient credential to habilitate the former waiving that right, even if its abdication is only temporary (for the time the convention is in force) and relative (limited to reasons relating to the content of the agreed convention).

Article 29. Right of access to placement services

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by both ILO-Convention (n° 168) concerning Employment Promotion and Protection against Unemployment (1988), by Article 1 (3) of the European Social Charter (1961) and by Article 1(3) of the Revised European Social Charter.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that ILO Convention n°168 has been ratified by only 2 Member States namely Finland and Sweden. In the framework of the European Social Charter, all the member States are bound by either Article 1 (3) of the European Social Charter (1961) or by Article 1(3) of the Revised European Social Charter regarding the undertaking to establish or maintain free employment services for all workers.

To ensure a minimal level of protection of the right guaranteed in Article 29 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provisions of the European Social Charter or the Revised European Social Charter or, if they have

considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

No conclusions have been adopted under this provision.

Article 30. Protection in the event of unjustified dismissal

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Articles 24 and 29 of the Revised European Social Charter.

It notes in this regard that 5 Member States have not signed the Revised European Social Charter: Germany, Hungary, Latvia, Malta and Poland. 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. The Network also notes that Cyprus does not consider itself bound by Article 29 of the Revised European Social Charter regarding workers' right to information and consultation in collective redundancy procedures; Denmark made a reservation with regard to this provision. Denmark and Sweden do not consider themselves bound by Article 24 regarding the right to protection in cases of termination of employment of the instrument.

To ensure a minimal level of protection of the right guaranteed in Article 30 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the Revised European Social Charter, or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the Network identified the following concerns with respect to the protection of the employee in the event of unjustified dismissal :

- The situation in Belgium is not in conformity with Article 4(3) of the European Social Charter, which requires that in cases of dismissal by reprisals, the form of the reparation should in principle be the reintegration of the employee in his/her previous functions or similar functions, unless the reintegration appears impossible or is not wished by the concerned employee, in which damages should compensate for the absence of reintegration, at a level sufficiently dissuasive and affording full reparation (see Conclusions VII, p. 27 and VIII, p. 66, Denmark, Conclusions XIII-5, pp. 270-271, general observation). The Network regrets in this regard that Article 21 of the Law of 25 February 2003 combating discrimination and modifying the Law of 15 February 1993 creating the Centre for Equal Opportunities and Fight against Racism (M. B., 17 March 2003), as well as the Law of 7 March 1999 on equal treatment between men and women in workig conditions, access to a self-employed activity and complementary social security regimes, do not provide for a right of the worker to be reintegrated after having been dismissed because of the complaint or the legal action

lodged after an allegation of discrimination, but instead subordinates the possibility of reintegration to the acceptation by the employer who, if he refuses, may indemnify the employee.

- In **Latvia**, recent case-law has highlighted the legal uncertainty which affects the rules applicable to the dismissal of civil servants : the national courts apply either the provisions of the Labour Law, or the provisions determining the procedure to be followed for the challenge of administrative acts. The rules applicable to such situations should be clarified. Moreover, the Network emphasizes that in the determination of disputes relating to the dismissal of civil servants, the independency of the competent courts should be fully preserved and respected by the Executive.

- The Network also encourages **Spain** to follow upon the finding of the European Committee of Social Rights (Concl. XVI-2 (2003), vol. 2) which considered that the situation in Spain was not in conformity with Article 4(4) of the European Social Charter (right of all workers to a reasonable period of notice for termination of employment), as the workers in a fixed term contract of employment of more than one year were to be notified of the termination of their employment only fifteen days in advance. With respect to the **United Kingdom**, the European Committee of Social Rights also concluded that this provision of the European Social Charter was not complied with, as the notice in the case of workers with less than three years' service continues to be too short (Concl. XVI-2, p. 16). The Network also encourages the **Slovak Republic** to remedy the situation found by the European Committee on Social Rights to be in violation with Article 8(2) of the European Social Charter (stating that it will be unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence), which is that the relocation of the employer or the transfer of all or part of his business activities is regarded as going out of business, thereby justifiying the dismissal of the employee during the absence on maternity leave or at such time that the notice would expire during such absence.

- The Network is concerned that, in **Denmark**, the protection of employees against unjustified dismissal is incomplete, as no protection will be granted to the employee who is not encompassed by the Lovbekendtgorelse (2002:691) om forholdet mellem arbejdsgivere og funktionaerer (Consolidated Act (2002:691) on the Relationship between Employers and White Collar Employees) or basic agreements.

Article 31. Fair and just working conditions

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 7 of the International Covenant on Economic, Social and Cultural Rights (1966), by ILO Convention (n° 105) concerning the Abolition of Forced Labour (1957), by Articles 2 and 3 of the European Social Charter (1961) and by Articles 2, 3 and 26 of the Revised European Social Charter.

The Network notes in this regard that 5 Member States have not signed the Revised European Social Charter : Germany, Hungary, Latvia, Malta and Poland. 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. Nevertheless the 5 Member States that have not signed the Revised European Social Charter and the 10 Member States that have signed but not ratified this

instrument have signed and ratified the European Social Charter of 1961.

With regard to Article 2 of the Revised European Social Charter regarding the right to just conditions of work, it notes that Cyprus does not consider itself bound by its paragraphs 3, 4 and 6; Denmark made a reservation with regard to its paragraph 7; Sweden considers itself bound only by its paragraphs 3, 5 and 6; Portugal made a declaration regarding its paragraph 6 and Estonia does not consider itself bound by its paragraph 4. With regard to the Article 2 of European Social Charter (1961) regarding the right to just conditions of work, the Network notes that the following States do not consider themselves bound by this provision: Austria, Denmark (with regard to its paragraphs 1 and 4), Latvia, Malta (with regard to its paragraph 4), Poland (with regard to its paragraph 2), Sweden (with regard to its paragraph 1, 2 and 4) and the United Kingdom (with regard to its paragraph 1).

With regard to Article 3 of the Revised European Social Charter regarding the right to safe and healthy working conditions, it notes that Estonia, Sweden and Cyprus do not consider themselves bound by its paragraph 4; Finland does not consider itself bound by its paragraphs 2 and 3. With regard to the Article 3 of European Social Charter (1961) regarding the right to safe and healthy working conditions, the Network notes that the following States do not consider themselves bound by this provision: Austria, Finland (with regard to its paragraphs 1 and 2) and Latvia. With regard to Article 26 of Revised European Social Charter regarding the right to dignity at work, it notes that Estonia and Cyprus do not consider themselves bound by this provision.

To ensure a minimal level of protection of the right guaranteed in Article 31 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the European Social Charter or the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In the **Netherlands**, the absence of any provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations led the European Committee on Social Rights to conclude that the Netherlands was not in conformity with Article 2(4) of the European Social Charter. The European Committee on Social Rights also concluded that the situation in **Finland** was not in conformity with this provision, as the workers exposed to radiation in the health sector are not entitled to reduced working hours or additional paid holidays (Concl. XIV-2). The situation in Finland was also considered not to be in conformity with Article 2(1) of the Charter, as Finnish law permits, in exceptional cases, daily rest periods to be lowered to seven or in some cases to five hours.

- The Network is concerned that in the **United Kingdom**, the health and safety regulations may be underenforced because of the manifest insufficient number of inspections carried out in Northern Ireland, as was found by the European Committee on Social Rights which therefore concluded that this situation was not in conformity with Article 3(2) of the European Social Charter (Concl. XVI-2). In **Spain**, the Network identifies the main problem of health and safety regulations in employment as being their underinclusiveness, as the self-employed are unsufficiently protected by

these regulations, which led the European Committee on Social Rights to conclude that this situation was not in conformity with Article 3(1) of the European Social Charter (Concl. XVI-2); moreover the continuous increase in industrial accidents are a source of concern.

Positive aspects and good practices

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the, the EU Network of Independent Experts on Fundamental Rights has identified a limited number of good practices which all the Member States are encouraged to seek inspiration from in formulating a fundamental rights policy in their jurisdiction :

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights notes that Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time seeks to codify a number of changes brought to Council Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organisation of working time. Considering the number of derogations which the directive authorizes, the EU Network of Independent Experts on Fundamental Rights underlines that in implementing the directive, the Member States are bound to respect Article 31(2) of the Charter of Fundamental Rights, and therefore also Articles 2(1)and(3) of the European Social Charter on which this provision of the EU Charter of Fundamental Rights in based. To that extent, any violation of the European Social Charter should be considered a violation of European Community law itself, where it is committed by a State implementing EC Law.

Article 32. Prohibition of child labor and protection of young people at work

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 10(3) of the International Covenant on Economic, Social and Cultural Rights (1966), by Article 32 of the Convention on the Rights of the Child (1989), by ILO Convention (n° 138) concerning Minimum Age for Admission to Employment (1973), by ILO Convention (n° 182) concerning the prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), and by Article 7 of the European Social Charter (1961) and Article 7 of the Revised European Social Charter.

The EU Network of Independent Experts on Fundamental Rights notes in this regard that 3 Member States still have to be sign ILO Convention n° 138: the Czech Republic, Estonia and Latvia. Moreover Latvia has not signed ILO Convention n° 182.

The Network notes that Cyprus does not consider itself bound paragraphs 5, 7 and 9 of Article 7 of the Revised European Social Charter regarding the right of children and young persons to protection. Estonia and Sweden do not consider themselves bound by its paragraphs 5 and 6. Finland does not consider itself bound by its paragraphs 6 and 9. In the framework of the European Social Charter, the following States have not accepted to be bound by Article 7 of the European Social Charter (1961) regarding the right of children and young persons to protection: Austria (with regard to its paragraph 1), Denmark, Germany (with regard to its paragraph 1), Hungary, Latvia, Poland (with regard to its paragraphs 1, 3 and 5) and the United Kingdom (with regard to its paragraphs 1, 4, 7 and 8).

To ensure a minimal level of protection of the right guaranteed in Article 32 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the European Social Charter or the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In **Latvia**, although Article 37 of the Labour Law prohibits employing children, defined as persons below the age of 15 or who continue primary education until the age of 18, in exceptional cases, with the permission of a parent or a legal guardian a child at the age of 13 can be employed in the free from school time in the activities listed by the Cabinet of Ministers, or in cultural, art, sport or advertisement activities, provided this in not contrary to the health, safety, or morals of the child. Although it is aware that Latvia has not accepted Article 7 of the Charter upon ratifying the European Social Charter, the Network encourages Latvia to reexamine this situation, and particularly its compatibility with the right to education of the child. The Network notes that similar concerns have been expressed about **Estonia** by the United Nations Committee on Economic, Social, and Cultural Rights, with regard to the fact that the law allows the work of children between 13 and 15 with the written consent of one parent or a guardian and the labour inspector, and that the list of permissible works includes that of an industrial nature (E/C.12/1/Add.85, Concluding Observations of the Committee on Economic, Social and Cultural Rights : Estonia, 19 December 2002, p. 20).

- The Network is concerned by the fact that despite its recent revision in order to comply with European Community law, the Labour Law in **Hungary** fails to define minor tasks that can be and in practice are completed by children, but do not fall under the notions of work or employment (see 2001. évi XVI. törvény [Act No. XVI of 2001] amending 1992. évi XXII. törvény a Munka Törvénykönyvéről [Act No. XXII of 2002 on the Labor Code]).
- The Network also is concerned that in **Malta**, the Regulations on the Protection of Young Persons do not apply in respect of approved training schemes or apprenticeship or educational, cultural or sports activities; not do they apply to hotels or catering establishments, provided the young worker is allowed not less than 12 consecutive hours' rest within any period of 24 hours, and not less than 2 days' rest each week, including a Sunday (CRC/C/3Add.56, para. 301). Moreover, in implementing the Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work Malta has chosen to exclude from "work" circumstances where children work within family businesses. This tolerance for child labour in family businesses and the tourism sector should be reexamined as a matter of urgency. The Labour Inspectorate should moreover be granted the necessary resources to effectively monitor compliance with the existing legislation.

- Finally, the situation of child labour in Portugal still constitutes a source of concern to the Network, especially in the fields of entertainment and sports, but also in traditional fields of child labour exploitation such as shoe manufacturing, especially in familial

undertakings. Although certain improvements are visible, still more efforts are required.

Positive aspects and good practices

The Network welcomes the appointment in November 2003 of 54 new Labour Inspectors in **Portugal**, as this appears to be decisive for the effective eradication of child labour, including within family undertakings where it still appears hardest to track.

Article 33. Family and professional life

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 23 of the International Covenant on Civil and Political Rights (1966), by Article 10 of the International Covenant on Economic, Social and Cultural Rights (1966), by Articles 8, and 16 of the European Social Charter (1961) and Articles 8, 16 and 27 of the Revised European Social Charter.

With regard to Article 8 of the Revised European Social Charter regarding the right of employed women to protection, it notes that: Cyprus considers itself bound by its paragraphs 1, 2 and 3; Finland considers itself bound by its paragraphs 2 and 4; Ireland does not considers itself bound by its paragraph 3 and Sweden considers itself bound by its paragraphs 1 and 3. With regard to Article 8 of the European Social Charter (1961) regarding the right of employed women to protection, it notes that the following States do not consider themselves bound by this provision: Denmark (with regard to its paragraphs 2-4), Germany (with regard to its paragraphs 2 and 4), Luxembourg (with regard to its paragraph 4), Malta (with regard to its paragraph 3) and the United Kingdom (with regard to its paragraphs 2-4). It notes that Cyprus does not consider itself bound by Article 16 of the European Social Charter (1961) nor by Article 16 of the Revised European Social Charter, both regarding the right of the family to social, legal and economic protection. With regard to Article 27 of the Revised European Social Charter regarding the right of workers with family responsibilities to equal opportunities and equal treatment, the Network recalls that 5 Member States have not signed the Revised European Social Charter: Germany, Hungary, Latvia, Malta and Poland; and that 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. Moreover, it notes that Denmark does not consider itself bound by Article 27 of the Revised European Social Charter, whilst Cyprus considers itself bound by its paragraph 3 and Ireland does not consider itself bound by its paragraph 1 (c).

To ensure a minimal level of protection of the right guaranteed in Article 33 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

No conclusions have been adopted under this provision.

Article 34. Social security and social assistance

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights (1966), by Articles 26 and 27 of the Convention on the Rights of the Child (1989), by ILO Convention (n° 168) concerning Employment Promotion and Protection against Unemployment (1988), by Article 12 and 13 of the European Social Charter (1961) and by Articles 12, 13, 30 and 31 of the Revised European Social Charter.

The Network notes in this regard that ILO Convention n° 168 has been signed and ratified by only 2 Member States, namely Finland and Sweden.

Article 13 of the European Social Charter (1961) and Article 13 of the Revised European Social Charter have the same content whilst the two Articles 12 are very similar. With regard to Article 12 of the Revised European Social Charter regarding the right to social security, the Network notes that Sweden does not consider itself bound by its paragraph 4 and that Estonia does not consider itself bound by its paragraph 2. With regard to Article 12 of the European Social Charter (1961) regarding the right to social security, it notes that the following States do not consider themselves bound by this provision: Hungary, Latvia, Malta (with regard to its paragraphs 2 and 4), Sweden (with regard to its paragraph 4) and the United Kingdom (with regard to its paragraphs 2-4).

With regard to Article 13 of the Revised European Social Charter regarding the right to social and medical assistance, it note that: Cyprus and Slovenia consider themselves bound by its paragraphs 2 and 3, Lithuania and Estonia consider themselves bound by its paragraphs 1-3. With regard to Article 13 of the European Social Charter (1961) regarding the right to social and medical assistance, it notes that Cyprus and Poland (with regard to its paragraphs 1 and 4) and Slovak Republic (with regard to its paragraph 4) do not consider themselves bound by this provision.

Articles 30 and 31 of the Revised European Social Charter go beyond the provisions of the European Social Charter. The Network notes in this regard that 5 Member States have not signed the Revised European Social Charter: Germany, Hungary, Latvia, Malta and Poland. 10 Member States have signed the Revised European Social Charter but have not ratified it: Austria, Belgium, Czech Republic, Denmark, Greece, Luxembourg, the Netherlands, Slovak Republic, Spain and the United Kingdom. It notes that Cyprus, Estonia and Lithuania do not consider themselves bound by Article 30 of the Revised European Social Charter regarding the right to protection against poverty and social exclusion. With regard to Article 31 of the Revised European Social Charter regarding the right to housing, Estonia, Cyprus and Ireland (which made a specific declaration on this provision) do not consider themselves bound by this provision whilst Lithuania accepts to be bound by its paragraphs 1 and 2.

To ensure a minimal level of protection of the right guaranteed in Article 34 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments and to accept the corresponding provision of the Revised European Social Charter or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

No conclusions have been adopted under this provision.

Article 35. Health care

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966), by Article 24 of the Convention on the Rights of the Child (1989). All the Member States have ratified these instruments. The interpretation of this provision of the Charter must also take into account Article 11 of the European Social Charter of 1961 and Article 11 of the Revised European Social Charter, regarding the right to protection of health, whcih have the same content. All the Member States are bound by either of these provisions.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights is concerned by the fact that in **Poland**, the level of education in the field of sexual and reproductive health remains insufficient, that family planning services are often inadequate, and that there is insufficient access to cheap contraception, as noted by UN Committee on Economic, Social and Cultural Rights (Concluding Observations of 19 December 2002, E/C.12/1/Add.82). In his Report for the Committee of Ministers and the Parliamentary Assembly on his visit to Poland on 18-22 November 2002, the Commissioner for Human Rights of the Council of Europe points to cases when women were refused an abortion and related services even in cases when it would be legally admissible under Polish law.

The Network notes that in **Portugal**, the system of numerus clausus in the access to medical studies has led to a shortage of doctors, and that medical staff is inequitably distributed across the country, leaving important parts of the population of the interior with a precarious access to as basic medical care as family doctors and paediatricians. Moreover, Portugal has the highest HIV rate in the European Union. More prevention campaigns aiming at changing behavioural patterns in relation to sexuality are required.

The Network considers that the introduction in Belgium, on 1 March 2003, of the possibility for emergency services in hospitals to require from the patients having “abusively” addressed him- or herself to those services a supplementary payment of 12,50 euros may penalize the poorest segment of the population, often obliged to rely on emergency services because of the impossibility for them to consult at an early stage a generalist medical doctor, and who are not always capable of evaluating the “emergency” character certain symptoms present. The Network considers that it cannot be excluded that the introduction of this fee will lead certain indigent persons to renounce to be treated at all, which would constitute an unacceptable regression in the right to health.

The Network is concerned that in many States, the Roma do not have adequate access to health services, including education on matters relating to health. The Network welcomes in this regard the report “Breaking the Barriers – Romani Women and Access to Public Health Care”, published by the Council of Europe in September 2003, that identifies the discriminations faced by Roma persons – especially Roma women –, which hinder their access to public health care. The report also highlights the devices that would allow better account to be taken of the specificity of the situation of the Roma community, particularly women, with regard to their access to public health care services. The policy of “openness” recommended by this report implies inter alia that the workers of the health sector familiarise themselves more with the practices of Roma people in the field of health and attempt to

provide them with adequate accommodations, in order to ensure their non discriminatory access to health care services.

Article 36. Access to services of general economic interest

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), as developed in the General Comment n°4 (1991) of the UN Committee on economic, social and cultural rights. All the Member States are parties to this instrument.

The interpretation of Article 36 of the EU Charter of Fundamental Rights should also take into account Article 31 of the Revised European Social Charter, which recognizes the right to housing. The Network recalls in this regard that 15 Member States are not parties to this instrument: Austria, Belgium, Czech Republic, Denmark, Germany, Greece, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Poland, the Slovak Republic, Spain and the United Kingdom. It notes moreover that among the States which have ratified the Revised European Social Charter, Cyprus, Estonia and Ireland do not consider themselves bound by this provision whilst Lithuania accepts to be bound by its sub-paragraphs 1 and 2.

To ensure a minimal level of protection of the right guaranteed in Article 36 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to accept the corresponding provision of the Revised European Social Charter and, as a first step towards such acceptation, to ratify this instrument or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the publication by the European Commission of the *Green Paper on services of general interest* (COM(230)270 final). However, referring to its findings recalled under Article 21 of the Charter concerning the situation of certain Romani settlements in the Member States, for instance in Cyprus, Greece and Italy, it would encourage an explicit ackowledgment that the situation of these settlements should be specifically addressed by measures including affordable public transportation, the availability of systems of communication, especially where these are required to ensure that the right to health and the right to education of the Roma population are effectively respected, even when they live in settlements segregated from the community. The EU Network of Independent Experts on Fundamental Rights welcomes the fact that the Green paper presents the concept of universal service as implying, in particular, the adoption of specific measures concerning disability, age or education. It is however important to present this as constituting an obligation, linked to the requirement of non-discrimination, to effectively accommodate the specific needs of the service user, to the extent at least that this does not impose a disproportionate burden on the provider of services.

Article 37. Environmental protection

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Articles 2 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), to which all Member States are parties.

Areas of concern

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the adoption of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC and of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, both of which seek to ensure the implementation by the Member States of the UN/ECE « Aarhus » Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which the EC signed on 25 June 1998 and which the Commission has proposed to the Council to conclude on behalf of the Community.

The EU Network of Independent Experts on Fundamental Rights also welcomes the proposals for a Directive of the European Parliament and of the Council on access to justice in environmental matters, and for a Regulation ensuring the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies. Concerning the question of access to justice in environmental matters, the EU Network of Independent Experts on Fundamental Rights notes that the Aarhus Convention does not exclude that a selection is made amongst the entities seeking to act to ensure that public authorities comply with environmental law, where these entities have no direct interest in such proceedings, i.e., where their subjective rights have not been violated and where they have not been directly affected by the act they seek to challenge. Under the proposal made by the Commission for a Regulation ensuring the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies, the Commission will recognize the entities seeking to be considered « qualified » to act in the name of the preservation of the environment. In granting this qualification, the Commission is still under the control of the European Court of Justice, which may take into account Article 2(5) of the Aarhus Convention in exercising its control as to the absence of any discrimination or misuse of powers. The EU Network of Independent Experts on Fundamental Rights also notes that where, under the proposed Directive of the European Parliament and of the Council on access to justice in environmental matters, national authorities will have to select qualified non-governmental organisations, a judicial remedy must be available to the organisations who consider that they have been treated unfairly or in a discriminatory fashion.

Article 38. Consumer protection

No conclusions have been adopted under this provision.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 25 of the International Covenant on Civil and Political Rights (1966) and by Article 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952), to which all Member States are parties.

Areas of concern

The EU Network of Independent Experts on Fundamental Rights notes with concern that there are sizable populations within the European Union who are without the citizenship of any member State and hence excluded from rights of political participation and some other rights under Chapter V. Some but not all of them are migrants and hence citizens of a third country. Without trying to be exhaustive, the Network expresses particular concern at two situations where a particular group is excluded from Article 45 rights or Chapter V rights in general.

First, the Network notes that after the dissolution of former Czechoslovakia, a part of the Roma population that was resident there has remained stateless in respect of both **Slovakia** and the **Czech Republic**. As a consequence, they may be denied the right to participate in the June 2004 elections of the European Parliament.

Second, the Network notes that in **Latvia**, non-citizens under the 1995 *Law on Status of citizens of the former USSR who are not citizens of Latvia or any other country* are neither citizens, nor foreigners, nor stateless persons. A great proportion of the large Russian-speaking population of the country falls within this category, unknown in public international law. The same applies to non-citizens in **Estonia**. The EU Network of Independent Experts on Fundamental Rights regrets that the situation of non-citizens has not been resolved during the entry negotiations between Latvia and Estonia and the EU, with the consequence that non-citizens will not have a right to stand for elections or be elected in the European Parliament.

The Network welcomes the fact that the United Kingdom has implemented the ruling of the European Court of Human Rights in the *Matthews v. the United Kingdom* judgment of 18 February 1999, by the adoption of the European Parliament (Representation) Act 2003, which follows upon the declaration made by the **United Kingdom** at the adoption of Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom , OJ L 283 of 21/10/2002, p. 1.

Positive aspects and good practices

The Network welcomes the fact that in **Luxemburg**, the Law of 18 February 2003 (Mém. A, 2003, 446) has simplified electoral procedures and has facilitated the conditions of residence for the citizend of the Union which are nationals from another Member State. This law has moreover broadened the right to vote to make it possible for all foreigners, whether citizens of the Union or not, to take part in local elections, and has lowered the residency requirements for all non-nationals in Luxemburg.

Article 40. Right to vote and to stand as a candidate at municipal elections

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 25 of the International Covenant on Civil and Political Rights (1966), by Article 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952) and by Article 10 of the European Convention on the Participation of Foreigners in Public Life at Local Level (1992).

The Network notes in this regard that 17 Member States still have to be sign and the European Convention on the Participation of Foreigners in Public Life at Local Level: Austria, Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia and Spain. 3 Member States have signed this instrument but have not ratified it: Cyprus, Czech Republic and the United Kingdom.

To ensure a minimal level of protection of the right guaranteed in Article 40 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the European Convention on the Participation of Foreigners in Public Life at Local Level or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern and Positive aspects

No conclusions have been adopted under this provision.

Article 41. Right to good administration

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 2 of the International Covenant on Civil and Political Rights (1966) and by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), to which all Member States are parties.

Areas of concern and Positive aspects

No conclusions have been adopted under this provision.

Article 42. Right of access to documents

No conclusions have been adopted under this provision.

Article 43. Ombudsman

State of ratifications

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on

Fundamental Rights notes that the Code of Good Administrative Behaviour proposed by the Ombudsman, and approved by the European Parliament on 6 September 2001, has not been implemented by most EU institutions, agencies or organs. In the absence of an adequate legal basis for the adoption of a legal instrument imposing the respect of the prescriptions contained in the Code by all institutions, agencies and organs, the EU Network of Independent Experts on Fundamental Rights notes that the institutions could adopt a common declaration stating that they adhere to those prescriptions; such a declaration, which could contain the code in an annex, would make visible the undertaking of the institutions to abide by the principles of the code.

Areas of concern and Positive aspects

No conclusions have been adopted under this provision.

Article 44. Right to petition

No conclusions have been adopted under this provision.

Article 45. Freedom of movement and of residence

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter must be read in accordance with the requirements formulated by Article 12 of the International Covenant on Civil and Political Rights (1966), by Article 2 of Protocol n° 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms other than those already included in the Convention and in the First Protocol (1963) and by the European Convention on Establishment (1955).

The Network notes in this regard that Greece still has to be sign the Protocol n° 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Spain and the United Kingdom have signed this instrument but have not ratified it.

It notes that 13 Member States still have to be sign the European Convention on Establishment: Czech Republic, Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Slovak Republic, Slovenia and Spain. Austria and France have signed this instrument but have not ratified it.

To ensure a minimal level of protection of the right guaranteed in Article 45 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights regrets that the Amended Proposal for a Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which the European Commission presented on 15 April 2003 (COM(2003)199 final), does not address the arguments presented in the opinion requested from the Network on certain aspects of the initial proposal (Opinion n°1-2003 of 10 April

2003). In particular, the EU Network of Independent Experts on Fundamental Rights notes that the Amended Proposal has not followed upon the suggestion of the European Parliament, concerning the definition of « members of the family » in the proposed instrument. As a result, a marriage concluded validly in certain Member States may not be recognized by other Member States for the purposes of family reunification, for the sole reason that the marriage is between two persons of the same sex rather than between two persons of the opposite sex. This constitutes a discrimination on the ground of sexual orientation, prohibited by Articles 8 and 14 combined of the European Convention on Human Rights and by Article 21 of the Charter of Fundamental Rights.

In that respect, the Network notes with interest that in May 2003 a bill was submitted to Parliament of the **Netherlands**, to regulate private international law on registered partnerships (partnerships that involve the official registration of exclusive legal relationships and that lead to rights and obligations which are similar to matrimonial ones) for international situations (*Kamerstukken* II, 2002-2003, 28 924). This initiative takes place within a wider evolution. In Opinion R-170/02 of 27 August 2003, the Ombudsman (Provedor de Justiça) in **Portugal**, confronted with the case of a Portuguese citizen who was unable to have his marriage with a Dutch person of the same sex although this marriage is valid under Dutch law, considered that, even if the marriage as such could not be recognized, at least certain consequences – patrimonial effects or, for instance, family reunion – could be nevertheless derived from the same-sex marriage, without such consequences being in contradiction with the public policy of Portugal. In **Belgium**, a circulaire of 24 January 2004 replacing a previous circulaire of 8 May 2003 on the Law of 13 February 2003 opening up marriage for persons of the same sex and amending certain provisions of the Civil Code considers that, as discrimination based on sexual orientation is against the public policy of Belgium, the foreign law prohibiting marriage between persons of the same sex should not constitute an obstacle to the celebration in Belgium of marriage between two persons of the same sex, insofar as at least one of the members of the couple has the nationality of, or is habitually residing in, a country which recognizes same-sex unions (M.B., 24.1.2004). These developments show the need to organize better the mutual recognition of civil status within the European Union for the purposes of family reunion, in a context which is rapidly evolving towards the organisation of different modes of organisation of same-sex couples.

As regards the situation created in Ireland after the decision of the Supreme Court in the case of *Lobe & Osayande* [2003] on the position of non-national families of Irish-born children whose right of residence is no longer considered to be 'automatic', the Network refers to its conclusions adopted under Article 7 of the Charter.

Article 46. Diplomatic and consular protection

No conclusions have been adopted under this provision.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that in accordance with Article 52(3) of Charter of Fundamental Rights, paragraphs 2 and 3 of this provision of the Charter have the same meaning than Article 6 paragraph 1 of the European Convention

for the Protection of Human Rights and Fundamental Freedoms (1950), to which they correspond, although they have a broader scope.

The Network notes moreover that this provision of the Charter must be read in accordance to the requirements formulated by Articles 2(3) and 4(1) of the International Covenant on Civil and Political Rights (1966) and by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), to which all Member States are parties.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights notes that in virtually all the Member States, reducing the length of judicial proceedings, especially in civil and administrative cases, should constitute an absolute priority. The delays are such, in many cases, that they amount to a denial of justice. Moreover, States should ensure that an effective remedy is available to the litigants concerned by the development of an excessive delay in proceedings, as required by Article 13 of the European Convention on Human Rights.

At the same time, the EU Network of Independent Experts on Fundamental Rights notes that a number of initiatives adopted to respond to the need to limit the workload of the judicial system and enable it to deliver judgments within a reasonable time may lead to disproportionate restrictions being imposed on the rights of defence or the right of access to a court. In **Malta** for instance, the level of Court registry fees payable by the parties was raised in order to discourage vexatious litigation. The effective implementation of this system should be closely monitored to ensure that it will not disproportionately affect indigent litigants with possibly meritorious cases from bringing cases to court. In the **Netherlands**, the concern to increase the efficiency and capacity of the legal system is reflected in a number of legislative proposals, for instance on the wider use of administrative sanctions (Kamerstukken II, 2002–2003, 29 000); the extension of the length of pre-trial detention whilst limiting the number of hearings of the suspect (*Kamerstukken* II, 2003–2004, 29 253); the extension of the possibilities for the Courts of Appeal to refuse the hearing of witnesses à décharge in appeal proceedings (*Kamerstukken* II, 2003–2004, 29 254); the lowering the requirements for motivation of criminal judgments against persons that have confessed to the charge (*Kamerstukken* II, 2003–2004, 29 255). Again, the impact on the rights of defence of these proposed modifications should be closely monitored, as they may appear to be disproportionate to the aim pursued. Even the proposal to create the possibility for the *Openbaar Ministerie* [Public Prosecutor's Office] to impose pecuniary sanctions for certain criminal offences (*Kamerstukken* II, 2003-2004, 29 279, no. 1, p. 17, and see *Staatscourant* 17 January 2003) may be questionable, as this could lead to violating the right of the individual concerned to have access to a court for the determination of the criminal charge against him. The same concerns may be raised in **Italy** where the Law n°134 of 12 June 2003 extends the field of application of the alternative procedure in criminal matters: this alternative procedure – so-called "procedure for the application of the penalty on the request of the parties" – consisting in an agreement concluded between the public prosecutor and the accused, henceforth can be used for any offence where the penalty incurred includes a maximum of 5 years of imprisonment. Similarly in **France**, the Law of 12 June 2003 reinforcing the fight against road violence imposes new burdens on the offender who wants to contest the inclusive fine that has been imposed to him. With the intention of avoiding abusive appeals, on the one hand the law now requires the previous consignment of a sum corresponding to the amount of the incurred fine and on the other hand, provides a 10% overcharge of the fine when the court, acting on the request of the presumed offender, finds the offender guilty. These provisions can chill the exercise of the right to access to a court.

In general, the EU Network of Independent Experts on Fundamental Rights insists that procedural innovations such as those described above should not be seen as an alternative to giving sufficient resources to the judicial system, to ensure that it will have the required personnel and equipment to adequately cope with the demands of an increasing case-load.

The Network notes that in its concluding observations on Belgium, which it delivered in May 2003, the Committee against Torture of the United Nations (CAT) expresses its concern vis-à-vis the non-suspensive character of the actions for annulement lodged with the Council of State by persons who have been served with an order to leave the territory (CAT/C/CR/30/6). The Committee also expresses its worry vis-à-vis the delays of the administration in the implementation of the ministerial guidelines of 2002 concerning the suspensive effect of the emergency remedies used by rejected asylum-seekers (para. 5, e)). The CAT recommends to confer a suspensive character, non only to those remedies, but also to all actions seeking the annulment of an expulsion order, where the foreigner concerned alleges that he/she risks being subjected to torture in the country to which he/she is to be returned (para. 7, d)). These observations gain further importane in the light of the fact that they concern the implementation of the obligations of Belgium under the European Convention on Human Rights, which the judgment of 5 February 2002 in the case of *Conka v. Belgium* has confirmed. Almost two years after the judgment has been delivered, Belgium still has not executed it adequately. In order to do so faithfully, Belgium should provide that the action for the annulment of the expulsion order lodged with the Council of State, should be considered suspensive ipso facto, and that this implies a prohibition imposed on the Aliens' Office (Office des étrangers) to execute the order to leave the territory which has been notified to the foreigner.

The EU Network of Independent Experts in Fundamental Rights regrets that the situation in Belgium is not exceptional in the Union. In **Italy** the orders of removal from the territory are automatically carried out and the delay for lodging an appeal can not suspend the implementation of such orders. This deprives the existing standards, regarding the prohibition of removals, of any efficiency. In **Portugal**, appeals against negative decisions by the SEF can be made to the National Commissariat for Refugees, and from there to the Administrative Supreme Court. However, appeals against admissibility decisions are not suspensive, which enables the deportation of asylum seekers rejected by the SEF before a final decision has been reached. Though deportations are rare, it would nonetheless be preferable to guarantee the suspensive effect of appeals against admissibility decisions. In **Lithuania**, according to the Law on Refugee Status, appeals against negative decisions on admissibility do not have a suspensive effect on deportation. In **Sweden**, it is also unfortunately still true that orders of removal from the territory are executed whilst the appeal is still pending.

The Network also remarks that a specific problem has occurred in the **Slovak Republic** with respect to the enforceability of rulings of the Constitutional Court, especially when they contain awards of financial compensation. It is not infrequent for the courts in this country to not respect the ruling of the Constitutional Court in this regard, arguing that they do not have enough financial means in their budgets, which would cover these payments.

The examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union also leads the Network to conclude that a number of obstacles remain to the availability of legal aid, in the conditions prescribed by Article 47, al. 3, of the EU Charter of Fundamental Rights. Legal aid may not be available for certain criminal proceedings (for instance, for for criminal proceedings which do not bear a minimum sentence of one year, as in **Cypru**s) or to seek compensation for certain types of offences (for instance in **Slovenia**, the injured party will be granted legal aid with respect to criminal offences involving insulting behaviour, libel, defamation and slander, only if the victim proves the probability that he or she has suffered legally admissible damage due to these offences); it may not be available for certain categories of litigants, in particular

undocumented aliens ; it may depend on the lack of sufficient resources of the applicant, but the means of proving such a lack of resources may be unclear and therefore create a risk of arbitrary determination by the competent authority (**Poland**), or simply impose a threshold which, in effect, will make it impossible for persons even with unsufficient resources to be granted legal aid.

The EU Network of Independent Experts on Fundamental Rights welcomes the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26 of 31.1.2003, p. 41), which seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. It would encourage any initiative seeking to improve further the effective and uniform application of EU Law, which at present is endangered by the disparity of approaches the Member States have taken towards the provision of legal aid. Although it is aware that the powers of the European Community are limited in this regard, it notes that such an initiative could be part of a broader attempt to ensure that the remedies available before the national jurisdictions of the Member States offer an adequate level of protection to all persons who invoke European law before these jurisdictions.

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, indeed, the EU Network of Independent Experts on Fundamental Rights notes that the Commission could usefully encourage a comparative study of the remedies available before the national jurisdictions of the Member States where a Community act of general scope affects a person directly, even before any implementation measure is adopted by the national authorities. Such a study would exhibit to which extent the effectiveness of judicial protection differs according to the Member State where the subject of EC Law resides or conducts his/her activities, and if necessary, it could lead to call for an adaptation of the powers of the national jurisdictions where the judicial protection appears unsufficient with regard to the requirements of Article 47 of the Charter. The Commission could, basing itself on the results of such a study, present a communication identifying the obligations which follow for the Member States, in the organisation of remedies before the national courts, from Article 47 of the Charter of Fundamental Rights and Article 10 EC. It is important to ensure that, when they contribute to the implementation of European law, the national courts respect all the requirements which follow from the right to an effective remedy, although this may in certain cases require that their powers be adapted to that purpose.

The EU Network of Independent Experts in Fundamental Rights recommends to the European Commission to prepare such a study and, if necessary, it recommends to the European Parliament to request such an initiative from the Commission (Article 192, al. 2 EC).

Positive aspects and good practices

The EU Network of Independent Experts in Fundamental Rights welcomes the fact that in **Greece**, specific organs should be set up within each jurisdiction to examine the alleged refusal of the Greek administration to comply with the judgments delivered against it. The Network expresses the hope that this reform will be effectively and promptly implemented in practice.

The EU Network of Independent Experts in Fundamental Rights recalls that the scope of application of Article 47 of the EU Charter of Fundamental Rights is wider than that of Article 6 ECHR, although it imposes that all the guarantees of this provision are respected where the rights and freedoms guaranteed by the law of the Union have arguably been violated. Therefore it welcomes the fact that in **France**, the Council of State has quashed the Order of 24 April 2001 regarding the rights of foreigners placed in administrative custody,

because the Order did not provide the possibility for the lawyers and interpreters – when the foreigner expresses this request – to have access at any time to the administrative detention centres, and did not ensure that a space would be created in the holding centres, equipped in particular with a phone line and a fax, where the confidentality of the meeting of the foreigner and his or her counsel could be guaranteed.

The Network notes with interest that in **Poland**, the Minister of Justice has adopted in April 2003 the document "Strategic tasks of the Ministry of Justice and the Central Management of the Prison Service for 2003 and Subsequent Years" in order to create conditions for substantial improvements in the system of administration of justice. It also welcomes the substantial increase of the budget of the administration of justice for 2004.

Article 48. Presumption of innocence and right of defence

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter corresponds to Article 6 paragraphs 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

This provision of the Charter moreover must be read in accordance to the requirements formulated by Article 14 of the International Covenant on Civil and Political Rights (1966), and by Articles 40 (2) b and 40 (3) of the Convention on the Rights of the Child (1989), to which all the Member States are parties.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights concludes that the following situations should be the source of particular concern to the institutions of the Union:

- In a number of Member States, including **Austria**, **Belgium**, **Ireland**, and **Lithuania**, a person arrested by the police is not recognized the right to obtain access from the outset of his/her detention to a lawyer. The Network notes that this situation has been criticized both by the United Nations Committee Against Torture and the European Committee for the Prevention of Torture. Moreover, the right to have access to a lawyer upon the moment of the arrest should not be made to depend on the resources of the suspect or the defendant : legal aid should be made available also with respect to legal assistance in such a situation. The Network welcomes the fact that in **Austria,** following the judgment of the Administrative Court of 17 September 2002 (VwGH, 2000/01/0325), which outlawed the common practice of the police not to inform suspects of their right to counsel and to refuse the presence of counsel during police interrogations, the Ministries of the Interior and Justice issued a joint decree (Decree 20.317/417-II/1/03 of 6 February 2003) instructing the security authorities correspondingly.

- In the **Netherlands**, the Duch Data Protection Authority released a report on 16 July 2003 where it considers current police practice as regard tapping and registration of confidential telecommunication with lawyers or other legal advisers, and denounces such pratice as illegal.

- In 2003, the EU Network of Independent Experts in Fundamental Rights had identified in its Thematic Comment "The Balance between freedom and security in the

response by the European Union and its Member States to the terrorits threaths" the trend towards limiting the right to privacy, including secrecy of communications, and the rights of defence, for the sake of combating organised crime including particularly terrorism. This trend has been confirmed during the period under scrutiny. In **Denmark**, the Parliament adopted the Act (2003:436) amending the criminal Code and the Administration of Justice Act extending the rules concerning the use of civil agents, the possibilities for the police to use confiscation and to conceal the identity of certain police officers, and extending the possibility of phone tapping and data reading. This Act also limits the rights of the accused to access certain documents in criminal cases. In the **Netherlands**, although the parliament had decided in 1999 that criminal infiltration should not be used because of the risk of abuses it entailed, exceptions were made in 2003. In **Luxembourg**, a draft law of 20 May 2003 strengthening the rights of victims of criminal offences and improving the protection of witnesses (Doc. parl. n°5156) introduced the possibility of using anonymous witnesses in the context of criminal procedures. In **Belgium,** the law of 6 January 2003 regarding special methods of research and other methods of investigation (M.B., 12 May 2003) provided a legal basis for the so-called special methods of research (observation, infiltration and the use of informers), which have the following common characteristics: they are discreet measures, leading to interferences by public authorities into the right of respect for private life, used proactively – i.e., before the offence has been committed – and the possible use of trickery in derogation from common rules of criminal procedure. This law also allows for other methods of inquiry such as the interception of mail, the entering of a private place or home in order to undertake direct phone tappings or the gathering of data regarding bank accounts and bank transactions. There is a real risk that these developments, although justified by the need to combat terrorism and other forms of organised crime, expand certain techniques limiting the right to private life or the rights of defence to the investigation of other offences, and become a permanent and usual part of the law on criminal procedure.

Positive aspects and good practices

Having examined the report evaluating the activities of the institutions of the Union on the basis of the EU Charter of Fundamental Rights, the EU Network of Independent Experts on Fundamental Rights welcomes the presentation by the Commission, on 19 February 2003, of the *Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union* (COM(2003)75 final). The EU Network of Independent Experts on Fundamental Rights would encourage the inclusion of a set of rights offering an adequate protection against the specific risk of ill-treatment in the hands of the police in any initiative of the Union seeking to identify the fundamental rights of the suspects throughout the Union from the moment of the arrest. Taking due account of the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatments or Punishments, the Network would include in such a list of rights the right of the accused person, from the moment of the arrest, to have access to a lawyer, to a doctor, and to a third person, f.i. a relative, to inform that person of his/her situation, unless certain exceptions can be justified in order to protect the legitimate interests of the police investigation, to the extent that such clearly defined exceptions are strictly limited in time, and are accompanied by appropriate safeguards; the right of the accused person, from the moment of detention, to receive a statement of his/her rights in a language both accessible and understandable, and unless the accused signs a declaration according to which he/she has been provided that information, not to be questioned in the absence of a lawyer; the right to be informed that the purpose of questioning is to establish facts, and not to lay pressure on the person suspected of having committed an offence ; the right not to be put in a vulnerable position during the questioning; the right to be questioned only by identified police officers.

The Network welcomes the fact that in **Austria**, in accordance with a judgment from the Administrative Court (VwGH, 2000/01/0325, judgement of 17 September 2002), the Ministries of the Interior and Justice issued a joint decree on 6 February 2003 (Decree 20.317/417-II/1/03) outlawing the common practice of the police not to inform suspects of their right to counsel and to refuse the presence of counsel during police interrogations.

Article 49. Principles of legality and proportionality of criminal offences and penalties

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that Article 49(1) of the Charter (with the exception of the last sentence) and (2) correspond to Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

The Network notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 15 of the International Covenant on Civil and Political Rights (1966), and by Article 40 (2)b and 40 (3) of the Convention on the Rights of the Child (1989), to which all Member States are parties.

Areas of concern

Upon examination of the reports submitted by its members on the situation of fundamental rights in the 25 Member States of the Union and on the activities of the institutions of the Union, the EU Network of Independent Experts on Fundamental Rights notes that upon considering the second periodic report submitted by **Estonia** on 15 April 2003 the Human Rights Committee expressed the concern that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the Criminal Code may have adverse consequences for the protection of rights under article 15 of the CCPR which corresponds to Article 49 of the EU Charter of Fundamental Rights. It requested that Estonia ensured that counter-terrorism measures, whether taken in connection with Security Council resolution 1373/2001 or otherwise, are in full conformity with the Covenant (CCPR/CO/77/EST, Concluding observations of the Human Rights Committee : Estonia, 15/04/2003, C, p. 8). The EU Network of Independent Experts on Fundamental Rights recalls in that respect that, in the Thematic Comment "The Balance between freedom and security in the response by the European Union and its Member States to the terrorits threaths" it has presented on the basis of its findings relating to 2002, it had emphasized that, where certain consequences such as the possibility to use certain methods of inquiry or to impose penalties of a certain level derive from the identification of a criminal offence as "terrorist", a simple reproduction, in the domestic criminal law, of the definition of terrorism proposed by the Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164 of 22.6.2002, p. 3) may not be compatible with the requirements of Article 7 of the European Convention on Human Rights (Thematic Comment n°1, pp. 7, 11 and 16).

The EU Network of Independent Experts on Fundamental Rights is also concerned by the fact that in **Cyprus**, some of the persons detained in the Central Prisons of Nicosia, that were sentenced for life at a time when life sentence according to the relevant Prisons Regulations had a specific limit, have been informed that since the said regulations were subsequently held to be *ultra vires*, they are not going to be released on the expected date, but are going to be held for life.

In the **Slovak Republic**,according to the Code of Criminal Procedure, a person indicted for having committed certain offences may be afforded a time-limit of only three days to file a complaint against that decision, even where the person concerned has just been notified of the criminal proceeding. The Network finds this time-limit for filing complaint against decision

issued in criminal proceeding stated in aforesaid provision of the Code of Criminal Procedure unreasonably short, and therefore incompatible with the right to a fair trial and the rights of defence guaranteed in the Articles 47 and 48 of the Charter.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

State of ratifications

The EU Network of Independent Experts on Fundamental Rights notes that this provision of the Charter has the same meaning than the corresponding Article 4 of Protocol n° 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1984), although its scope is wider.

It notes that this provision of the Charter must be read in accordance to the requirements formulated by Article 14 of the International Covenant on Civil and Political Rights (1966), and by Articles 40 (2)b and 40 (3) of the Convention on the Rights of the Child (1989).

The EU Network of Independent Experts on Fundamental Rights notes in this regard that Belgium and the United Kingdom still have to be sign Protocol n° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. 4 Member States have signed it but have not ratified it: Germany, the Netherlands, Portugal and Spain.

To ensure a minimal level of protection of the right guaranteed in Article 50 of the EU Charter of Fundamental Rights throughout the Union, all Member States are encouraged to sign and ratify the corresponding instruments or, if they have considered such ratification but rejected it, to explain their reasons for doing so and examine whether these explanations are still valid.

Areas of concern

No conclusions have been adopted under this provision.

ANNEXE 1

United Nations
Status of Ratifications of the Fundamental Conventions
(Status as of 15/02/2004)

- Slavery Convention, 25th September 1926 (CE)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21st March 1950 (CRTEH)
- Convention relating to the Status of Refugees, 28th July 1951 (CSR)
- Convention on the Political Rights of Women, 31st March 1953 (CDPF)
- Protocol amending the Slavery Convention, 7th December 1953 (CE-P)
- Convention relating to the Status of Stateless Persons, 28th September 1954 (CSA)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, 7th September 1956 (CSAE)
- Convention on consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 10th December 1962 (CCM)
- International Convention on the Elimination of All Forms of Racial Discrimination, 21st December 1965 (CERD)
- International Covenant on Economic, Social and Cultural Rights, 16th December 1966 (CESCR)
- International Covenant on Civil and Political Rights, 16th December 1966 (CCPR)
- Optional Protocol to the International Covenant on Civil and Political Rights, 16th December 1966 (CCPR-P1)
- Protocol relating to the Status of Refugees, 31st January 1967 (CSR-P)
- Convention on the Elimination of All Forms of Discrimination against Women, 18th December 1979 (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10th December 1984 (CAT)
- Convention on the Rigths of the Child, 20th November 1989 (CRC)
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, 15th December 1989 (CCPR-P2)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18th December 1990 (MWC)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6th October 1999 (CEDAW-P)
- Optional Protocol to the Convention on the Rigths of the Child on the Involvement of Children in Armed Conflict, 25th May 2000 (CRC-P1)
- Optional Protocol to the Convention on the Rigths of the Child on the Sale of Children, Child Prostitution and child pornography, 25th May 2000 (CRC-P2)
- Rome Statute of the International Criminal Court, 18th July1998 (ICC)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18th december 2002 (not in force)(CAT-P)

	CESCR	CCPR	CCPR-P1	CCPR-P2	CERD	CEDAW	CEDAW-P	CAT	CAT-P	CRC	CRC-P1	CRC-P2	MWC
Germany	17/12/73	17/12/73[1]	25/08/93[2]	18/08/92	16/05/69[3]	10/07/85[4]	15/01/02	01/10/90[5]	-	06/03/92[6]	*s. 09/00*	*s. 09/00*	-
Austria	10/09/78	10/09/78[7]	10/12/87[8]	02/03/93	09/05/72[9]	31/03/82[10]	07/09/00	29/07/87[11]	*s. 09/03*	06/08/92[12]	01/02/02	*s. 09/00*	-
Belgium	21/04/83[13]	21/04/83[14]	17/05/94	08/12/98	07/08/75[15]	10/07/85[16]	*s. 12/99*	25/06/99[17]	-	16/12/91[18]	06/05/02	*s. 09/00*	-
Denmark	06/01/72[19]	06/01/72[20]	06/01/72[21]	24/02/94	09/12/71[22]	21/04/83	31/05/00	27/05/87[23]	*s. 06/03*	19/07/91[24]	28/08/02	24/07/03[25]	-
Spain	27/04/77	27/04/77[26]	25/01/85[27]	11/04/91	13/09/68[28]	05/01/84[29]	06/07/01	21/10/87[30]	-	06/12/90[31]	08/03/02	18/12/01	-
Finland	19/08/75	19/08/75[32]	19/08/75	04/04/91	14/07/70[33]	04/09/86	29/12/00	30/08/89[34]	*s. 09/03*	21/06/91	11/04/02	*s. 09/00*	-
France	04/11/80[35]	04/11/80[36]	17/02/84[37]	-	28/07/71[38]	14/12/83[39]	09/06/00	18/02/86[40]	-	08/08/90[41]	05/03/03	05/02/03	-
Greece	16/05/85	05/05/97	05/05/97	05/05/97[42]	18/06/70	07/06/83	24/01/02	06/10/88[43]	-	11/05/93	22/10/03	*s. 09/00*	-
Ireland	08/12/89[44]	08/12/89[45]	08/12/89[46]	18/06/93	29/12/00[47]	23/12/85[48]	08/09/00	11/04/02	-	28/09/92	18/11/02	*s. 09/00*	-
Italy	15/09/78	15/09/78[49]	15/09/78[50]	14/02/95	05/01/76[51]	10/06/85	22/09/00	12/01/89[52]	*s. 08/03*	05/09/91	10/05/02	10/05/02	-
Luxembg	18/08/83	18/08/83[53]	18/08/83[54]	12/02/92	01/05/78[55]	02/02/89[56]	01/10/03	29/09/87[57]	-	07/03/94[58]	*s. 09/00*	*s. 09/00*	-
Netherlands	11/12/78[59]	11/12/78[60]	11/12/78	26/03/91	10/12/71[61]	23/07/91[62]	22/05/02	21/12/88[63]	-	06/02/95[64]	*s. 09/00*	*s. 09/00*	-
Portugal	31/07/78	15/06/78	03/05/83	17/10/90	24/08/82[65]	30/07/80	26/04/02	09/02/89[66]	-	21/09/90	19/08/03	16/05/03	-
UK	20/05/76[67]	20/05/76[68]	-	10/12/99	07/03/69[69]	07/04/86[70]	-	08/12/88[71]	*s. 06/03*	16/12/91[72]	24/07/03	*s. 09/00*	-
Sweden	06/12/71[73]	06/12/71[74]	06/12/71[75]	11/05/90	06/12/71[76]	02/07/80	24/07/03	08/01/86[77]	*s. 06/03*	29/06/90	20/02/03	*s. 06/00*	-
Cyprus	02/04/69	02/04/69	15/04/92	10/09/99[78]	21/04/67[79]	23/07/85	26/04/02	18/07/91[80]	-	07/02/91	-	*s. 02/01*	-
Estonia	21/10/91	21/10/91	21/10/91	**30/01/04**	21/10/91	21/10/91	-	21/10/91	-	21/10/91	*s. 09/03*	*s. 09/03*	-
Hungary	17/01/74[81]	17/01/74[82]	07/09/88	24/02/94	01/05/67[83]	22/12/80	22/12/00	15/04/87[84]	-	08/10/91	*s. 03/02*	*s. 03/02*	-
Latvia	14/04/92	14/04/92	22/06/94	-	14/04/92	15/04/92	-	14/04/92	-	15/04/92	*s. 02/02*	*s. 02/02*	-
Lithuania	20/11/91	20/11/91	20/11/91	28/03/02	10/12/98	18/01/94	*s. 09/00*	01/02/96	-	31/01/92	20/03/03	-	-
Malta	13/09/90[85]	13/09/90[86]	13/09/90[87]	24/12/94	27/05/71[88]	08/03/91[89]	-	13/09/90[90]	24/09/03	30/09/90[91]	10/05/02	*s.09/00*	-
Poland	18/03/77	18/03/77[92]	07/11/91[93]	*s. 03/00*	05/12/68[94]	30/07/80	***s. 12/03***	26/07/89[95]	-	07/06/91[96]	*s. 02/02*	*s. 02/02*	-
Czech R.	01/01/93[97]	22/02/93[98]	22/02/93	-	22/02/93[99]	22/02/93	27/02/01	01/01/93[100]	-	22/02/93[101]	30/11/01[102]	-	-
Slovakia	28/05/93[103]	28/05/93[104]	28/05/93	22/06/99	28/05/93[105]	28/05/93	17/11/00	28/05/93[106]	-	28/05/93[107]	*s. 11/01*	*s. 11/01*	-
Slovenia	06/07/92	06/07/92[108]	16/07/93[109]	10/03/94	06/07/92[110]	06/07/92	*s. 12/99*	16/07/93[111]	-	06/07/92[112]	*s. 09/00*	*s. 09/00*	-

	ICC	CSR	CSR-P	CSA	CCM	CRTEH	CE	CE-P	CSAE	CDPF
Germany	11/12/00[113]	01/12/53[114]	05/11/69	26/10/76[115]	09/07/69	-	12/03/29	29/05/73	14/01/59	04/11/70[116]
Austria	28/12/00[117]	01/11/54[118]	05/09/73	-	01/10/69	-	19/08/27	16/07/54	07/10/63	18/04/69
Belgium	28/06/00[119]	22/07/53[120]	08/04/69	26/05/60	-	22/06/65	23/09/27	13/12/62	13/12/62	20/05/64
Denmark	21/06/01[121]	04/12/52[122]	29/01/68	17/01/56[123]	08/09/64[124]	*s. 02/51*	17/05/27	03/03/54	24/04/58	07/07/54[125]
Spain	24/10/00[126]	14/08/78[127]	14/08/78	12/05/97[128]	15/04/69	18/06/62	12/09/27	10/11/76	21/11/67	14/01/74[129]
Finland	29/12/00[130]	10/10/68[131]	10/10/68	10/10/68[132]	18/08/64[133]	08/06/72[134]	29/09/27	19/03/54	01/04/59	06/10/58[135]
France	09/06/00[136]	23/06/54[137]	03/02/71	08/03/60[138]	*s. 12/62*	19/11/60[139]	28/03/31	14/02/63	26/05/64[140]	22/04/57
Greece	15/05/02	05/04/60[141]	07/08/68	04/11/75	*s. 01/63*	-	04/07/30	12/12/55	13/12/72	29/12/53
Ireland	11/04/02	29/11/56[142]	06/11/68	17/12/62[143]	-	-	18/07/30	31/08/61	18/09/61	14/11/68[144]
Italy	26/07/99	15/11/54[145]	26/01/72	03/12/62[146]	*s. 12/63*	18/01/80	25/08/28	04/02/54	12/02/58[147]	06/03/68[148]
Luxembg	08/09/00	23/07/53[149]	22/04/71[150]	27/06/60	-	05/10/83	-	-	01/05/67	01/11/76
Netherlands	17/07/01	03/05/56[151]	29/11/68[152]	12/04/62[153]	02/07/65[154]	-	07/01/28	07/07/55[155]	03/12/57[156]	30/07/71
Portugal	05/02/02[157]	22/12/60[158]	13/07/76[159]	-	-	30/09/92	04/10/27	-	10/08/59	-
UK	04/10/01[160]	11/03/54[161]	04/09/68[162]	16/04/59[163]	09/07/70[164]	-	18/06/27	07/12/53	30/04/57[165]	24/02/67[166]
Sweden	28/06/01[167]	26/10/54[168]	04/10/67	02/04/65[169]	16/06/64[170]	-	17/12/27	17/08/54	28/10/59	31/03/54
Cyprus	07/03/02[171]	16/05/63[172]	09/07/68	-	30/07/02	05/10/83	21/04/86[173]	-	11/05/62	12/11/68
Estonia	30/01/02[174]	10/04/97[175]	10/04/97	-	-	-	16/05/29	-	-	-
Hungary	30/11/01[176]	14/03/89[177]	14/03/89	21/11/01[178]	05/11/75[179]	29/09/55	17/02/33	26/02/56	26/02/58	20/01/55
Latvia	28/06/02[180]	31/07/97[181]	31/07/97[182]	05/11/99[183]	-	14/04/92	09/07/27	-	14/04/92	14/04/92
Lithuania	12/05/03[184]	28/04/97[185]	28/04/97	07/02/00	-	-	-	-	-	-
Malta	29/11/02[186]	17/06/71[187]	15/09/71[188]	-	-	-	03/01/66[189]	-	03/01/66	09/07/68[190]
Poland	12/11/01[191]	27/09/91[192]	27/09/91	-	08/01/65	02/06/52	17/09/30	-	10/01/63	11/08/54[193]
Czech R.	*s. 04/99*	11/05/93[194]	11/05/93	-	22/02/93	30/12/93	22/02/93	-	22/02/93	22/02/93
Slovakia	11/04/02[195]	04/02/93[196]	04/02/93	03/04/00[197]	28/05/93	28/05/93	28/05/93	-	28/05/93	28/05/93
Slovenia	31/12/01	06/07/92[198]	06/07/92	06/07/92	-	06/07/92	-	-	06/07/92	06/07/92

ANNEXE 2

International Labor Organization
Status of Ratifications of the Fundamental Conventions
(Status as of 15/02/2004)

- Convention (n°29) concerning Forced or Compulsory Labour, 28th June 1930
- Convention (n°87) concerning Freedom of Association and Protection of the Right to Organise, 9th July 1948
- Convention (n°98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1st July 1949
- Convention (n°100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 29th June 1951
- Convention (n° 105) concerning the Abolition of Forced Labour, 25th June 1957
- Convention (n°111) concerning Discrimination in Respect of Employment and Occupation, 25th June 1958
- Convention (n° 122) concerning Employment Policy, 9th July 1964
- Convention (n°135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 23rd June1971
- Convention (n°138) concerning Minimum Age for Admission to Employment, 26th June1973
- Convention (n°154) concerning the Promotion of Collective Bargaining, 19th June 1981
- Convention (n°168) concerning Employment Promotion and Protection against Unemployment, 21st June 1988
- Convention (n°182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 17th June 1999

	Forced Labor		Freedom of Association				Discrimination		Child Labor			
	C.29	C.105	C.87	C.98	C.135	C.154	C.100	C.111	C.138[199]	C.182	C.122	C.168
Germany	13/06/56	22/06/59	20/03/57	08/06/56	26/09/73	-	08/06/56	15/06/61	08/04/76	18/04/02	17/06/71	-
Austria	07/06/60	05/03/58	18/10/50	10/11/51	06/08/73	-	29/10/53	10/01/73	18/09/00	04/12/01	27/07/72	-
Belgium	20/01/44	23/01/61	23/10/51	10/12/53	-	29/03/88	23/05/52	22/03/77	19/04/88	08/05/02	08/07/69	-
Denmark	11/02/32	17/01/58	13/06/51	15/08/55	06/06/78	-	22/06/60	22/06/60	13/11/97	14/08/00	17/06/70	-
Spain	29/08/32	06/11/67	20/04/77	20/04/77	21/12/72	11/09/85	06/11/67	06/11/67	16/05/77	02/04/01	28/12/70	-
Finland	13/01/36	27/05/60	20/01/50	22/12/51	13/01/76	09/02/83	14/01/63	23/04/70	13/01/76	17/01/00	23/09/68	19/12/90
France	24/06/37	18/12/69	28/06/51	26/10/51	30/06/72	-	10/03/53	28/05/81	13/07/90	11/09/01	05/08/71	-
Greece	13/06/52	30/03/62	30/03/62	30/03/62	27/06/88	17/09/96	06/06/75	07/05/84	14/03/86	06/11/01	07/05/84	-
Ireland	02/03/31	11/06/58	04/06/55	04/06/55	-	-	18/12/74	22/04/99	22/06/78	20/12/99	20/06/67	-
Italy	18/06/34	15/03/68	13/05/58	13/05/58	23/06/81	-	08/06/56	12/08/63	28/07/81	07/06/00	05/05/71	-
Luxembg	24/07/64	24/07/64	03/03/58	03/03/58	09/10/79	-	23/08/67	21/03/01	24/03/77	21/03/01	-	-
Netherlands	31/03/33	18/02/59	07/03/50	22/12/93	19/11/75	22/12/93	16/06/71	15/03/73	14/09/76	14/02/02	09/01/67	-
Portugal	26/06/56	23/11/59	14/10/77	01/07/64	31/05/76	-	20/02/67	19/11/59	20/05/98	15/06/00	09/01/81	-
UK	03/06/31	30/12/57	27/06/49	30/06/50	15/03/73	-	15/06/71	08/06/99	07/06/00	22/03/00	27/06/66	-
Sweden	22/12/31	02/06/58	25/11/49	18/07/50	11/08/72	11/08/82	20/06/62	20/06/62	23/04/90	13/06/01	11/06/65	18/12/90
Cyprus	23/09/60	23/09/60	24/05/66	24/05/66	03/01/96	16/01/89	19/11/87	02/02/68	02/10/97	27/11/00	28/07/66	-
Estonia	07/02/96	07/02/96	22/03/94	22/03/94	07/02/96	-	10/05/96	-	-	24/09/01	12/03/03	-
Hungary	08/06/56	04/01/94	06/06/57	06/06/57	11/09/72	01/01/94	08/06/56	20/06/61	28/05/98	20/04/00	18/06/69	-
Latvia	-	27/01/92	27/01/92	27/01/92	27/01/92	25/07/94	27/01/92	27/01/92	-	-	27/01/92	-
Lithuania	26/09/94	26/09/94	26/09/94	26/09/94	26/09/94	26/09/94	26/09/94	26/09/94	22/06/98	29/09/03	-	-
Malta	04/01/65	04/01/65	04/01/65	04/01/65	09/06/88	-	09/06/88	01/07/68	09/06/88	15/06/01	-	-
Poland	30/07/58	30/07/58	25/02/57	25/02/57	09/06/77	-	25/10/54	30/05/61	22/03/78	09/08/02	24/11/66	-
Czech R.	01/01/93	06/08/96	01/01/93	01/01/93	09/10/00	-	01/01/93	01/01/93	-	19/06/01	01/01/93	-
Slovakia	01/01/93	29/09/97	01/01/93	01/01/93	-	-	01/01/93	01/01/93	29/09/97	20/12/99	01/01/93	-
Slovenia	29/05/92	24/06/97	29/05/92	29/05/92	29/5/92	-	29/05/92	29/05/92	29/05/92	08/05/01	29/05/92	-

ANNEXE 3

Council of Europe
Status of Ratifications of the Fundamental Conventions
(Status as of 15/02/2004)

- Convention for the Protection of Human Rights and Fundamental Freedoms, 4th November 1950 (STE005)
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20th March 1952 (STE009)
- European Convention on Establishment, 13th December 1955 (STE019)
- European Social Charter, 18th October 1961 (STE035)
- Protocol n°4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the first Protocol thereto, 16th September 1963 (STE046)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 28th January 1981(STE108)
- Protocol n°6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, 28th April 1983 (STE114)
- Protocol n° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22nd November 1984 (STE117)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26th November 1987 (STE126)
- Additional Protocol to the European Social Charter, 5th May 1988 (STE128)
- Protocol amending the European Social Charter, 21st October 1991 (not in force) (STE142)
- European Charter for Regional or Minority Languages, 5th November 1992 (STE148)
- Framework Convention for the Protection of National Minorities, 1st February 1995 (STE157)
- Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9th November 1995 (STE158)
- European Convention on the Exercise of Children's Rights, 25th January 1996 (STE160)
- Revised European Social Charter, 3rd May 1996 (STE163)
- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine : Convention on Human Rights and Biomedicine, 4th April 1997 (STE164)
- Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, 12th January 1998 (STE168)
- Protocole n° 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 4th November 2000 (not in force)(STE177)
- Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personnel Data, regarding supervisory authorities and transborder data flows, 8th Novembre 2001 (not in force) (STE181)
- Convention on Cybercrime, 23rd November 2001 (not in force)(STE185)
- Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin, 24th January 2002 (not in force)(STE186)
- Protocol n°13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the Abolition of th Death Penalty in All Circumstances, 3rd May 2002 (STE187)
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 28th January 2003 (not in force) (STE189)

	STE005	STE009	STE019	STE035	STE046	STE108	STE114	STE117	STE126	STE128	STE142	STE148	STE157
Germany	05/12/52[200]	13/02/57[201]	23/02/65[202]	27/01/65[203]	01/06/68[204]	19/06/85[205]	05/07/89[206]	*s. 03/85*[207]	21/02/90[208]	*s. 05/88*	-	16/09/98[209]	10/09/97[210]
Austria	03/09/58[211]	03/09/58[212]	*s. 12/57*	29/10/69[213]	18/09/69[214]	30/03/88[215]	05/01/84	14/05/86[216]	06/01/89	*s. 12/90*	13/07/95[217]	28/06/01[218]	31/03/98[219]
Belgium	14/06/55	14/06/55	12/01/62[220]	16/10/90[221]	21/09/70	28/05/93[222]	10/12/98	-	23/07/91	23/06/03[223]	21/09/00	-	*s. 07/01*[224]
Denmark	13/04/53	13/04/53	09/03/61	03/03/65[225]	30/09/64	23/10/89[226]	01/12/83	18/08/88[227]	02/05/89	27/08/96[228]	-	08/09/00[229]	22/09/97[230]
Spain	04/10/79[231]	27/11/90[232]	-	06/05/80[233]	*s. 02/78*	31/01/84[234]	14/01/85	*s.11/84*	02/05/89	24/01/00	24/01/00	09/04/01[235]	01/09/95
Finland	10/05/90[236]	10/05/90	-	29/04/91[237]	10/05/90	02/12/91[238]	10/05/90	10/05/90	20/12/90	29/04/91[239]	18/08/94	09/11/94[240]	03/10/97
France	03/05/74[241]	03/05/74[242]	*s. 12/55*	09/03/73[243]	03/05/74[244]	24/03/83[245]	17/02/86	17/02/86[246]	09/01/89	*s. 06/89*[247]	24/05/95	*s. 05/99*[248]	-
Greece	28/11/74	28/11/74[249]	02/03/65[250]	06/06/84[251]	-	11/08/95	08/09/98	29/10/87	02/08/91	18/06/98	12/09/96	-	*s. 09/97*
Ireland	25/02/53[252]	25/02/53[253]	01/09/66[254]	07/10/64[255]	29/10/68[256]	25/04/90[257]	24/06/94	03/08/01	14/03/88	-	14/05/97	-	07/05/99
Italy	26/10/55	26/10/55	31/10/63	22/10/65[258]	27/05/82[259]	29/03/97[260]	29/12/88	07/11/91[261]	29/12/88[262]	26/05/94[263]	27/01/95	*s. 06/00*	03/11/97
Luxembg	03/09/53	03/09/53[264]	06/03/69[265]	10/10/91[266]	02/05/68	10/02/88[267]	19/02/85	19/04/89[268]	06/09/88	*s. 05/88*	*s. 10/91*	*s. 11/92*	*s. 07/95*[269]
Netherlands	31/08/54[270]	31/08/54[271]	21/05/69[272]	22/04/80[273]	23/06/82[274]	24/08/93[275]	25/04/86[276]	*s. 11/84*[277]	12/10/88[278]	05/08/92[279]	01/06/93[280]	02/05/96[281]	*s. 02/95*
Portugal	09/11/78[282]	09/11/78[283]	-	30/09/91[284]	09/11/78	02/09/93[285]	02/10/86	*s. 11/84*	29/03/90	-	08/03/93	-	07/05/02
UK	08/03/51[286]	03/11/52[287]	14/10/69[288]	11/07/62[289]	*s. 09/63*	26/08/87[290]	20/05/99[291]	-	24/06/88[292]	-	*s. 10/91*	27/03/01[293]	15/01/98
Sweden	04/02/52	22/06/53[294]	24/06/71[295]	17/12/62[296]	13/06/64	29/09/82[297]	09/02/84	08/11/85[298]	21/06/88	05/05/89	18/03/92	09/02/00[299]	09/02/00[300]
Cyprus	06/10/62	06/10/62	-	07/03/68[301]	03/10/89[302]	21/02/02[303]	19/01/00	15/09/00	03/04/89	*s. 05/88*	01/06/93	26/08/02[304]	04/06/96
Estonia	16/04/96[305]	16/04/96[306]	-	-	16/04/96	14/11/01[307]	17/04/98	16/04/96	06/11/96	-	-	-	06/01/97[308]
Hungary	05/11/92	05/11/92	-	08/07/99[309]	05/11/92	08/10/97[310]	05/11/92	05/11/92	04/11/93	-	**04/02/04**	26/04/95[311]	25/09/95
Latvia	27/06/97	27/06/97[312]	-	31/01/02[313]	27/06/97	30/05/01[314]	07/05/99	27/06/97	10/02/98	*s. 05/97*	**09/12/03**	-	*s. 05/95*
Lithuania	20/06/95[315]	24/05/96	-	-	20/06/95	01/06/01[316]	08/07/99	20/06/95	26/11/98	-	-	-	23/03/00
Malta	23/01/67[317]	23/01/67[318]	-	04/10/88[319]	05/06/02	28/02/03[320]	26/03/91	15/01/03	07/03/88	-	16/02/94	*s. 11/92*	10/02/98[321]
Poland	19/01/93	10/10/94	-	25/06/97[322]	10/10/94	23/05/02	30/10/00	04/12/02	10/10/94	-	25/06/97	*s. 05/03*	20/12/00[323]
Czech R.	18/03/92[324]	18/03/92	-	03/11/99[325]	18/03/92	09/07/01[326]	18/03/92	18/03/92	07/09/95	17/11/99[327]	17/11/99	*s.11/00*	18/12/97
Slovakia	18/03/92[328]	18/03/92	-	22/06/98[329]	18/03/92	13/09/00[330]	18/03/92	18/03/92	11/05/94	22/06/98	22/06/98	05/09/01[331]	14/09/95
Slovenia	28/06/94	28/06/94	-	*s. 10/97*	28/06/94	27/05/94[332]	28/06/94	28/06/94	02/02/94	*s. 10/97*	*s. 10/97*	04/10/00[333]	25/03/98[334]

	STE158	STE160	STE163	STE164	STE168	STE177	STE181	STE185	STE186	STE187	STE189
Germany	-	10/04/02[335]	-	-	-	*s. 11/00*	12/03/03[336]	*s. 11/01*	-	*s. 05/02*	*s. 01/03*
Austria	*s. 05/99*	*s. 07/99*	*s. 05/99*	-	-	*s. 11/00*	*s. 11/01*	*s. 11/01*	-	**12/1/04**	*s. 01/03*
Belgium	23/06/03	-	*s. 05/96*	-	-	*s. 11/00*	*s. 04/02*	*s. 11/01*	-	23/06/03	*s. 01/03*
Denmark	*s. 11/95*	-	*s. 05/96*[337]	10/08/99[338]	*s. 01/98*	-	*s. 11/01*	*s. 04/03*	-	28/11/02[339]	***s. 02/04***
Spain	-	*s. 12/97*	*s. 10/00*	01/09/99	24/01/00	-	-	*s. 11/01*	-	*s. 05/02*	-
Finland	17/07/98[340]	*s. 01/96*	21/06/02[341]	*s. 04/97*	*s. 01/98*	*s. 11/00*	*s. 11/01*	*s. 11/01*	-	*s. 05/02*	*s. 01/03*
France	07/05/99	*s. 06/96*	07/05/99	*s. 04/97*	*s. 01/98*	-	*s. 11/01*	*s. 11/01*	-	*s. 05/02*	*s. 01/03*
Greece	18/06/98	11/09/97[342]	*s. 05/96*	06/10/98	22/12/98	*s. 11/00*	*s. 11/01*	*s. 11/01*	*s. 01/02*	*s. 05/02*	*s. 01/03*
Ireland	04/11/00	*s. 01/96*	04/11/00[343]	-	-	*s. 11/00*	*s. 11/01*	*s. 02/02*	-	*s. 05/02*	-
Italy	03/11/97	04/07/03[344]	05/07/99[345]	*s. 04/97*	*s. 01/98*	*s. 11/00*	*s. 11/01*	*s. 11/01*	*s. 02/02*	*s. 05/02*	-
Luxembg	-	*s. 01/96*	*s. 02/98*	*s. 04/97*	*s. 01/98*	*s. 11/00*	-	*s. 28/01*	*s. 01/02*	*s. 05/02*	*s. 01/03*
Netherlands	***s. 01/04***	-	***s.01/04***	*s. 04/97*	*s. 05/98*[346]	*s. 11/00*	*s. 05/03*	*s. 11/01*	*s. 02/02*	*s. 05/02*	*s. 01/03*
Portugal	20/03/98	*s. 03/97*	30/05/02[347]	13/08/01	13/08/01	*s. 11/00*	*s. 11/01*	*s. 11/01*	*s. 02/02*	03/10/03	*s. 03/03*
UK	-	-	*s. 11/97*	-	-	-	*s. 11/01*	*s. 11/01*	-	10/10/03[348]	-
Sweden	29/05/98	*s. 01/96*	29/05/98[349]	*s. 04/97*	*s. 01/98*	-	08/11/01	*s. 11/01*	-	22/04/03	*s. 01/03*
Cyprus	06/08/96	*s. 09/02*	27/09/00[350]	20/03/02	20/03/02	30/04/02	*s. 10/02*	*s. 11/01*	-	12/03/03	-
Estonia	-	-	11/09/00[351]	08/02/02	08/02/02	*s. 11/00*	-	12/05/03[352]	17/09/03	*s. 05/02*	*s. 01/03*
Hungary	-	-	-	09/01/02	09/01/02	*s. 11/00*	-	04/12/03[353]	-	16/07/03	-
Latvia	-	30/05/01[354]	-	*s. 04/97*	*s. 01/98*	*s. 11/00*	-	-	-	*s. 05/02*	-
Lithuania	-	-	29/06/01[355]	17/10/02	17/10/02	-	*s. 11/01*	23/06/03	-	**29/1/04**	-
Malta	-	*s. 01/99*	-	-	-	-	-	*s. 01/02*	-	03/05/02	*s. 01/03*
Poland	-	28/11/97[356]	-	*s. 05/99*	*s. 05/99*	-	*s. 11/02*	*s. 11/01*	-	*s. 05/02*	*s. 07/03*
Czech R.	*s. 02/02*	07/03/01[357]	*s. 11/00*	22/06/01	22/06/01	*s. 11/00*	24/09/03	-	-	*s. 05/02*	-
Slovakia	*s. 11/99*	*s. 06/98*	*s. 11/99*	15/01/98	22/10/98	*s. 11/00*	24/07/02	-	-	*s. 07/02*	-
Slovenia	*s. 10/97*	28/03/00[358]	07/05/99[359]	05/11/98	05/11/98	*s. 03/01*	-	*s. 07/02*	*s. 01/02*	04/12/03	-

[1] Reservations : art. 2(1), 14(3)(d), 14(5), 15(1), 19, 21 and 22 ; Declaration : art. 41
[2] Reservation : art. 5(2)(a)
[3] Declaration : art. 14
[4] Reservations : §11 of the Preamble, art. 7(b)
[5] Reservations : art. 3, 21 and 22
[6] Reservations : art. 18(1), 38(2), 40(2)(b)(ii) and (v)
[7] Reservations : art. 9, 10(3), 12(4), 14, 19, 21, 22 and 26 ; Declaration : art. 41
[8] Reservation : art. 5(2)
[9] Reservations : art. 4(a), 4(b) and 4(c)
[10] Reservation : art. 11
[11] Reservations : art. 5(1)(c) and 15 ; Declarations : art. 21 and 22
[12] Reservations : art. 13, 15,17, 38(2), 38(3)
[13] Reservations : art. 2(2) and (3)
[14] Reservations : art. 10(2)(a), 10(3), 14(1), 14(5), 19, 20, 21, 22 and 23(2) ; Declaration : art. 41
[15] Reservation: art. 4 ; Declaration : art. 14
[16] Reservations : art.15(2) and (3)
[17] Reservations : art. 21 and 22
[18] Reservations : art. 2(1), 13, 14(1), 15 and 40(2)(b)(v)
[19] Reservation : art. 7(d)
[20] Reservations : art. 10(3), 14(1), 14(5), 14(7) and 20(1) ; Declaration : art. 41
[21] Reservation : art. 5(2)(a)
[22] Declaration : art. 14
[23] Declarations : art. 21 and 22
[24] Reservation : art. 40(2)(b)(v)
[25] Declaration
[26] Declaration : art. 41
[27] Reservation : art. 5(2)
[28] Declaration : art. 14
[29] General Declaration
[30] Declarations : art. 21 and 22
[31] Reservations : art. 21(d), 38(2) and 38(3)
[32] Reservations : art. 10(2)(b), 10(3), 14(7) and 20(1) ; Declaration : art. 41
[33] Declaration : art. 14
[34] Declarations : art. 21 and 22
[35] Reservations : art. 6, 8, 9, 11, 13

[36] Reservations : art. 4(1), 9, 13, 14, 20(1), 21, 22 and 27
[37] Reservations : art. 1, 5(2)(a) and 7
[38] Reservations : art. 4, 6 and 15 ; Declaration : art. 14
[39] Reservations : §11 of the Preamble, art. 5(b), 9, 14(2)(c), 14(2)(h), 16(1)(d), 16(1)(g) and 29(1)
[40] Reservation : art. 30(2) ; Declarations : art. 21 and 22
[41] Reservations : art. 6, 30 and 40(2)(b)(v)
[42] Reservation : art. 2
[43] Declarations : 21 and 22
[44] Reservations : art. 2(2) and 13(2)(a)
[45] Reservations : art. 10(2), 14, 14(7), 19(2) and 20(1) ; Declaration : art. 41
[46] Reservation : art. 5(2)
[47] Reservations : art. 4(a), (b), (c) ; Declaration : art. 14
[48] Reservations : art. 13(b), 13(c), 16(1)(d) and 16(1)(f)
[49] Reservations : art. 9(5), 12(4), 14(3), 14(5), 15(1) and 19(3) ; Declaration : art. 41
[50] Reservation : art. 5(2)
[51] Reservations : art. 4(a), 4(b) and 6 ; Declaration : art. 14
[52] Declarations : art. 21 and 22
[53] Reservations : art. 10(3), 14(3), 14(5), 19(2) and 20 ; Declaration : art. 41
[54] Reservation : art. 5(2)
[55] Declaration : art. 14
[56] Reservation : art. 7 and 16(1)(g)
[57] Reservation : art. 1(1) ; Declarations : art. 21 and 22
[58] Reservation : art. 3, 6, 7 and 15
[59] Reservation : art. 8(1)(d)
[60] Reservations : art. 10(2), 10(3), 12(1), 12(2), 12(4), 14(3)(d), 14(5), 14(7), 19(2), 20(1) ; Declaration : art. 41
[61] Declaration : art. 14
[62] Reservations : § 10 and 11 of the Preamble
[63] Reservation : art. 1(1) ; Declarations : art. 21 and 22
[64] Reservations : art. 14, 22, 26, 37, 38, 40
[65] Declaration : art. 14
[66] Declarations : art. 21 and 22
[67] Reservations : art. 1, 2(3), 6, 7(a)(i), 9, 10(2), 13(2)(a) and 14
[68] Reservations : art. 1, 10(2)(a), 10(2)(b), 10(3), 11, 12(1), 12(4), 14(3)(d), 20, 23(3), 24(3) ; Declaration : art. 41
[69] Reservations : art. 1(1), 4(a)(b) and (c), 6, 15 and 20
[70] Reservations : art. 2, 4(1), 9, 11(2), 15(3) and 15(4), 16(1)(f) ; General Declaration

[71] General Declaration ; Declaration : art. 21
[72] Reservations : art. 22 and 37(c) ; General Declaration
[73] Reservation : art. 7(d)
[74] Reservations : art. 10(3), 14(7) and 20(1) ; Declaration : art. 41
[75] Reservation : art. 5(2)
[76] Declaration : art. 14
[77] Declarations : art. 21 and 22
[78] Reservation : art. 2(1)
[79] Declaration : art. 14
[80] Declarations : art. 21 and 22
[81] Reservations : art. 26(1) and 26(3)
[82] Reservations : art. 48(1) and 48(3) ; Declaration : art.41
[83] Reservations : art. 17(1) and 18(1) ; Declaration :art. 14
[84] Declarations : art. 21 and 22
[85] Reservation : art. 13
[86] Reservations : art. 13, 14(2), 14(6), 19, 20 and 22 ; Declaration : art. 41
[87] Reservations : art. 1 and 5(2)
[88] Reservations : art. 4 and 6
[89] Reservations : art. 11, 13, 15 and 16
[90] Declarations : art. 21 and 22
[91] Reservations : art. 26
[92] Declaration : art. 41
[93] Reservation : art. 5(2)(a)
[94] Reservations : art. 17(1) and 18(1) ; Declaration : art. 14
[95] Reservations : art. 20 and 30(1) ; Declaration : art. 21 and 22
[96] Reservations : art. 7, 12 à 16, 24(2)(f) and 38
[97] Reservation : art. 26
[98] Reservation : art. 48 ; Declaration : art. 41
[99] Reservation : art. 17 ; Declaration : art. 14
[100] Declarations : art. 21 and 22
[101] Reservation : art. 7(1)
[102] Reservation : art. 3(2)
[103] Reservation : art. 26
[104] Reservation : art. 48 ; Declaration : art. 41
[105] Reservation : art. 17 ; Declaration : art. 14

[106] Declarations : art. 21 and 22
[107] Reservation : art. 7(1)
[108] Declaration : art. 41
[109] Reservations : art. 1 and 5(2)(a)
[110] Declaration : art. 14
[111] Declarations : art. 21 and 22
[112] Reservation : art. 9(1)
[113] Reservation : art. 87
[114] Reservation : art. 1B
[115] Reservations : art. 23 and 27
[116] Reservation : art. III
[117] Reservation : art. 87(2)
[118] Reservations : 1B, 17 , 22, 23 and 25
[119] Reservations : art. 31(1)(e), 21(1)(b)(c), 87
[120] General declaration; Reservations : art. 1B and 15
[121] Reservation : art. 87
[122] Reservations : art. 1B and 17(1)
[123] Reservations : art. 24 and 31
[124] Reservation : art. 1(2)
[125] Reservation : art. 3
[126] Reservations : art. 87 and 103
[127] General declaration; Reservations : art. 1B, 8, 12 and 26
[128] Reservation : art. 29(1)
[129] Reservations : art. I, II and III
[130] Reservation : art. 87
[131] Reservations : general, art. 1B, 7(2), 8, 12(1), 24, 25 and 28(1)
[132] Reservations : general, art. 7(2), 8, 24(1)(b), 24(3), 25 and 28
[133] Reservation : art. 1(2)
[134] Reservation : art. 9
[135] Reservations : art. III
[136] Reservations : art. 8, 87 and 124 ; General Declaration
[137] Declaration : art. 29(2) and 17 ; Reservation : art. 1B
[138] Reservation : art. 10(2)
[139] General declaration
[140] General declaration

[141] Reservations : art. 1B and 26
[142] Declaration : art. 32 ; Reservations : art. 1B, 17, 25 and 29(1)
[143] Declarations : art. 31, general ; Reservation : art. 29(1)
[144] Reservation : art. III
[145] Reservation : art. 1B
[146] Reservations : art. 17 and 18
[147] General declaration
[148] Declaration : art. III
[149] Réservations : art. 1B, general
[150] General Reservation
[151] Reservation : art. IB
[152] Declaration : art. VII
[153] Reservations : art. 8 and 26, general
[154] General declaration
[155] General declaration
[156] General declaration
[157] Declaration : art. 5(1)
[158] Reservation : art. 1B
[159] General declaration
[160] Reservations : art. 8 and 87
[161] Reservation : art. 1B
[162] Declaration : art. VII(4)
[163] Declarations : art. 36, 38 and general ; Reservations : art. 8, 9, 24(1)(b) and 25(1) and(2)
[164] Declarations : art. 1 and general
[165] Declaration general
[166] Reservations : art. III, general
[167] Reservation : art. 8 and 87
[168] Reservation : art. 1B
[169] Reservations : art. 8, 12(1), 24(1)(b), 24(3) and 25(2)
[170] Reservation : art. 1(2)
[171] Reservation : art. 87
[172] General Declaration ; Reservation : art. 1B
[173] Ratification of the Convention as amended by the Protocol
[174] Reservation : art. 87
[175] Reservations : art. 1B, 23, 24, 25 and 28(1)

[176] Reservation : art. 87
[177] Reservation : art. 1B
[178] Reservations : art. 23, 24 and 28
[179] Reservation : art. 1(2)
[180] Reservation : art. 87
[181] Reservations : art. 1B, 8, 17, 24, 26 , 34 and general
[182] Declaration : art. VII(2)
[183] Reservations : art. 24(1)(b) and 27
[184] Declaration : art. 103(1) ; Reservation : art. 87
[185] Reservation : art. 1B
[186] Declaration : art. 20(3) ; Reservation : art. 87
[187] Reservation : art. 1B
[188] Declaration : art. VII(2)
[189] Ratification of the Convention as amended by the Protocol
[190] Reservation : art. III
[191] Reservation : art. 87(2)
[192] Reservation : art. 1B
[193] Reservation : art. VII
[194] Reservation : art. 1B
[195] Declaration : art. 103(1)
[196] Reservation : art. 1B
[197] Declaration : art. 27
[198] Reservation art. 1B
[199][199] Minimum age specified: 15 years : Germany, Austria, Belgium, Denmark, Finland, Greece, Ireland, Italy, Luxembourg, Netherlands, Sweden, Cyprus, Poland, Slovakia, Slovenia ; 16 years : Spain, France, Portugal, United-Kingdom, Hungary, Lithuania, Malta.
[200] Reservation : art. 7 ; Declaration : art. 56
[201] Declarations : art. 1, 2 and 4
[202] Réserve : art 4 ; Declaration : art. 30
[203] Declarations : art. 6, 20 and 34
[204] Declaration : art. 5
[205] Declarations : art. 8, 12, 13, 24
[206] General Declarations
[207] Declarations : art. 2, 3, 4
[208] Declaration : art. 20
[209] Declarations : art. 2, 3, 7, 8, 9, 10, 11, 12, 13, 14

[210] Declaration
[211] Reservations : art. 5 and 6
[212] Reservation : art. 1
[213] Declaration : art. 20
[214] Reservation : art. 3
[215] Declarations : art. 2, 3, 5, 9 and 13
[216] Declarations : art. 2, 3, 4
[217] Declaration : art. 4
[218] Declarations : art. 2 and 3
[219] Declaration
[220] Declaration : art. 12
[221] Declaration : art. 20
[222] Declarations : art. 3, 13 and 14
[223] Declaration : art. 5
[224] Reservation
[225] Declarations : art. 20 and 34
[226] Declarations : art. 13 and 24
[227] Reservation : art. 2 ; Declarations : art. 2 and 6
[228] Declaration : art. 9
[229] Declarations : art. 2, 3, 4 and 15
[230] Declaration
[231] Reservation : art. 17 ; Declarations : art. 5, 6, 10 and 15
[232] Reservation : art. 1
[233] Declaration : art. 31 and 37
[234] Declaration : art. 13
[235] Declarations : art. 2, 3, 7
[236] Reservation : art. 6
[237] Declaration : art. 20
[238] Declaration : art. 13
[239] Declaration : art. 5
[240] Declarations : art. 2, 3, 7, 8, 9, 10, 11, 13, 14
[241] Reservations : art. 5, 6 and 15 ; Declarations : art. 10 and 56
[242] Declarations : art. 1 and 4
[243] Reservations : art. 2 and 13 ; Declarations : art. 12 and 20
[244] Declaration : art. 5

[245] Declarations : art. 3, 9, 13
[246] Reservations : art. 2, 3, 4, 5, 6 ; Declaration : art. 2
[247] Reservation : art. 9 ; General Declaration
[248] Declarations : art. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14
[249] Reservation : art. 2
[250] Declarations : art. 12 and 33
[251] Declaration : art. 20
[252] Reservation : art. 6
[253] Declaration : art. 2
[254] Reservations : art. 9 and 21 ; Declaration : art. 12
[255] Declaration : art. 20
[256] Declaration : art. 3
[257] Declarations : art. 3 and 13
[258] Declaration : art. 20
[259] Reservation : art. 3
[260] Declarations : art. 3 and 13
[261] Declarations : art. 2, 3, 4
[262] Declaration : art. 16
[263] General Declaration
[264] Reservation : art. 1
[265] Reservations : art. 16 and 18 ; Declarations : art. 12
[266] Declaration : art. 20
[267] Declarations : art. 3 and 13
[268] Reservation : art. 5
[269] Declaration
[270] Declaration : art. 56
[271] Declarations : art. 2 and 4
[272] Declaration générale
[273] Declarations : art. 20 and 34
[274] Declarations : art. 3 and 5
[275] Declarations : art. 3, 13 and 24
[276] Declarations: générale , art. 2
[277] Declaration : art. 2
[278] Declaration : art. 20
[279] Declarations : art. 9

[280] General Declaration
[281] Declarations : general, art. 2 3, 7, 8, 9, 10, 11, 12, 13, 14
[282] Reservations : art. 5 and 7
[283] Reservations : art. 1 and 2
[284] Declarations : art. 6 and 20
[285] Declaration : art. 13
[286] Declarations : art. 5 and 6
[287] Reservations : art. 2 and 4 ; General Declarations and art. 1
[288] Reservations : art. 9, 15 and 21
[289] Declarations : art. 20, 34 and 37
[290] Declarations : art. 3, 13 and 24
[291] Declaration générale
[292] Declarations : art. 20
[293] Declarations : art. 1, 2, 3
[294] Reservation : art. 2
[295] Reservations : art. 3, 11 and 23 ; Declaration : 12
[296] Declaration : art. 20
[297] Declaration : art. 13
[298] Declaration : art. 1
[299] Declarations : art. 2, 8, 9, 10, 11, 12, 13, 14
[300] Declaration
[301] Declarations : art. 2, 7, 20, 37
[302] Declaration : art. 4
[303] Declaration : art. 13
[304] Declarations : art. 1 and 7
[305] Reservation : art. 6
[306] Reservation and Declaration : art. 1
[307] Declarations : art. 3 and 13
[308] Declaration
[309] Declaration : art. 20
[310] Declarations : art. 3 and 13
[311] Declarations : art. 2, 3, 8, 9, 10, 11, 12, 13
[312] Reservation : art. 1
[313] Declaration : art. 20
[314] Declarations : art. 3 and 13

[315] Reservation : art. 5
[316] Declaration : art. 13
[317] Reservation : art. 10 ; Declaration : art. 6
[318] Declaration : art. 2
[319] Declaration : art. 20
[320] Declarations : art. 3, 8 and 13
[321] Reservation : art. 15 ; Declarations : art. 24 and 25
[322] Declaration : art. 20
[323] General Declarations and art. 18
[324] Reservations : art. 5 and 6
[325] Declaration : art. 20
[326] Declaration : art. 13
[327] Declaration : art. 5
[328] Reservations : art. 5 and 6
[329] Declaration : art. 20
[330] Declaration : art. 13
[331] Declarations : general, art. 1, 2, 3, 8, 10, 12, 13
[332] Declaration : art. 13
[333] Declarations : art. 2 and 7
[334] Declaration
[335] Declaration : art. 1
[336] Declaration : art. 1
[337] Declaration : art. A
[338] Reservation : art. 10§2 ; Declarations : art. 20§2ii and 35
[339] Declaration : art. 4
[340] Declaration : art. 2
[341] Declaration : art. A
[342] Declaration : art. 1
[343] Declaration : art. A
[344] Declaration : art. 1
[345] Declaration : art. A
[346] Declaration : art. 1
[347] Reservations : art. 2§6 and 6
[348] Declaration : art. 4
[349] Declaration : art. A

[350] Declaration : art. A
[351] Declaration : art. A
[352] Declaration : art. 24, 27 and 35
[353] Declaration : art. 27 ; Reservation : Art. 9
[354] Declaration : art. 1
[355] Declaration : art. A
[356] Declaration : art. 1
[357] Declaration : art. 1
[358] Declaration : art. 1
[359] Declaration : art. A