

**Policy Department C
Citizens' Rights and Constitutional Affairs**



**A SYNTHESIS OF THE FORMER EP RESOLUTIONS
IN THE FIELD OF FUNDAMENTAL RIGHTS**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

OCTOBER 2007
PE 393.256

EN



PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
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**Directorate-General Internal Policies
Policy Department C
Citizens Rights and Constitutional Affairs**

A SYNTHESIS OF THE FORMER EP RESOLUTIONS IN THE FIELD OF FUNDAMENTAL RIGHTS

BRIEFING PAPER

Résumé:

This Briefing Paper provides a synthesis of the resolutions of the European Parliament in the fields of Fundamental Rights.

After having sketched the role of the European Parliament in the realisation of a genuine EU fundamental rights policy, the paper analyses the yearly resolutions since 1993 adopted by the EP on the situation as regards fundamental rights in the European Union. The paper explains the structure of the documents, main concerns raised, member states and actors singled out and positive remarks highlighted. A comparison is provided between the resolutions covering the period 1993 to 1999 and those adopted after the proclamation of the EU Charter on Fundamental Rights. The paper concludes with a short assessment of the impact, role and added-value of the resolutions.

PE 393.256

This note was requested by The European Parliament's committee on Civil Liberties, Justice and Home Affairs.

This paper is published in the following languages: EN, FR.

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Manuscript completed in October 2007

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Brussels, European Parliament

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A. INTRODUCTION: THE EUROPEAN PARLIAMENT AND FUNDAMENTAL RIGHTS

I. THE EP: A SEMINAL ACTOR IN EU FUNDAMENTAL RIGHTS POLICY

It does not take much to acknowledge that the European Parliament (EP) is one of the most important EU institutional actors in the promotion and protection of fundamental rights within and outside the European Union (EU).

From an early assurance in the ‘Joint Declaration by the European Parliament, the Council and the Commission’ of 1977¹ to respect fundamental rights in the exercise of their powers and in pursuance of their aims, it has been - from all of the three - clearly the EP that aimed with the highest commitment at going beyond this quiet passive stance. In its endeavour to achieve a genuine EU fundamental rights policy the EP has always been several steps ahead of the other institution and member states, adopting as early as 1989 a “Declaration of fundamental rights and freedoms”², containing a preamble, final provisions and 28 articles.³ In this declaration it expressed its determination to achieve a basic Community instrument with a binding legal character guaranteeing fundamental rights. The fact, that more than fifteen years later the EU still lacks such an unambiguously legally binding instrument and might even continue to do so,⁴ clearly highlights the avant-garde role that the EP has played in this field.

It legitimized this role by referring to its democratic foundation. As the only institution being directly elected by the citizens of Europe, it conceived it as a *responsibility* to draw up the Declaration of 1989, well aware of the political signal and issuing an express invitation to the other institutions and member states to “associate themselves normally” with it. This understanding of having a special responsibility for an EU fundamental rights policy has continued over the years, as exemplified in para. 3 of its 1996 resolution on fundamental rights⁵:

Considers that it has a duty, as a democratically elected Community institution, to ensure that fundamental rights and freedoms are defended and promoted within the European Union

It gained new momentum once the Charter of Fundamental Rights of the European Union⁶ (Charter) was proclaimed on 7 December 2000. In its first annual resolution following the proclamation (covering the year 2000⁷) the EP stated in para 3:

Notes that it is the particular responsibility of the European Parliament (by virtue of the role conferred on it under the new Article 7(1) of the Treaty of Nice) and of its appropriate committee to ensure (in cooperation with the national parliaments and the parliaments of the candidate countries) that both the EU institutions and the Member States uphold the rights set out in the various Chapters of the Charter

¹ OJ C 103, 27.4.1977, p. 1.

² OJ C 120, 16.5.1989, p. 51.

³ Some years later, the EP went another step forward by adopting a resolution on an EU constitution, also containing a catalogue of human rights guaranteed by the Union, OJ C 61, 28.2.1994, p. 155.

⁴ Depending on the outcome of the 2007 Intergovernmental Conference on the so called Reform Treaty. For an analysis of the proposed Reform Treaty on the Area of Freedom, Security and Justice, see S. Carrera & F. Geyer, *The Reform Treaty & Justice and Home Affairs – Implications for the common Area of Freedom, Security and Justice*, *CEPS Policy Brief, August 2007*, 11 pp.

⁵ OJ C 80, 16.3.1998, p. 43.

⁶ OJ C 364, 18.12.2000, p. 1.

⁷ OJ C 65 E, 14.3.2002, p. 350.

The decisive position of the EP in this field has been – at least formally - recognized by its fellow institutions,⁸ and attracted intense academic scrutiny.⁹ Yet, while recognising the importance of its role, independent observers and human rights NGOs have expressed in the past disappointment and frustration about the concrete way the EP has made practical use of its position;¹⁰ a critique that was not outspokenly rejected from within the institution.¹¹ In December 2005 the EP commissioned an impact assessment study of the resolutions and other activities in the field of human rights *outside the EU*. This 350 page study was published in October 2006 containing a high number of observations and recommendations.¹²

II. FUNDAMENTAL RIGHTS VS HUMAN RIGHTS? AN EP PECULIARITY

Synthesizing former EP resolutions in the field of fundamental rights requires taking account of a specificity of the EP's working methods and divisions of tasks. This specificity is characterized by a distinction between 'fundamental rights' on the one hand and 'human rights' on the other. While the first term generally addresses the situation *within* the EU, the second refers to the situation *outside* the EU.¹³ Although, this distinction is terminologically not always respected, the practice in the EP clearly does. This is due to the fact that two different committees are responsible for each of the fields. According to the Rules of Procedure of the EP, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) is responsible *inter alia* for the 'protection within the territory of the Union of citizens' rights, human rights and fundamental rights, including the protection of minorities (...). In contrast, the Committee on Foreign Affairs (AFET) together with its Sub-Committee on Human Rights is responsible for 'issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries'.

Consequently there is not *one* EU Human Rights Policy, but two focusing either on the internal or the external dimension. In the line of this distinction there are each year two central reports and related resolutions on the situation of human and fundamental rights. While AFET votes on an 'Annual Report on Human Rights in the World' building the basis of the respective EP resolution, LIBE is preparing a yearly report 'on the situation as regards fundamental rights in the European Union'.

This Briefing Paper will concentrate on the EP resolutions in the field of *fundamental rights*, therefore those related to the situation *within* the EU.

⁸ 'Over the years, the European Parliament has assumed an ever greater role in making human rights one of the central concerns of the EU', General Affairs Council - Luxembourg, 9 October 2001, *Annual Report on Human Rights 2001*, p. 12 [Not published in the Official Journal].

⁹ See e.g. R. Rack & S. Lausegger, 'The role of the European Parliament: Past and Future', in P. Alston (ed), *The EU and Human Rights*, Oxford University Press: Oxford, 1999, pp. 801 – 838; K. Bradley, 'Reflections on the Human Rights Role of the European Parliament', in P. Alston (ed), *The EU and Human Rights*, Oxford University Press: Oxford, 1999, pp. 839 – 858.

¹⁰ See P. Alston & J.H.H. Weiler, An 'ever closer Union' in need of a human rights policy: *the EU and human rights*, Harvard Jean Monnet Working Paper 1/99, Harvard Law School: Cambridge, MA, 2000, p. 37 seq.; Amnesty International & International Federation for Human Rights, *A critical assessment of the European Parliament's 2002 human rights reports*, 21.3.2002, <http://www.fidh.org/spip.php?article1534>.

¹¹ Cf. the statement of rapporteur J. Swiebel for the 2001 report: 'Over the years, the European Parliament has taken on a particular role in promoting and protecting human rights – a role that has often given rise to criticism that is not always unfounded', European Parliament, Report, A5-0451/2002, 12.12.2002, p. 25.

¹² European Inter-University Centre for Human Rights and Democratisation (EIUC), *Beyond Activism – the impact of the resolutions and other activities of the European Parliament in the field of human rights outside the European Union*, October 2006.

¹³ See for this distinction in a very visible way: the internet gateway of the EP on "Human Rights - Fundamental Rights", http://www.europarl.europa.eu/comparl/human_rights/default_en.htm.

III. OVERVIEW ON EP RESOLUTIONS IN THE FIELD OF FUNDAMENTAL RIGHTS

Roughly speaking one can discern three kinds of EP resolutions that could be characterized as 'in the field of fundamental rights'. There are first all those resolutions that contain some reference to fundamental rights, that pronounce e.g. concerns connected to the respect of fundamental rights on the occasion of a concrete legislative proposal. Second there are those resolutions which focus on a specific fundamental rights related topic, e.g. on death penalty,¹⁴ on racism, xenophobia and anti-Semitism,¹⁵ on degrading conditions in prisons,¹⁶ on conscientious objection,¹⁷ or just recently on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners,¹⁸ to name just a few.

Finally there are the annual resolutions addressing the situation of fundamental rights within the EU in its width but limited to a certain period of time. This practice started with a resolution on the year 1993.¹⁹ In fact, this last category of resolutions appears to be the most central and seminal one as the annual resolutions aim at monitoring the development - progress and regress, concerns and approvals - not only with regard to EU institutions but also EU member states. The intention of this reporting practice is characterized by the rapporteur of the 2002 resolution, F. Sylla, as follows:

In my view, this report constitutes a valuable point of reference for elaborating and implementing EU policies. It is also an open method of coordination which highlights good practices in the Member States and makes it possible to draw a comparison between initiatives and ensure compatibility between them. It provides a means of allowing and supporting the establishment of the prevention mechanism under Article 7 of the Treaty on European Union. It should also contribute to publicising and sharing the European Parliament's commitment in this specific area and, lastly, it promotes transparency and facilitates dialogue with civil society.²⁰

The idea to draft such annual reports has been promulgated in a short but important resolution on human rights in 1991.²¹ Here the EP expressed its opinion that it is not enough to look at the state of human rights in third countries and that an annual reporting practice addressing the situation of human rights *within* the EU should be taken up. The synthesis provided in this Briefing Paper concentrates on these yearly resolutions on fundamental rights.²²

One key feature of the resolutions is that member states and actors are often individually addressed and named. In principle this can have three reasons:

- 1.) The EP acknowledges positively certain actions or legislative developments.²³
- 2.) The EP urges the concerned party to sign and/or ratify a certain instrument of international law, mostly Council of Europe Conventions or protocols.²⁴
- 3.) The EP explicitly formulates its concern or disapproval with a concrete situation or incident.

¹⁴ OJ C 94, 13.4.1992, p.277.

¹⁵ OJ C 126, 22.5.1995, p. 75.

¹⁶ OJ C 32, 5.2.1996, p. 102.

¹⁷ OJ C 44, 14.2.1994, p. 103.

¹⁸ 2006/2200(INI), P6_TA(2007)0032, 14.2.2007.

¹⁹ OJ C 115, 26.4.1993, p. 115.

²⁰ European Parliament, Report, A5-0281/2003 REV1, 21.8.2003, p. 27.

²¹ OJ C 240, 16.9.1991, p. 45.

²² These resolutions regularly take account of the more thematic resolutions that were adopted in the same year of reporting.

²³ Highlighting also the positive developments has considerably increased in the 2001 (OJ C 38 E, 12.2.2004, p. 247) and 2002 (OJ C 76 E, 25.3.2004, p. 412) resolutions.

²⁴ This is in fact the most common reason to be named for.

Being named for reasons no. 2 and no. 3 can hence be seen as not living up to fundamental rights standards as interpreted by the EP. Counting the times each member state has come negatively into the focus of the EP between 1993 and 2002 (for reasons no. 2 and no. 3) reveals a tangible gap between member states.²⁵ There are ‘model pupils’ and ‘children of sorrow’ and the distance between them is remarkable. While Sweden expressly appeared less than 20 times in these ten resolutions, Greece was mentioned around 60 times, followed by Belgium and the UK with around 50 to 55. The middle field reaching between 35 to 45 counts is composed of Austria, Germany, Spain, France, Ireland, Italy, Luxembourg and the Netherlands, while Portugal, Finland and Denmark had been mentioned between 20 to 30 times.

Finding a common ground among MEPs from different political groups and member states on the content of these resolutions has proven difficult and it does not require too much fantasy to imagine, that there are a very high number of interests involved. This difficulty has become apparent when the EP plenary rejected the report for 2003 drafted by A. Boumediene-Thiery as rapporteur. Researching for the reasons it is interesting to note that these do in fact diverge and that many actors and observers point at different parts of the report to explain its rejection. The incident clearly underlines the sensitivity of the annual resolutions.

B. A SYNTHESIS OF THE FORMER EP RESOLUTIONS IN THE FIELD OF FUNDAMENTAL RIGHTS

I. BEFORE 1993

In the years that preceded the EP’s annual reporting practice on the situation of fundamental rights within the EU, most of the EP’s energy and attention in the field of fundamental rights were dedicated to two major themes: 1) to raise awareness of the need for the European Communities to consider themselves bound by fundamental rights and 2.) the struggle for the adoption of a legally binding set of rights of the citizens.

Conceptions similar to what is now established as ‘Union citizenship’ were already discussed in 1975 under the term ‘Community citizenship’. In order to achieve equality of Community citizens in the enjoyment of civil and political rights, both at Community and member state level, the EP advocated laying down the necessary measures in regulations. In its efforts the EP considered the Communities to be imbedded in the broader context of fundamental rights protection. In this sense it has always argued for an accession to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Similarly, in a resolution of 1977, it pressed for an agreement between member states to consider the ECHR, the UN International Covenant on civil and political rights as well as the civil and political rights provided for in the constitutions and laws of the member states as integral parts of the Treaties; all this ‘in the light of the Universal Declaration of human rights, adopted by the United Nations General Assembly on 10 December 1948’²⁶.

In this line, the following general resolutions and declarations are worth mentioning:

- Resolution on European union, 10.7.1975.²⁷
- Joint Declaration on fundamental rights by the European Parliament, the Council and the Commission, 5.4.1977.²⁸

²⁵ Note that Austria, Finland and Sweden only joined in 1995. The situation after the 2004 and 2007 enlargement rounds has not yet been addressed in the annual reports. The report covering the years 2004 to 2007 is currently in the stage of preparation.

²⁶ OJ C 299, 12.12.1977, p. 26, para. 2.

²⁷ OJ C 179, 6.8.1975, p. 28.

²⁸ OJ C 103, 27.4.1977, p. 1.

- Resolution on the granting of special rights to be citizens of the European Community in implementation of the decision of the Paris Summit of December 1974 (point 11 of the final communiqué).²⁹
- Resolution adopting the Declaration of fundamental rights and freedoms, 12.4.1989.³⁰
- Resolution on the Community Charter of Fundamental Social Rights, 22.11.1989.³¹
- Resolution on Union citizenship, 14.6.1991.³²
- Resolution on human rights, 9.7.1991.³³

Three important, more thematic resolutions of this period address the issue of death penalty³⁴, children rights³⁵ and conscientious objection.³⁶

II. FROM 1993 TO 1999 – THE PRE-CHARTER ERA

As stated earlier, the EP annual reporting practice started with a resolution on the year 1993. Rapporteurs on the reports from 1993 to 1999 that build the basis of the resolutions were the following MEPs:

- de Gucht, BE, ALDE for 1993.
- De Esteban Martin, ES, EPP-ED for 1994.
- Roth, DE, Greens/EFA for 1995.
- Pailler, FR, GUE/NGL for 1996.
- Schaffner, FR, EPP-ED for 1997.
- Haarder, DK, ALDE for 1998/1999.

1. The structure of the resolutions

During this period the structure of the resolutions varied quite significantly. This is important to note as the positioning of certain matters within a political document does carry at least symbolical weight. To give an example: While the resolution on 1993³⁷ – in its material part - started with poverty and economic rights, the resolutions on the years 1994³⁸ and 1995³⁹ addressed in the first place the right to life. For 1996⁴⁰ immigration and the right to asylum was at the top, in 1997⁴¹ access to care and in 1998/1999⁴² the exercise of civil and political rights. This divergence ceased to exist, however, once the Charter had been proclaimed, as the resolutions were henceforward streamlined with the structure of the Charter. This is why the period from 1993 to 1999 will be referred to in this paper as ‘pre-Charter era’.

2. Main concerns and reappearing topics

In spite of the diverging structure there are a number of topics that constantly reappear in the resolutions throughout the years. One of these is the general question as to the appropriate **EU system for the protection of human rights**, including the call for a legally binding charter, the mechanisms for strengthening human rights, the role of the different EU institutions, the self-perception of the EP and the intention and working methods of the yearly reports.

²⁹ OJ C 299, 12.12.1977, p. 26.

³⁰ OJ C 120, 16.5.1989, p. 51.

³¹ OJ C 323, 27.12.1989, p. 44.

³² OJ C 183, 15.7.1991, p. 473.

³³ OJ C 240, 16.9.1991, p. 45.

³⁴ OJ C 94, 13.4.1992, p. 277.

³⁵ OJ C 241, 21.9.1992, p. 67.

³⁶ OJ C 291, 20.11.1989, p. 122.

³⁷ OJ C 115, 26.4.1993, p. 178.

³⁸ OJ C 320, 28.10.1996, p. 36.

³⁹ OJ C 132, 28.4.1997, p. 31.

⁴⁰ OJ C 80, 16.3.1998, p. 43.

⁴¹ OJ C 98, 9.4.1999, p. 279.

⁴² OJ C 377, 29.12.2000, p. 344.

From a material perspective the following issues constantly reappear in the resolutions:

- **Right to life** and the abolishment of capital punishment.
- The **right to asylum** (expressing its concern that member states as well as EU activities in this field are on a downward slope and in danger of not living up to the obligations imposed by the Geneva Convention).
- The **right to freedom from bodily harm, torture and ill-treatment** (addressing in particular the issue of police violence against persons in arrest and detention, deteriorating detention conditions as such and the rights of persons in detention).
- **Rule of law** and in particular **procedural rights** (expressing its concern about the high number of cases in which the European Court of Human Rights in Strasbourg decided against member states for being in breach of Art. 6 ECHR and calling for common EU wide procedural rights).
- The threat to rule of law, democracy and human rights posed by **organised crime and terrorism**.
- **Data protection** (requesting for unmitigated data protection standards in light of increasing number of European databases and growing exchange of data between European law enforcement services).
- **Equal treatment and non discrimination** as regards equality between men and women, disabled persons, immigrants, the young and the elderly.
- **Legal status of homosexuals** (calling for abolishing discriminatory criminal prosecution and recognising homosexual relationships).
- **Rights of the child** (addressing e.g. right to education, working age, physical violence, missing children, paedophilia).
- Increase efforts **against racism, xenophobia, anti-Semitism** and other forms of discrimination based on religious or ethnic-cultural background (addressing in particular the situation of Sinti and Roma).
- Protection of **ethnic and linguistic minorities**.
- **Immigration** (expressing concern about restrictions to the right of family reunification, calling for granting political rights to third-country nationals, deploring collective deportations, addressing human trafficking).
- **Freedom of religion and belief and the right to conscientious objection**.
- **Violations of individual rights by certain sects** (calling for the refusal to grant these sects the status of religious or cultural organisations).
- **Freedom of expression and information** (speaking out in particular against concentration in the media sector, reaffirming confidentiality of journalists' sources).
- **Economic and social rights** (addressing issues like poverty, income gaps, housing conditions, right to work, semi-slavery).
- **Right of association and trade union freedoms** (calling in particular for trade union rights in the military forces and security services and speaking out against practises of restricting the right of association of third-country national workers).
- **Freedom of movement** within the EU.

3. Member States and actors singled out

Comparing the EP's practice of naming individual member states in its resolutions, a considerable divergence between the pre-Charter era and the following years becomes apparent. In the resolution on 1997, e.g., there are around five issues which are directly linked to an individualised member state against more than sixty similar incidents in the report on 2001. This does, however, not signify an increase of fundamental rights violations. Instead it is connected to a change of reporting technique and shift of focus of the EP.

For the years 1993 to 1999 member states were cited for the following reasons:

- **Greece** for the treatment, laws and practices of conscientious objection (1993, 1994, 1998/1999), for its nationality law towards its Turkish minority (1993), for having a reference to religion in its identity cards (1997). Greece was furthermore called upon to guarantee the right to freedom of association and assembly by authorizing meetings of ethnic, religious and other minorities (1995), to abolish differences in the age of consent for homosexual and heterosexual relations (1997), to ratify Protocol No. 6 to the ECHR (death penalty) (1995), to ratify the European Framework Convention for the protection of national minorities (1989/1999) and to sign the European Charter for regional and minority languages (1998/1999).
- **UK** for restriction on trade union rights (1993, 1994), for cutting funds to certain North-Irish groups (1993), for the practice in one prison of tying up or handcuffing prisoners during gynaecological examinations or after giving birth (1996). The UK was furthermore called upon to ratify Protocol No. 6 to the ECHR (death penalty) (1995), to sign the agreement on social policy annexed to the Treaty on European Union (1995), to take initiative to abolish restrictions on the right to strike (1996), to abolish differences in the age of consent for homosexual and heterosexual relations (1997), to sign the European Charter for regional and minority languages (1998/1999).
- **Germany** for its treatment of ex-SED functionaries (1993), for some of its local authorities that outlawed begging in the streets (1995, 1996), for rise of extreme right wing offences (1997).
- **France** for some of its local authorities that outlawed begging in the streets (1995, 1996), for militancy of its anti-abortionist activists (1996, 1997), for not having transposed Directive 94/80 laying down detailed arrangements for the exercise for the right to vote and stand as candidate in municipal elections by citizens of the Union (1996). It was called upon to sign the European Framework Convention for the protection of national minorities (1998/1999) and to ratify the Charter for regional and minority languages (1998/1999).
- **Ireland** for its law on prohibiting any material in favour of abortion (1995, 1996). It was called upon to sign the European Charter for regional and minority languages (1998/1999).
- **Austria** for its discriminatory age of consent criminal legislation as regards homosexual and heterosexual relationships (1995, 1996, 1997). It was called upon to ratify the European Charter for regional and minority languages (1998/1999).
- **Belgium** for not having transposed Directive 94/80 laying down detailed arrangements for the exercise for the right to vote and stand as candidate in municipal elections by citizens of the Union (1996). It was called upon to ratify Protocol No. 6 to the ECHR (death penalty) (1995), to sign the European Framework Convention for the protection of national minorities (1998/1999) and to sign the European Charter for regional and minority languages (1998/1999).
- **Portugal** was called upon to abolish differences in the age of consent for homosexual and heterosexual relations (1997) and to ratify the European Framework Convention for the protection of national minorities (1998/1999) and to sign the European Charter for regional and minority languages (1998/1999).
- **Luxembourg** was called upon to ratify the European Framework Convention for the protection of national minorities (1998/1999) and to sign the European Charter for regional and minority languages (1998/1999).
- **The Netherlands and Sweden** were called upon to ratify the European Framework Convention for the protection of national minorities (1998/1999).
- **Italy and Sweden** were called upon to sign the European Charter for regional and minority languages (1998/1999).
- **Denmark and Spain** were called upon to ratify the European Charter for regional and minority languages (1998/1999).

- The **European Commission** was cited for its practice of requiring pre-recruitment HIV tests (1995).

4. Positive remarks

In its efforts to follow-up with the developments and to assess whether previous remarks had been addressed, the resolutions from 1995 onwards also contain information on incidents that had been positively acknowledged by the EP. These are:

For 1995:

- The appointment of a European Ombudsman.
- Danish provisions on dealing with complaints about police violence.
- Greek legislative initiatives to allow public service instead of obligatory military service.
- The EU Joint Action programme on racism and xenophobia.

For 1996:

- Anti-discrimination clauses in Community instruments and the European Year against Racism.
- Improvements at Community and member states level as to the situation of homosexuals.

For 1997:

- Greece's efforts to release prisoners who had been sentenced for evading military service as conscientious objectors and to adapt its legislation in this respect.
- The UK for having 'finally' accepted the 1989 Charter of Social Rights.
- Provisions in the draft Amsterdam Treaty to outlaw all forms of discrimination based on sex, race, nationality, ethnic origin, age, religious belief, sexual orientation.
- The possibility to register partnerships in a growing number of member states.
- The setting-up of the EU Monitoring Centre in Vienna.

For 1989/1999:

- The entry into force of the Amsterdam Treaty.
- Institutional developments at the Council of Europe (single permanent Court).
- The legal recognition of extramarital cohabitation irrespective of gender in a growing number of member states.
- The UK for changing its age-of-consent legislation with regard to homosexual and heterosexual relationships.

5. Miscellaneous aspects – themes that did not regularly reappear

Some issues and themes appear in one or two resolutions but then disappear from the agenda. The reasons for this appear to be manifold. An underlying political dissent might have appeared, the focus of the rapporteur might have changed or the problem might have been solved. Sometimes internal EP working methods might also be the reason as became evident in the monitoring on the fundamental rights situation of candidate countries. These countries were addressed once in the 1998/1999 resolution but were hence dealt with in the 'other' EP human rights report drafted by the AFET Committee.

In this respect, it is interesting to note that the first resolution on the year 1993 established a very prominent and clear link between growing intergovernmental cooperation in Justice and Home Affairs at EU level and the need to guarantee clear and easy procedures at member state level to remedy infringements of fundamental rights.⁴³ In this context, the resolution on 1993 addresses the issue of so called 'compensatory measures' for the abolishment of internal borders (Schengen convention, ad hoc intergovernmental groups) and states that it is in particular these developments which make a system of human rights protection in the EU an

⁴³ OJ C 115, 26.4.1993, p. 178, para. 1.

urgent necessity. Such a strong criticism which - in essence - links the *raison d'être* of the EP resolutions with EU policies on Justice and Home Affairs has henceforth not been pronounced as prominently in the years to come.

As other issues which appear only scarcely in the resolutions in the period 1993 to 1999, the following shall be mentioned:

- Right to environmental protection (1994, 1995).
- Calling for a ban on 'euthanasia' to the detriment of the disabled, patients in long-term coma, disabled new-born infants and the elderly (1995, 1997).
- Speaking out against assimilation pressures exerted by majority groups towards linguistic and ethnic minorities (1995, 1996).
- A call on member states to regularize irregular migrants (1996, weaker in 1997).
- A call on member states to recognize 'ius soli' in questions of citizenship (1993, 1994 and weaker in 1996).
- A call against the practice of double sentencing in immigration law, i.e. making a foreigner serve his prison term for a crime and afterwards deporting him for the same crime (1993, 1996, 1997).
- The right to safety (1997) as a specific right.
- Cultural freedom (1997).

6. Other fundamental right resolutions in the pre-Charter era

Apart from the annual resolutions, a number of important more thematic resolutions have been adopted by the EP in the period between 1993 and 1999. Among these features the very important resolution on the Constitution of the European Union,⁴⁴ mentioned already earlier and the resolution on the establishment of the EU Fundamental Rights Charter.⁴⁵

Other thematic resolutions addressed issues like conscientious objection,⁴⁶ general principles of a European policy on refugees,⁴⁷ racism, xenophobia and anti-Semitism,⁴⁸ trafficking in human beings,⁴⁹ degrading conditions in prisons,⁵⁰ sects in Europe,⁵¹ protection of minors,⁵² violence against women,⁵³ and sexual abuse of children⁵⁴ to name just a few.

III. FROM 2000 ONWARDS – USING THE CHARTER AS GUIDELINE

Since the proclamation of the Charter three resolutions had been adopted, covering the years 2000⁵⁵, 2001⁵⁶, 2002⁵⁷. Rapporteurs had been the following MEPs:

- Cornillet, FR, ALDE for 2000.
- Swiebel, NL, PES for 2001.
- Sylla, FR, GUE/NGL for 2002.

⁴⁴ OJ C 61, 28.2.1994, p. 155.

⁴⁵ OJ C 54, 25.2.2000, p. 93.

⁴⁶ OJ C 44, 14.2.1994, p. 103.

⁴⁷ OJ C 44, 14.2.1994, p. 106.

⁴⁸ OJ C 126, 22.5.1995, p. 75.

⁴⁹ OJ C 32, 5.2.1996, p. 88.

⁵⁰ OJ C 32, 5.2.1996, p. 102.

⁵¹ OJ C 78, 18.3.1996, p. 31.

⁵² OJ C 20, 20.1.1997, p. 170.

⁵³ OJ C 304, 6.10.1997, p. 55.

⁵⁴ OJ C 358, 24.11.1997, p. 37.

⁵⁵ OJ C 65 E, 14.3.2002, p. 350.

⁵⁶ OJ C 38 E, 12.2.2004, p. 247.

⁵⁷ OJ C 76 E, 25.3.2004, p. 412.

As mentioned above the report for 2003 drafted by Boumediene-Thiery, FR, Greens/EFA had been rejected in the plenary. The report for the years 2004 to 2007 will be drafted by Catania, IT, GUE/NGL.

With regard to the background of the rapporteurs it is remarkable that there is a clear geographical emphasis on France with 4 rapporteurs and a reduced involvement of the two major political groups: MEPs from EPP-ED have been twice, from PES only once been so far in charge of preparing the resolutions.

1. The structure of the resolutions

As stated earlier, from 2000 onwards the structure of the resolution had been streamlined with the Charter. In this respect the LIBE Committee had endorsed the rapporteur's proposal of 2000 to adopt a method that involves using the Charter as a working instrument and a method of interpretation, involving a country-by-country analysis of each individual right;⁵⁸ a decision which also aimed at providing the Charter with a more pronounced political value – in absence of its binding legal force.⁵⁹

As a consequence of this new approach, the mentioning of individual member states has increased considerably. This is mainly due to the fact that the resolutions also paid a particularly detailed look into the state of signature and ratification of international treaties and conventions.

2. Main concerns and topics

The issues commonly addressed in the resolutions stayed more or less the same compared to the pre-Charter era in spite of its new structure (see therefore the list at B.II.2). However, as Citizenship of the Union with its respective rights constitutes an individual chapter in the Charter, reporting on these rights has been intensified in the EP resolutions. While in the pre-Charter era, the focus had been on free movement of persons and voting rights for EU citizens, from 2000 onwards, issues like good administration and access to documents have been additionally addressed.

Another – quite self-explanatory – feature is that the issue of terrorism became more prominent in the resolutions. In previous years organized crime and terrorism were mentioned as threats to the rule of law, democracy and human rights. While this remained unchanged, the EP voiced growing concern as to means of countering terrorism and called upon the actors not to undermine civil rights in these efforts (2001, 2002), paying particular attention to the consequences of international cooperation with the US (2002).

3. Member States, actors or incidents singled out

Due to the considerably intensified reporting on the state of signatures and ratifications of international treaties and conventions in the resolutions on 2000 onwards and due to the scope of this Briefing Paper, an exhaustive account cannot be provided. It must suffice to highlight that around thirty of such instruments are listed throughout these three resolutions, providing for each which member states have not signed and which have not ratified. This stands in contrast to around five instruments mentioned in the resolutions of 1993 to 1999.

The following list therefore only provides a thematic account of other incidents addressed to individualized member states or actors that faced concern or calls for actions.

Chapter Human Dignity:

- Abolish death penalty: EL (2001).
- Concern about Amnesty International report titled: 'Greece: Ill-treatment, shootings and impunity' (2001).

⁵⁸ European Parliament, Report, A5-0223/2001 REV, 21.6.2001, p. 24

⁵⁹ OJ C 65 E, 14.3.2002, p. 350, paras.1-3.

- Devise a balanced policy towards trafficking in human beings, focusing not only on prosecution but also protection and rehabilitation of victims: member states in particular EL (2001).
- Consequences of international cooperation with the US as regards data protection standards and detention condition for Community nationals at Guantanamo Bay (2002).
- Overcrowding of prisons: UK, PT, BE, IT, FR (2002).
- Period of detention of minors in prisons, secure re-education centres or holding centres for immigrants: BE, FR, LU, UK (2002).
- Confinement of very old prisoner or such who suffer from serious and incurable diseases: FR (2002).
- Supervision of psychiatric hospitals: BE, DK (2002).

Chapter Freedoms:

- Conscientious objection and duration of alternative civilian service: EL (2000, 2001, 2002) and FI (2002).
- Violations of freedom of expression and movement, right of due process and physical integrity during G8 meeting in Genoa: IT (2001).
- Media concentration and danger of de facto monopolies: IT (2001, 2002).
- Criminal law provisions on proselytism and restrictions for Muslims to build mosques and cemeteries: EL (2002).
- Situation of unaccompanied minors: AT, BE, ES, SE, IT (2002).

Chapter Equality:

- Discriminatory legislation concerning age of consent with regard to homosexual and heterosexual relationships: AT (2000) and PT, IE, EL (2002); terminate all ongoing proceedings and rehabilitate convicted persons: AT (2002).
- Discriminatory housing policies towards Roma: GR and IT (2001).
- Remaining sexual discrimination in Law on Names and membership of political parties: NL (2001).
- Difference in minimum age for marriage for young women and men: FR (2001).
- Ban for women to enter Mount Athos: EL (2001, 2002).
- Adopt a more proactive policy in order to eradicate racist behaviour: DK, EL, NL, AT, IT (2002).
- Set up a system for active gathering of data to develop anti-racism policy: EL, AT, IT (2002).
- Make it more difficult for political parties to disseminate racist and xenophobic propaganda: EL, DK, NL, AT, IT (2002).
- Racially motivated physical attacks: DE, FR, NL (2002).
- Racially motivated verbal attacks on Muslims: DE (2002).
- Racist messages on internet and football sites: IT (2002).
- Take more action to prevent violence against children: ES, BE, UK (2002).

Chapter Solidarity:

- Forced labour in prisons: DE, FR, AT, UK (2001).
- Infringement of freedom of association for foreign workers by disqualifying them from being candidates for worker councils: AT (2001, 2002) and LU (2002).
- Restrictions of the right to form trade unions, to engage in collective bargaining and to take part in collective action for certain professional groups, in particular public services: DK, DE, NL, PT, UK (2001) and IE, ES, DE, DK, FR, IT, UK (2002).
- UK for accepting discrimination against workers due to their membership of a trade union (2001).
- Great disparity of wage level between men and women: EL, ES, UK (2001).

- Forced labour as disciplinary measure in certain economic areas: BE, UK (2001).
- International rules on child labour are not being observed: IT, PT, FR, NL (2002).
- Minimum wage less than 50% of average net wage: IE, ES, EL (2002).
- Refusal to pay family allowances in cases where dependent children of migrant workers don't live on the territory of member states or impose minimum period of residence or employment requirements: AT, BE, DE, LU, IE, ES, EL (2002).
- Ensure accumulation of insurance and employment periods for migrant workers: BE, EL, DK, IE, NL, DE, FI (2002).
- Pay greater attention to public health issues: BE (vaccination rate), EL (smoking), IT and IE (occupational health), SE (inadequate medical check-ups), FR and AT (restrictions to medical care for the most disadvantaged sections of the population) (2002).

Chapter Citizenship:

- Administrative obstacles to the issuing of valid residence documents: EL (2001).
- Restrictions on free movement rights for Roma: some member states (2002).

Chapter Justice:

- Right to fair trial: FI, EL, IT (2001) and IT, SE, UK, FI, ES, EL, AT, FR (2002).
- Access to courts: BE, FR, EL, UK (2001) and IT, SE, UK, FI, ES, EL, AT, FR (2002).
- Public hearing: AT (2001).
- Principle of adversarial proceedings: DE, FR, FI, IT (2001).
- Proceedings within a reasonable time: AT, DE, ES, FR, EL, IT, LU, PT (2001) and IT, SE (2002).
- Impartial and independent tribunal: BE, FR, UK (2001).
- Right to defence: AT, BE, FR, EL, UK (2001).
- Presumption of innocence: AT (2001).
- Ne bis in idem: AT (2001).
- Alarming breaches of right to proceedings in reasonable time: IT (2001, 2002).
- Climate of impunity against police violence: AT, BE, FR, IT, PT, SE, UK (2001).

4. Positive remarks

As much more country-by-country information was gathered for the resolutions, also the positive remarks gained in volume. In particular in the resolution on 2002 it is tangible, that the rapporteur's aim was not only to give an account about what is going wrong, but also highlight what has been achieved. The state of signature or ratification of internal law instruments is once more a yardstick in this regard and the resolutions give a detailed description which member state has signed or ratified which instrument. As stated earlier, this account shall not be reproduced here. Emphasis is given, instead, on other incidents that found the EP's approval.

- Setting up of the EU Network of Independent Experts on Fundamental Rights (2001).
- Commission's decision (SEC(2001) 380/3 of 13.3.2001) to review proposals and other decisions in advance to see whether they are compatible with the Charter (2001).
- Council's proposal to ensure greater consistency between the EU's internal and external human rights policies (2001).
- Adoption of framework decision on combating human trafficking (2001).
- Ireland for removing death penalty from its constitution (2001).
- Austria for repealing § 209 of its criminal code containing a discriminatory age of consent provision concerning homosexuals (2001 and 2002).

- Austria, Greece and UK for setting up independent agencies to monitor police activities and the running of prisons (2002).
- Awareness-raising campaigns conducted by UK, Sweden, Germany, Finland, Portugal forewarning the public against the dangers of stereotyping and the Manichaeian view of a 'clash of civilisations' (2002).
- UK action to circulate to all civil servants a code of conduct to be adhered to in relations with all members of the public whatever their origin to promote equal treatment (2002).
- UK, Germany, the Netherlands, Portugal and Denmark for setting up a system for gathering reliable data for an effective anti-racism policy.
- Finnish proposal to set up a permanent European Roma forum (2002).
- Efforts by Greek authorities to introduce a Roma integration programme (2002).
- Finland for recognising the rights of transsexuals (2002).
- Belgium for allowing homosexual marriages (2002).
- Adoption of Directive 2002/73/EC on the implementation of the principle of equal treatment for men and women (2002).
- Positive efforts towards professional integration of women in Greece, Sweden, Belgium (2002).
- Laws in Denmark, Sweden, Belgium to improve position of children in court proceedings (2002).
- Several measures taken by the EU which improve accessibility to services for people with disabilities (2002).
- Adoption of Directives 2002/14/EC establishing a general framework for informing and consulting employees in the European Community and adoption of Directive 2002/74/EC which extended the protection of employees in the event of insolvency of their employer to cover part-time and temporary workers (2002).
- Adoption of Decision 1786/2002/EC on a programme of Community action in the field of public health (2002).
- Political agreement on long-term residents' directive (2002).
- Green paper on procedural rights (2002).

5. Other fundamental right resolutions since 2000

Other EP resolutions dealing either with general or specific issues related to EU fundamental rights in the period since 2000 address e.g. the following:

drafting of the EU Charter of Fundamental Rights,⁶⁰ its impact and future status⁶¹ and compliance with it,⁶² the role of national and European institutions in the promotion and protection of fundamental rights including the Fundamental Rights Agency,⁶³ the progress made in each year towards the establishment of the area of freedom, security and justice (AFSJ),⁶⁴ the future AFSJ and measures to enhance its legitimacy and effectiveness,⁶⁵ the European arrest warrant,⁶⁶ alleged CIA activities on European territory,⁶⁷ immigration and asylum policy,⁶⁸ protection of minorities and anti-discrimination policies,⁶⁹ freedom of expression and information,⁷⁰ freedom of expression on the internet,⁷¹ freedom of expression

⁶⁰ OJ C 377, 29.12.2000, p.329.

⁶¹ OJ C 300 E, 11.12.2003, p. 432.

⁶² P6_TA(2007)0078, 15.3.2007.

⁶³ OJ C 117 E, 18.5.2006, p. 242.

⁶⁴ See e.g. for the year 2001 OJ C 284 E, 21.11.2002, p. 292.

⁶⁵ OJ C 166 E, 7.7.2005, p. 58.

⁶⁶ OJ C 291 E, 30.11.2006, p.244.

⁶⁷ P6_TA(2007)0032, 14.2.2007.

⁶⁸ OJ C 38 E, 12.2.2004, p. 242.

⁶⁹ OJ C 124 E, 25.5.2006, p. 405.

⁷⁰ P5_TA(2004)0373, 22.4.2004.

⁷¹ P6_TA(2006)0324, 6.7.2006.

and respect for religious beliefs,⁷² equality between women and men,⁷³ homophobia in Europe,⁷⁴ trafficking of women and children,⁷⁵ to name a few and to illustrate the EP's range of activity.

C. CONCLUSION: IMPACT AND OBSERVATIONS

Turning finally - in this concluding chapter - to the question of the impact of the EP resolutions synthesised above, it is self-explanatory that it is here not possible to come even close to the results and recommendations generated by the extensive impact study carried out with respect to the EP human rights activities *outside the EU*⁷⁶. One recommendation that shall be put forward, therefore, is to consider whether it might not be advisable to commission such an impact study covering the EP fundamental rights activities *inside the EU*. Such a study could build on the existing one and bring the respective results together. The possible coming into force of the Reform Treaty in 2009, leading – most likely – to a legally binding EU Fundamental Rights Charter, might serve as a good occasion to revise the EP's overall Human Rights activities, drawing from the results and recommendations of the impact studies.

Yet, even without being able to rely on a detailed impact study, it is possible and legitimate to conclude that – in spite of the constructive criticism raised by observers and NGOs⁷⁷ – the EP fundamental rights resolutions do play an important role in various contexts:

- In the postulation and formulation of an EU fundamental rights policy;
- In the promotion and application of the EU Charter of Fundamental Rights;
- In holding accountable EU institutions and member states ;
- In the formulation of an - ideally – supranational EU wide standard of fundamental rights agreed upon in a public and accountable manner by a democratically legitimised body.

The particular strength of the resolutions lies in the fact that the reporting takes place in the retrospective and not 'event-driven'. By following-up with previous recommendations and resolutions in a structured and consistent manner, the EP is not only exerting considerable political pressure but brings itself furthermore in a position to highlight and conceive long-term developments and draw conclusions from these for its strategy on current and future questions.

In this respect, it is elucidating to observe, for example, that concerns expressed by the EP on the compliance with international asylum standards as contained in the Geneva Convention go well back to its first resolutions. However, judging from current EU and member states activities in this policy area, there is no evidence whatsoever indicating any improvement. In contrast: while the EP 'noted with profound concern' in its 1995 resolution that 133 refugees have died while attempting to enter EU territory, present estimations say that up to 10.000 are believed to have drowned in the last five years.⁷⁸ A close monitoring of this development can help to better contextualise and perceive present policy initiatives, challenges and struggles.

⁷² OJ C 290 E, 29.11.2006, p. 399.

⁷³ P6_TA(2006)0039, 2.2.2006.

⁷⁴ P6_TA(2007)0167, 26.4.2007.

⁷⁵ P6_TA(2006)0005, 17.1.2006.

⁷⁶ European Inter-University Centre for Human Rights and Democratisation (EIUC), *Beyond Activism – the impact of the resolutions and other activities of the European Parliament in the field of human rights outside the European Union*, October 2006.

⁷⁷ See supra Fn.10.

⁷⁸ BBC News, *Left at sea hanging on a tuna net*, 10.9.2007, <http://news.bbc.co.uk>.

Asylum policy, however, is just an example. The observation is valid for many of the issues addressed in the resolutions.

Finally, although the annual EP resolutions don't carry immediate legal weight, it would be erroneous to consider them legally void. They do have a potential indirect legal effect by encouraging human rights defenders and individuals to bring perceived fundamental rights violations before the courts. In addition, the resolutions might serve as *persuasive authority* in the preparation and defense of the claim.

Two examples from Austria shall serve as examples of this effect:

- 1.) in the matter on discriminatory criminal law provisions on age of consent addressed by the EP resolutions since 1995, the European Court of Human Rights in 2003 finally ruled against Austria acknowledging a violation of Article 14 (prohibition of discrimination) with Article 8 (respect for private life) ECHR;⁷⁹
- 2.) in the matter of foreign workers being deprived of the right to stand as candidate in worker councils, criticised by the EP in its 2001 and 2002 resolutions, the European Court of Justice declared the Austrian legislation in 2004 to be in violation of European law.⁸⁰

All this highlights, that the EP annual resolutions do play a vital role in the realisation and protection of fundamental rights vis-à-vis EU institution and member states. The EP is therefore well advised to continue with its reporting practice, applying a systematic approach based on objective data. The task, however, has not become easier. Latest enlargements have lead to an increased diversification of conceptions and opinions on many of the issues regularly addressed in previous resolutions. The heated debate on the European Day against the Death Penalty does provide a telling illustration of the conflicts that might lie ahead. This, however, should not discourage. Quite the opposite: it underlines the need to develop, reiterate and defend a common, EU wide understanding of the commitment undertook in the preamble of the Treaty on European Union: to be attached to 'the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.'

⁷⁹ European Court of Human Rights, judgments of 9.1.2003, application numbers 39392/98 and 39829/98 (L. and V. v. Austria) as well as 45330/99 (S.L. v. Austria).

⁸⁰ European Court of Justice, judgment of 16 September 2004 in Case C-465/01: *Commission of the European Communities / Republic of Austria*.