

EUROPEAN PARLIAMENT

Working Documents

1982-1983

13 September 1982

DOCUMENT 1-547/82

Report

drawn up on behalf of the Legal Affairs Committee

on the Memorandum from the Commission of the
European Communities on the accession of the
European Communities to the Convention for the
Protection of Human Rights and Fundamental
Freedoms (Doc. 160/79 - COM(79) 210 final)

Rapporteur: Mr G. GONELLA

OR: It.

1.2.2

On 4 May 1979 the European Parliament was requested by the Commission to deliver an opinion on its Memorandum. At its sitting of 8 May 1979 the European Parliament referred the Memorandum to the Political Affairs Committee as the committee responsible and to the Legal Affairs Committee for its opinion.

By letter of 5 September 1979 the chairman of the Legal Affairs Committee requested the President of Parliament to reverse the roles of the two committees in this matter.

As a result of a request from the enlarged Bureau, Mr RUMOR, chairman of the Political Affairs Committee and Mr FERRI, chairman of the Legal Affairs Committee, agreed on 19 June 1980 that the Legal Affairs Committee would be the committee responsible and the Political Affairs Committee would draw up an opinion; the enlarged Bureau noted this agreement at its meeting of 10 July 1981.

Mr GONELLA was appointed rapporteur on 26 November 1980.

At its meeting of 30/31 March 1982 the Legal Affairs Committee considered a working document prepared by the rapporteur, whom it then instructed to draw up a draft report.

The Legal Affairs Committee considered this draft report at its meeting of 26/27 May 1982 and adopted the motion for a resolution by 12 votes for and 1 against with 4 abstentions at its meeting of 12/13 July 1982.

The following participated in the vote: Mr Chambeiron, vice-chairman and acting chairman; Mr Turner, vice-chairman; Mr Gonella, rapporteur; Mrs Baduel Glorioso (deputizing for Mrs Cinciari Rodano), Mr Balfe (deputizing for Mr Alfonsi), Mr Del Duca (deputizing for Mr Goppel), Mr Donnez (deputizing for Mr Visentini), Mr Ferri, Mr Forth (deputizing for Mr Dalziel), Mr Geurtese, Mr Janssen van Raay, Mr Malangré, Mr Megahy, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade and Mr Vié.

The opinion of the Political Affairs Committee is annexed.

C O N T E N T S

| | <u>Page</u> |
|---|-------------|
| A. Motion for a resolution | 5 |
| B. Explanatory statement | 7 |
| I. PREFACE | 7 |
| II. THE PROTECTION OF FUNDAMENTAL RIGHTS | 10 |
| (A) In the context of the European Convention .. | 10 |
| (B) At European Community level | 14 |
| (C) Conflicts between Community law and the European Convention | 16 |
| III. CONSIDERATIONS AS TO THE ADVISABILITY OF ACCESSION TO THE CONVENTION | 19 |
| IV. SOME IMPORTANT STATEMENTS ON THE MATTER | 22 |
| V. THE LEGAL BASIS OF ACCESSION | 24 |
| VI. TECHNICAL AND PROCEDURAL ASPECTS | 27 |
| VII. THE INCORPORATION OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS INTO THE EUROPEAN CONVENTION ON HUMAN RIGHTS | 28 |
| VIII. CONCLUSIONS | 29 |
| Opinion of the Political Affairs Committee | 31 |

A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

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

The European Parliament,

- having been consulted by the Commission on the Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms (Doc. 160/79),
- having regard to the report tabled by Mr JOZEAU-MARIGNE on behalf of the Legal Affairs Committee on the motion for a resolution (Doc. 103/71) tabled by Mr LAUTENSCHLAGER, on behalf of the Socialist Group, concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted (Doc. 297/72),
- having regard to the report tabled by Mr JOZEAU-MARIGNE on behalf of the Legal Affairs Committee on the report from the Commission of the European Communities (COM(76) 37 final) on the protection of fundamental rights (Doc. 321/76),
- having regard to the report tabled by Mr SCELBA on behalf of the Political Affairs Committee on the accession of the European Community to the European Convention on Human Rights (Doc. 80/79),
- having regard to the Declaration on the European identity made by the Heads of State or of Government of the Community Member States in Copenhagen in December 1973,
- having regard to the Joint Declaration by Parliament, the Council and the Commission of 5 April 1977 on respect for fundamental rights¹,

¹ OJ No. C 103, 27.4.1977

- having regard to the Declaration on democracy made by the European Council in Copenhagen in April 1978,
 - having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 1-547/82),
1. Reaffirms its determination to strengthen and increase the protection of the rights of the individual in the formulation and development of Community law;
 2. Stresses that the accession of the Community to the European Convention on Human Rights will demonstrate to the outside world and to public opinion in the Community Member States the determination of the Community Institutions increasingly to reinforce the role of the Community as a Community founded on the rule of law;
 3. Expresses the conviction that accession will consolidate the principles of parliamentary democracy and will strengthen the protection of fundamental rights in the Community;
 4. Considers it essential, in connection with the accession of the Community to the European Convention on Human Rights, that all Member States should allow individual actions to be brought before the Commission of Human Rights;
 5. Considers Article 235 of the EEC Treaty to be the appropriate legal basis for accession;
 6. Realizes that accession will involve considerable constitutional, political, legal and technical difficulties, but expresses its confidence that the Commission will strive to overcome these difficulties in practice;
 7. Requests the Commission to submit at the earliest opportunity to the Council a formal proposal on the accession of the Community to the European Convention on Human Rights, after duly consulting the Court of Justice of the Community and in the light of developments in the situation, and to give a formal undertaking to consult the European Parliament again before opening negotiations on accession;
 8. Further requests the Commission to ask to take part in the current discussions within the Council of Europe on the incorporation into the Convention of other fundamental social, economic and cultural rights;
 9. Instructs its President to forward this resolution to the Council and the Commission and, for information, to the Court of Justice of the Community and the Parliaments of the Member States.

EXPLANATORY STATEMENTI. PREFACE

1. The Treaties establishing the European Communities were drawn up to pursue short or long-term objectives which are mainly economic; however, it should be pointed out that their preambles contain more ambitious and far-reaching objectives such as the preservation of peace and liberty, the constant improvement of living conditions and the achievement of an ever closer union among the peoples of Europe.

2. It is clear from this that the various Community institutions were unable to disregard the protection of fundamental human rights, which form the basis of any civilized society.

This is demonstrated by the declaration on the European identity made by the Heads of State and of Government of the Member States of the Community in Copenhagen in 1973 in which they confirmed their will to safeguard the principles of representative democracy, of the rule of law, of social justice and of respect for human rights, which constitute fundamental elements of the European identity. Once again, in April 1978, the European Council of Ministers stated in Copenhagen that respect for and maintenance of representative democracy and human rights were essential elements of membership of the European Communities.

In addition, on 5 April 1977 the Community's political institutions - the Parliament, Council and Commission - solemnly stated their views on the need to ensure the respect of fundamental rights in a joint declaration¹ in which, after restating the principle that the Treaties establishing the European Communities are based on the principle of respect for the law, they emphasized the importance which they attach to the protection of fundamental rights as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and ratified by all Member States.

3. However, behind these statements of principle lie several legal and jurisprudential lacunae.

It is useful to recall in fact that in the Treaties establishing the European Communities there is no coherent and complete set of provisions defining and protecting fundamental rights beyond the statements of principle mentioned above. Those Treaties only contain a small number of provisions which bear directly on the protection of fundamental rights.

¹ OJ No. C 103 of 27 April 1977

For example, in the EEC Treaty, Articles 7 (a general prohibition on discrimination on grounds of nationality), 48 (freedom of movement for workers), 52 (freedom of establishment for self-employed persons), 59 (freedom to provide services), 117 (improved working conditions and an improved standard of living for workers), 119 (equal pay for men and women) and 220 (protection of persons and protection of rights) may be considered to have such a bearing.

These provisions are certainly not adequate to protect the rights of individuals.

The case-law of the Court of Justice of the European Communities has, especially as regards the most recent judgments in this field, mitigated the negative effects of the lack of express provisions.

4. However, the work of the Court of Justice comes up against the limits laid down by substantive Community law. Hence there is a need, which has been pointed out by various parties and made topical by recent judgments of several constitutional courts, to complete and supplement the legal mechanisms of protection.

This is not a relatively new problem: in a resolution dating from 1967 the European Parliament had already requested the committees responsible, particularly the Legal Affairs Committee, to submit concrete proposals aiming to provide adequate protection for private individuals by means of new provisions of Community law¹. Even before that, this problem had been discussed in legal writings.

The action taken by the European Parliament became more incisive and pressing from 1973. The Jozeau-Marigné report drawn up on behalf of the Legal Affairs Committee on the safeguard of the fundamental rights of citizens of the Member States as Community law is created² is particularly important since that report is at the origin of the report submitted by the Commission to the European Parliament and the Council on 4 February 1976 on 'the protection of fundamental rights as Community law is created and developed'³. This report of the Commission was accompanied by an interesting study on the problems of drawing up a catalogue of fundamental rights for the European Communities drawn up by Professor R. Bernhardt, Director of the Max-Planck-Institute for Foreign Public Law and International Law, Heidelberg, on which subject the Legal Affairs Committee will have to give its opinion later on.

¹Resolution of 10 May 1967 (OJ 1967 No. 103 of 2.6.1967), on the basis of a report drawn up by Mr Derringer (Doc. 39/67)

²Doc. 297/72

³See Supplement 5/76 to the Bulletin of the European Communities

The European Parliament stated its views on that Commission report on 12 October 1976¹ on the basis of a report drawn up by Mr Jozeau-Marigné on behalf of the Legal Affairs Committee²; however, on that occasion the Parliament merely requested that the political institutions of the Community should immediately adopt the joint declaration referred to in paragraph 2 above.

5. The specific question of the accession of the Communities to the European Convention was raised at the Round Table on 'special rights and the charter of the rights of the citizens of the European Community' organized by the European Parliament in Florence from 26 to 28 October 1978, in which many Members of Parliament and university lecturers took part³.

The adoption by the European Parliament on 22 April 1979 of a resolution on the accession of the European Community to the European Convention on Human Rights⁴ on the basis of a report drawn up by Mr Scelba on behalf of the Political Affairs Committee⁵ marked a decisive step towards such accession. That resolution states expressly that the European Parliament

- '1. Is in favour of the accession of the European Community to the European Convention on Human Rights;
.....
3. Calls on the Council and Commission, in close cooperation with the European Parliament:
 - (a) to make immediate preparations for the accession of the European Community to the European Convention on Human Rights,'.

This political statement of opinion makes quite clear the attitude of the European Parliament in this respect.

6. It is clear that at that point it only remained to consider the legal and procedural aspects of accession. The preparatory work in this connection was completed by the Commission, the results of which are explained in its Memorandum of 2 May 1979 on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms⁶.

¹ See OJ No. C 259 of 4.11.1976

² Doc. 321/76

³ See Records of the Round Table, published by the Directorate-General for Research and Documentation, September 1979

⁴ OJ No. C 127 of 21.5.1979

⁵ Doc. 80/79

⁶ Doc. 160/79

The Legal Affairs Committee must now prepare the opinion of the European Parliament on that memorandum. Naturally the opinions which have been expressed in other quarters, particularly in the Parliamentary Assembly of the Council of Europe, which has an understandable interest in the question, will also be taken into consideration.

7. However, before going on to deal with the specific issue of accession, it seems appropriate to review the systems for the protection of fundamental rights existing within the framework of the Convention itself and at Community level and to consider possible conflicts between Community law and the Convention, so as better to put into perspective the relationship between the two systems and the most appropriate solutions to the problems which arise.

II. THE PROTECTION OF FUNDAMENTAL RIGHTS

(A) In the context of the European Convention

8. The European Convention on Human Rights was drawn up within the Council of Europe. It was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953. All the Member States of the Communities have deposited an instrument of ratification of that Convention.

The Convention was later supplemented by 5 protocols; the first extends the scope of the rights protected by the Convention, the second confers upon the European Court of Human Rights competence to give advisory opinions in certain circumstances, the third amends Articles 29, 30 and 34 of the Convention, the fourth secures certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto and the fifth amends Articles 22 and 40 of the Convention.

9. The rights and freedoms protected are as follows:

- the right to life (Article 2)
- the right not to be subjected to torture or to inhuman or degrading treatment or punishment (Article 3)
- the right not to be held in slavery or servitude (Article 4)
- the right to liberty and security of person (Article 5)
- the right to good administration of justice (Article 6)
- the right that the criminal law shall not be retroactive (Article 7)

- the right to respect for private and family life, the home and correspondence (Article 8)
- freedom of thought, conscience and religion (Article 9)
- freedom of expression (Article 10)
- freedom of peaceful assembly and freedom of association (Article 11)
- the right to marry and to found a family (Article 12)
- the right to an effective remedy before a national authority where the rights and freedoms protected by the Convention have been violated (Article 13)
- the right to enjoyment of these rights and freedoms without discrimination on any ground (Article 14)
- the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1)
- the right to education (Article 2 of Protocol No. 1)
- the right to free elections and a secret ballot (Article 3 of Protocol No. 1)
- the right not to be deprived of liberty merely on the ground of inability to fulfil a contractual obligation (Article 1 of Protocol No. 4)
- the right to liberty of movement and freedom to choose one's residence (Article 2 of Protocol No. 4)
- the right of a national not to be expelled from the national territory and the right to enter the territory of the State of which one is a national (Article 3 of Protocol No. 4)
- the prohibition on collective expulsion of aliens (Article 4 of Protocol No. 4).

10. It should be pointed out that the protection of the rights and freedoms listed above is not absolute. In fact, the enjoyment of some of these is subject to certain limitations which are necessary for reasons of public order, security of the State or protection of the rights and freedoms of others. For example, the right to life is not absolute where it is absolutely necessary to defend any person from unlawful violence; in the same way, a person may be deprived of his liberty where he has been convicted by a competent court, and freedom of expression may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law or necessitated by overwhelming collective interests.

11. The chief interest of the Convention lies in the fact that it gives a list of human rights, provides for an international judicial system to guarantee them and allows individual citizens access to that judicial system.

The institutions of the judicial system created by the Convention are the European Commission of Human Rights and the European Court of Human Rights; however, the Committee of Ministers of the Council of Europe also intervenes in certain cases. The essential features of those institutions are listed briefly below.

(a) The European Commission of Human Rights

12. This Commission consists of a number of members equal to that of the Contracting Parties. No two members of the Commission may be members of the same State (Article 20).

Its members are elected by an absolute majority by the Committee of Ministers of the Council of Europe from a list of names drawn up by the Bureau of the parliamentary Assembly of the Council of Europe on the basis of three candidates put forward by each of the national parliamentary delegations (Article 21).

Their term of office is six years (Article 22). The Commission's jurisdiction may be considered from the point of view of limitation of time (rationa temporis), subject-matter (ratione materiae), territory (ratione loci) and persons (ratione personae):

- jurisdiction ratione temporis

The Commission may only deal with issues that have arisen after the date of entry into force of the Convention for each Contracting Party.

- jurisdiction ratione materiae

The Commission may only deal with cases of breach of the provisions of the Convention and the protocols thereto.

- jurisdiction ratione loci

The jurisdiction of the Commission extends to actions which have occurred on the territory of the Contracting Parties and, by means of an express declaration, within dependent territories of those Contracting Parties.

- jurisdiction ratione personae

Any Contracting Party (Article 24) or person, nongovernmental organization or group of individuals may address a petition to the Commission provided that the Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions (Article 25)¹.

¹ At present, only one Community Member State does not recognize this competence.

The procedure before the Commission is in two stages; the first stage relates to the admissibility of the petition, whilst in the second, the Commission examines the petition which has been declared admissible.

Three of the conditions for the admissibility of the petition are of fundamental importance: the action complained of must be that of a public authority, a petition may only be addressed to the Commission after all domestic remedies have been exhausted and may only be submitted by the person who has been directly affected.

Where a petition has been declared admissible, the Commission undertakes an examination and attempts to secure a friendly settlement of the matter. If it is not possible to reach a settlement, the Commission draws up a report in which it states, with a reasoned opinion, whether or not the State concerned has been in breach of its obligations under the Convention. This report is transmitted to the Committee of Ministers and the State concerned.

The procedure within the Commission finishes at this stage. In other words the Commission does not have the power to deliver a decision: its duties cease when it draws up its opinion, which becomes the starting-point for a further stage of the procedure.

13. At this point there are two possibilities; the case may be referred within a period of three months by the Commission itself or by one of the Contracting Parties concerned to the European Court of Human Rights, or it may not be so referred. In the latter case, it is for the Committee of Ministers to take a decision. However, the subsequent developments will be described below when the procedure before the Committee of Ministers is described.

(b) The European Court of Human Rights

14. The Court consists of a number of judges equal to that of the Members of the Council of Europe.

The judges are elected by the parliamentary Assembly of the Council of Europe from a list of persons nominated by the Members of the Council of Europe (Article 39). Their term of office is nine years (Article 40).

As stated above, only the European Commission of Human Rights or one of the Contracting Parties concerned may bring a case before the Court after the Commission has submitted its report on a specific case (Article 48).

The procedure before the Court may end in the following ways:

- friendly settlement,
- removal from the register,
- or judgment.

In its judgments, which must state the reasons upon which they are based, the Court determines whether or not the Convention has been violated. Judgments are final and the Committee of Ministers supervises their execution (Article 54).

(c) The Committee of Ministers

15. The Committee of Ministers is not a body created expressly by the Convention, but is identical to the ministerial institution of the Council of Europe. It takes action in two cases, in other words, where the matter is not referred to the European Court of Human Rights within a period of three months from the date on which the report was submitted by the Commission of Human Rights, and where it supervises the execution of the judgments of the Court.

In the first case, where, on the basis of the report, it finds that there has been a breach of the rights protected by the Convention, the Committee of Ministers prescribes a period during which the State concerned must take the requisite measures. If the State concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers decides what effect is to be given to its original decision and publishes the report. The Contracting States undertake to regard the decisions of the Committee of Ministers as binding on them (Article 32).

It is worth pointing out that when it acts as a judicial body within the context of the Convention, the Committee of Ministers takes its decisions by a two-thirds majority, whereas normally it decides unanimously when it takes decisions as an intergovernmental body of the Council of Europe.

(B) At European Community level

16. The European Communities have replaced the Member States in the exercise of certain powers, particularly in the economic and social spheres. For this reason, within the framework of those powers the Community institutions are clearly responsible for the protection of human rights.

The Treaties establishing the European Communities have not however provided for a judicial system comparable to that established by the European Convention on Human Rights. The Commission and the Court of Justice ensure the protection of human rights as far as violations of rights derived from Community acts are concerned.

Under the Treaties establishing the European Communities, the Court of Justice of the European Communities is responsible for ensuring that, in the interpretation and application of the Treaties themselves, the law is observed¹.

Faced with this concise wording, the Court initially acted with some caution in its decisions relating to the protection of the rights of individuals. Subsequently, it radically altered its position, ruling that the constitutional guarantees provided by the Member States with regard to human rights and fundamental liberties must be taken into consideration whenever the Treaties establishing the European Communities are interpreted², and that international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories can supply guidelines which should be followed within the framework of Community law³. Moreover, in a later judgment, the Court made express reference to certain provisions of the European Convention on Human Rights⁴.

In respect of the guarantees offered by Community law, the Court has established itself as the supervisory body vis-à-vis both the Member States and the other Community institutions as far as human rights are concerned. This development is important insofar as the judgments of the Court are enforceable within the territory of the Member States of the Community, even if for various reasons some Member States may be slow to conform to those judgments⁵.

17. It should nevertheless be pointed out that private individuals do not have an absolute and full right of action. In fact the provisions of the EEC Treaty for example conferring this right are very few and far between. These provisions are, in particular, the second paragraph of Article 173 (which permits a direct action contesting Community acts which are of direct and individual concern to the applicant), Article 175 (action for failure to act), Article 184 (which enables a plea of illegality to be brought where a Community regulation is contested), Article 215

¹ ECSC Treaty, Article 31: EEC Treaty, Article 164 and EAEC Treaty, Article 126

² Judgment of 14 December 1970 in Case 11/70, Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel, [1970] ECR 1125

³ Judgment of 14 May 1974 in Case 4/73, J. Nold, Kohlen und Baustoffgrosshandlung v Commission of the European Communities, [1974] ECR 491

⁴ Judgment of 28 October 1975 in Case 36/75, Roland Rutili v Minister for the Interior, [1975] ECR 1219

⁵ See, in this connection, the working document by Mr SIEGLERSCHMIDT on the responsibility of Member States for the application of Community law (PE 77.275).

(contractual and non-contractual liability of the Community institutions) and finally Article 177 (preliminary ruling by the Court of Justice in proceedings pending before a national court).

18. In spite of this, the Court of Justice has developed a body of rules ensuring quite adequate protection of the fundamental rights of individuals against the legislation adopted by the Communities.

The Court of Justice has in this respect based itself on the classic principle of legal interpretation that a special rule (which is represented by the Treaties establishing the Communities) may not derogate from the general rule (the constitutions and legislation of the Member States, which are inspired by the same principles) without an express provision to the contrary.

(C) Conflicts between Community law and the European Convention

19. The problem of the conflicts between Community law and the European Convention on Human Rights has been treated in depth by Robert Lecourt, former President of the Court of Justice of the European Communities, in a report submitted to the Colloquium on the European Convention on Human Rights in relation to other international treaties for the protection of human rights, organized jointly by the Greek Government and the Secretariat General of the Council of Europe in September 1978 in Athens.

It seems useful, in view of the authority of the author, to reproduce below the salient passages of that report.

20. The European Convention on Human Rights and the Treaties establishing the European Communities have established two distinct but not concurrent European legal orders.

Nevertheless, whilst the Convention's sole purpose was to safeguard the rights of individuals, the Treaties establishing the European Communities did not make express reference to human rights apart from certain provisions here and there. Apparently this is explained by the fact that the objectives of the Treaties establishing the European Communities, though chiefly of an economic nature, already gave individuals specific legal remedies.

Moreover, the Member States of the Communities were bound to comply, as regards the protection of fundamental rights and liberties, with strict constitutional rules.

In practice, however, the possibility of conflicts between the system set up by the European Convention, the Community system and the national legal orders continues to exist as regards the protection by the courts of fundamental rights.

21. In general, the conflicts between Community law and the Convention may occur at three levels:

- (a) as to the rights which are subject to protection;
- (b) as to interpretation; and (c) as to the judicial remedies.

(a) Conflicts as to the rights which are the subject of protection

22. The Community system and the system set up by the European Convention have many points of contact.

In fact the Community treaties whose objectives, as has been said, are chiefly economic, directly affect individuals through their economic interests. Moreover, it is to individuals that the rights apply when the Treaties establishing the European Communities guarantee them freedom of movement (Article 48 et seq. of the EEC Treaty), establishment (Article 52 et seq. of the EEC Treaty) and to provide services (Article 59 et seq. of the EEC Treaty). It is clear that those liberties imply a prohibition against discrimination, the guarantee of the rights relating to family life and the safeguard of trade union rights.

In addition to the provisions of the Treaties establishing the European Communities, the regulations, directives and conventions and other Community acts also create rights.

Of the provisions of the European Convention which have points of contact with Community law, we may cite Article 5 which relates to the right to liberty and security of person and which may be rendered valueless by restrictive measures adopted by one Member State against nationals of other Member States, Article 8 which concerns the right to respect for one's private and family life, Article 11, which relates to freedom of association, including trade union rights, and Article 14 which prohibits any discrimination based on sex, race, language, religion, political opinion, nationality or any other grounds.

(b) Conflicts as regards interpretation

23. The risks of conflict are greater as regards the interpretation both of provisions and concepts as well as of the restrictions which are sometimes placed on the enjoyment of the rights conferred on individuals in view of the fact that the two legal systems in question have distinct judicial bodies.

More precisely, a conflict as to interpretation of the provisions may arise whenever a plaintiff attempts to obtain an extensive interpretation of specific provisions on the basis of the imprecise wording of the provisions of the European Convention.

The differences of opinion between judicial bodies as to the substance of one and the same principle may be more obvious. Thus the principles of non-discrimination and proportionality, which are not precisely defined, may lead to conflicting or any any rate not precisely compatible interpretations.

Finally, there may be divergent interpretations in relation to the 'necessary' restrictions imposed on the rights guaranteed, for example restrictions on grounds of public morality, public order or public safety.

(c) Conflicts as regards judicial remedies

24. It is clear that whenever a Community measure is contested for incompatibility with the European Convention, there are real possibilities of conflicts between the two judicial systems.

25. In such circumstances, if the measure is addressed to the Member States, the author of the measure (normally the Council) may only be brought before the Court of Justice under Article 173 of the EEC Treaty. It is therefore for that court to guarantee the rights protected by the European Convention.

Legal writers however leave open the question whether proceedings may be brought before the Strasbourg Court of Human Rights against a Member State of the Communities on the ground that it played a part in the formulation of the Community measure.

26. If the Community measure is addressed to individuals, they have the right in certain cases to bring an action before the Court of Justice. The power to bring an action is given to individuals, as already indicated in paragraph 17 above, under Article 173 of the EEC Treaty (review of the legality of acts), Article 175 (action for failure to act), Article 184 (plea of illegality), Article 177 (preliminary ruling by the Court of Justice, but only within the context of proceedings pending before a national court) and Article 215 (contractual and non-contractual liability).

In this case, the sole institution which has jurisdiction is the Court of Justice.

If, on the other hand, there is no power to bring a direct action and the person concerned starts proceedings before a national court, a conflict between the two European courts is possible. In fact, having exhausted the domestic remedies, if necessary after a preliminary ruling has been given by the Court of Justice, the person concerned may in theory bring an action before the Strasbourg Court with the risk that judgments of the latter Court may diverge from the case-law of the Court of Justice.

III. CONSIDERATIONS AS TO THE ADVISABILITY OF ACCESSION TO THE CONVENTION

27. In its Memorandum, the Commission of the European Communities states the need for prompt accession to the European Convention, in view of the fact that organized protection of human rights and fundamental liberties at Community level does not appear to be attainable in the short term.

Your committee shares this view. It is clear in fact that the best way of protecting fundamental rights is to insert in the Treaties establishing the European Communities a catalogue of those rights. However, progress towards this objective will not be short or easy in view of the different attitudes of the Member States on this subject at present and of the consequent obstacles to a revision of the Treaties establishing the European Communities.

28. The other arguments adopted by the Commission in support of accession are the following

- (a) the strengthening of Europe's image as an area of freedom and democracy;
- (b) the strengthening of the protection of fundamental rights in the Community;
- (c) the strengthening of institutions.

(a) The strengthening of Europe's image as an area of freedom and democracy

29. The Commission takes the view that the accession of the Community as such to the European Convention is clearly desirable in that it would also consolidate the ideals of democracy and freedom beyond the Community and would demonstrate clearly the political will of the Community actually to give effect to those ideals by making itself legally bound to observe a specific catalogue of fundamental rights.

(b) The strengthening of the protection of fundamental rights in the Community

30. The Commission claims that this strengthening would be a result of the right accorded to individuals to bring an action directly before the legal authorities in Strasbourg once the options provided under the Community Treaties have been exhausted.

(c) The strengthening of institutions

31. In the Commission's opinion, by its accession, the Community as an international institution would be able to refute any criticisms of lacunae or deficiencies in connection with fundamental rights. In fact, it would be able to show that these rights are actually protected by its formal obligations under the European Convention as well as by the Court of Justice of the European Communities.

32. Your committee endorses these arguments which have been summarised here for the sake of brevity. For further details reference should be made to the Commission's document, in particular to Chapter IV of the Memorandum.

33. It should be added that the accession of the Community would have two other considerable advantages.

First, it would make the provisions of the Convention applicable - if only in the case of Community legislation - at national level in those countries (Denmark, Ireland and the United Kingdom) in which they do not have the same status as domestic law.

Secondly, the Community, and particularly the Commission, would be able to participate in the bodies established by the Convention and also to intervene directly in proceedings relating to Community problems and thus to defend the interests of the Community.

34. It should be stressed that various arguments have been put forward against the advisability of accession; however, as has been pointed out in various quarters, the difficulties and problems which would confront accession could be overcome as long as the political will of the Member States of the Community existed.

35. Some of the objections which have been made are set out in Chapter V of the Commission's Memorandum.

36. In particular, the objection has been raised that it would be preferable to draw up a Community catalogue of fundamental rights since the rights protected by the Convention do not meet the requirements of the Community. However, as the Commission rightly points out, accession does not necessarily preclude the adoption of a Community catalogue.

On the other hand, as far as the specific requirements of the Community are concerned, the argument that the rights protected by the Convention lie outside the province of the Community because they relate to traditional political and civil rights rather than economic and social rights which are of greater interest for the Community is clearly untenable. In this respect it may indeed be pointed out that the Community cannot disregard certain traditional rights and liberties; in the same way in fact the Court of Justice has in its more recent case-law taken them into account. In addition, within the Council of Europe work is at present in progress with a view to the incorporation of social and economic rights in the European Convention.

37. Another important objection is that the Community would not be able to fulfil the obligations arising under the Convention because that Convention was designed for sovereign States. At first sight, this argument seems to be relevant. However, the simple reply is that the text of the Convention should be adapted so that the Community takes on specific obligations whilst leaving unaltered certain other obligations which are obviously those of the States.

38. Other significant objections are that the Community legal system would be upset and that in addition accession would only be reasonable if the Community permitted actions to be brought by individuals.

As regards the first point, it may be pointed out that it is right to presume that conflicts of jurisdiction and problems of hierarchy will arise between the Community judicial body and the Strasbourg authorities and that the procedure might be prolonged.

However, concrete solutions are possible as regards the resolution of the conflicts of jurisdiction and problems of hierarchy. As regards, next, the fear that the judicial proceedings will be prolonged as a result of the increase in the number of judicial bodies, this may be countered by saying that this disadvantage is offset by the increased powers given to individuals to bring actions.

It seems that the Community ought not to oppose the right of individuals to bring proceedings, especially since at present only one Member State does not recognize this right and, finding itself in an isolated position, it may well change its attitude.

39. Finally, the objection has been raised that the judicial protection provided by the Court of Justice, which has hitherto been satisfactory, makes the accession of the Community to the Convention unnecessary.

This statement has been contradicted by the facts, as shown by the well-known judgments of several constitutional courts¹. In addition, it is clear that it is primarily for the legislative and executive authorities to protect fundamental rights.

It must be pointed out, moreover, that in its case-law the Court of Justice has been selective in its observance of the Convention, disregarding, for instance, the provisions covering rights relating to judicial procedure (Article 6 et seq of the Convention).

40. For the reasons set out above, in addition to those contained above, accession is desirable even if a wide variety of difficult problems may arise.

In this connection, it is appropriate to point out that when adopting unanimously the opinion attached to this report, the Political Affairs Committee expressed its unequivocal and unconditional support for accession.

IV. SOME IMPORTANT STATEMENTS ON THE MATTER

41. The wealth of literature, the countless meetings held or to be held and the deliberations of both Community and external bodies on the subject of this report are proof enough of the considerable interest it has aroused.

Your committee considers that it would be instructive to outline below the main issues that have been raised by the Community's Economic and Social Committee, the Parliamentary Assembly of the Council of Europe and the UK House of Lords Select Committee on the European Communities.

(a) Economic and Social Committee

42. On the basis of the request made to the Community institutions by the Heads of State or Government of the Member States in October 1972 to acknowledge its right to produce own-initiative reports on all matters relating to the work of the Community, the Economic and Social Committee decided, on 29 April 1980, to publish on its own initiative an opinion on

¹ See, in this connection, the report tabled by Mr RIVIEREZ on behalf of the Legal Affairs Committee on the primacy of Community law and the protection of fundamental rights (Doc. 390/75).

the Commission's Memorandum. This opinion, drawn up on the basis of a brief and a draft report prepared by the Subcommittee on the Protection of Human Rights¹, was published in Official Journal of the European Communities No. C 353 of 31 December 1980.

In its opinion, the Economic and Social Committee, after expressing concern about a number of national court rulings prejudicial to the primacy of Community law on matters of human rights, came down in favour of Community accession in the belief that it would strengthen the legal protection of individuals vis-à-vis the legal acts of the Community institutions, especially if the right of the individual to bring actions was recognized.

The Economic and Social Committee takes the view that the negotiations on the Community's accession will inevitably come up against a whole series of legal, political and constitutional difficulties. However, none of these difficulties should be insurmountable. Furthermore, a successful conclusion to the negotiations would considerably boost the international standing of the Community.

It is worth stressing that, in its opinion, the Economic and Social Committee asserts that Community accession to the European Convention on Human Rights would be an impediment neither to the development of the Court of Justice's case-law on human rights and fundamental freedoms nor to the inclusion in the Community Treaties of a code of fundamental rights and freedoms.

(b) Parliamentary Assembly of the Council of Europe

43. In resolution No. 745 (1981) which it adopted on 29 January 1981 on the basis of a report by Mr BLENK and Mr KRIEPS² on the accession of the European Communities to the European Convention on Human Rights, the Parliamentary Assembly of the Council of Europe expressed the hope that the European Communities would very soon lodge an official application for accession to the Convention, in the firm belief that this would consolidate the links between the Community and those Member States of the Council of Europe which were not members of the Community in the area of human rights and fundamental freedoms, and thus strengthen the principles of parliamentary democracy.

(c) House of Lords Select Committee

44. A report submitted by this parliamentary committee outlines both the advantages and the disadvantages of Community accession to the European Convention on Human Rights.

¹ Both documents were drawn up by Mr Williams

² Doc. 4649 of 11 December 1980

The conclusions of this report have been misrepresented in some quarters to give the impression that the committee is opposed to accession. However, even though it is couched in somewhat vague terms, the report may be regarded as sympathetic to the idea of accession.

Admittedly, the conclusions express some doubts as to the practical value of accession in view of the magnitude of the preparatory work involved. In a somewhat colourful expression, the author of the report asks whether 'the game is worth the candle'. But it should not be assumed from this that the report takes a negative stance, since in these same conclusions it is stated that the problems to be solved, though serious, are not likely to be insurmountable if Community accession is genuinely felt to be desirable.

V. THE LEGAL BASIS OF ACCESSION

45. In its Memorandum, the Commission states that Article 235 of the Treaty establishing the European Economic Community¹ and the corresponding articles of the EAEC Treaty and the ECSC Treaty (Articles 203 and 95 respectively) must provide the legal basis for the accession of the Communities to the European Convention. These articles permit the European Community to take the necessary steps for the purpose of pursuing one of the objectives of the Treaties where the Treaties themselves do not lay down specific provisions along those lines.

According to the Commission, in view of the express requirements of public opinion, several supreme courts and a considerable trend in the writings of learned authors, Community legislation and the implementation of Community measures call for effective protection of fundamental rights at Community level. The accession of the Community to the Convention would therefore pursue this goal.

46. In this connection it should be borne in mind that in the resolution adopted on 16 November 1977 on the granting of special rights to the citizens of the European Community in implementation of the decision of the Paris Summit of December 1974², the European Parliament had envisaged an alternative legal basis. In fact, in that resolution it had requested the Commission to 'press for an agreement between the Member States, on the basis of Article

¹Article 235 of the EEC Treaty provides as follows:

'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures'.

²Doc. 346 by Mr SCALBA, OJ C 299 of 12.12.1977

235 and, possibly, Article 236 of the EEC Treaty, under the terms of which the following would be considered - in the light of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948 - as integral parts of the Treaties establishing the Communities:

- (a) the European Convention on Human Rights of 4 November 1950 and subsequent protocols,
- (b) the International Covenant on civil and political rights, adopted by the United Nations General Assembly on 19 December 1966,
- (c) the civil and political rights provided for in the constitutions and laws of the Member States'.

47. Your committee considers that the choice of Article 235 of the EEC Treaty made by the Commission of the European Communities as the basis of accession to the European Convention on Human Rights is rational and valid.

In fact, under Article 235 the unanimous decision of the Member States is necessary; in this respect each individual government retains intact its own sovereign powers of decision-making.

On the other hand, the amendment to the Convention made necessary by the accession of the Community will have to be ratified by all the Member States of the Council of Europe. It follows that at national level too the sovereignty and discretionary power of the States and their respective parliaments will be guaranteed.

On the other hand, the use of Article 236 which, as you will remember, relates to amendments to the EEC Treaty, would have the disadvantage of delaying the procedure for the ratification of the instrument of accession, given that it would first be necessary to convene an intergovernmental conference.

48. It should be noted, in order to clarify the validity of the argument that Article 235 constitutes an appropriate legal basis for accession if this is necessary, that in the joint declaration adopted by the European Parliament, the Council and the Commission on 5 April 1977, the three institutions, having stated that the Treaties establishing the European Communities are based on the principle of respect for the law - this acknowledgement includes the fundamental rights of individuals - undertook to respect that principle.

The Heads of Government of the Member States of the Community, meeting within the European Council, associated themselves with that undertaking when they stated in Copenhagen on 8 April 1978 in the famous declaration on democracy their will 'to ensure that the cherished values of their legal, political and moral order are respected and to safeguard the principles of representative democracy, of the rule of law, of social justice and of respect for human rights'.

Finally, it is worth pointing out that in the Declaration published at the close of the Conference of Heads of State or of Government of the Member States of the Community held in Paris from 19 to 21 October 1972, it was expressly stated that the participants were agreed that the fullest possible use should be made of Article 235 of the EEC Treaty.

49. Moreover, it seems to your committee that the disquisitions on the absolute need to choose a precise legal basis for each Community act are typically academic, as is shown by the fact that certain legal acts have been adopted by the Council even though they make no reference to specific articles as an appropriate legal basis.

The following are just a few examples of where this has occurred:

- the Council Regulation on Community tariff quotas for certain textile products originating in developing countries (OJ No. L 310 of 23 November 1975);
- the Council Regulation on new types of aid for young people from the European Social Fund (OJ No. L 361 of 23 December 1978);
- the Council Regulation on financial support for projects to exploit alternative energy sources (OJ No. L 93 of 12 April 1979);
- the Eighth Council Directive on turnover taxes and arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ No. L 331 of 27 December 1979);
- the Council Regulation concerning a contribution to regional development (OJ No. L 271 of 5 October 1980).

50. Your committee considers it instructive to quote an eminent jurist who, whilst acknowledging the possible complexities involved in invoking Article 235 of the EEC Treaty, affirms that 'the only way of removing them is to stress the fact that a very wide interpretation has been placed on Article 235 in Community practice and to bear in mind that this would receive decisive support from the Commission and Parliament, with their broad agreement on the objective of accession, once the Council unanimously decided to apply for accession'¹.

This thesis is borne out by a number of precedents concerning the use of Article 235 of the EEC Treaty enabling the Community to accede to international conventions in its own right:

¹ Article by Francesco CAPOTORTI in the Rivista di diritto internazionale, Milan, Year 68, No. 1, 1980.

- Council Decision of 3 March 1975 concluding the Convention for the prevention of marine pollution from land-based sources (OJ No. L 194 of 25 July 1975);
- Council Decisions of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and concluding the Convention for the protection of the Rhine against chemical pollution (OJ No. L 240 of 19 September 1977);
- Council Decision of 11 June 1981 on the conclusion of the Convention on long-range transboundary air pollution (OJ No. L 171 of 27 June 1981);
- Council Decision of 3 December 1981 concerning the conclusion of the Convention on the conservation of European wildlife and natural habitats (OJ No. L 38 of 10 February 1982).

VI. TECHNICAL AND PROCEDURAL ASPECTS

51. It seems advisable to point out first of all that the expression 'technical and procedural aspects' used as the heading for this section does not exclude considerations of a political nature.

52. In its Memorandum, the Commission outlines the more significant technical and procedural problems relating to accession.

In particular, it refers to the fulfilment by the Community of the obligations arising from the Convention (page 19), the hierarchy of the legal systems involved (page 23), the legal protection of the individual and States' reservations (page 24), Community participation in the work of the organs set up by the Convention (page 26) and the technical procedures for accession (page 34).

In addition, on pages 32 to 34 the Commission discusses three special problems, namely: the place of the European Convention in the hierarchy of the Community legal system; the effects of accession on the applicability of the convention within the legal systems of the Member States; the procedure to be followed in the event of a national court failing to fulfil its obligation to make a reference to the Court of Justice of the Community.

53. In order not to hold up unduly the deliberations of Parliament on the subject of this report, your committee will refrain for the time being from discussing these problems and assessing the merits of the solutions envisaged by the Commission. A thorough examination of these matters will be more useful when the Commission has submitted a formal proposal for accession.

Obviously this will only apply if the Commission gives a formal undertaking to consult the European Parliament again before opening negotiations on accession, in accordance with the indication given in paragraph 45 of its Memorandum.

In this connection, your committee would strongly urge the Commission to consult the Court of Justice and the bodies administering the Convention and to consider the observations on its Memorandum that have meanwhile been made by authoritative writers in the field before drawing up its formal proposal for accession, while taking particular account of the need as far as possible to avoid conflicts of jurisdiction between the legal bodies involved and the danger of differing interpretations being placed by those bodies on the provisions of the Convention.

54. Lastly, it must be emphasized that the Community can accede only on the basis of an amending protocol to the Convention, endorsed by all the Member States meeting within the Committee of Ministers of the Council of Europe and ratified by the Member States of the Council of Europe in accordance with their respective constitutional procedures, and that, on the basis of the formal proposal to be submitted by the Commission, it will be up to the Council of the European Communities to entrust the Commission with a mandate to negotiate accession.

VII. THE INCORPORATION OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS INTO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

55. The practical provisions of the European Convention on Human Rights protect certain social rights, such as the ban on forced or compulsory labour (Article 4(2)) and the right to form or join a trade union (Article 11). These and other socio-economic rights are also protected under international conventions and the European Social Charter.

56. Your committee has considered the advisability of taking advantage of the negotiations on accession to try to have a range of other social, economic and cultural rights included in the Convention.

Most members of your committee considered that such a move could greatly delay accession and that it should therefore be abandoned.

However, it so happens that discussions on the matter are currently in progress within the Council of Europe. Consequently, your committee calls on the Commission to request leave to join immediately in those discussions.

57. It should also be pointed out that a motion for a resolution tabled by Mr GEURTSSEN and Mr DELOROZOY on behalf of the Liberal and Democratic Group on extending human and social rights in the European Community (Doc. 1-476/80) has been referred to your committee. This motion will provide a further opportunity to consider the matter in hand.

The Legal Affairs Committee intends to begin to consider and deal with this motion for a resolution as soon as the report has been adopted by the European Parliament.

VIII. CONCLUSIONS

58. The political institutions of the Community have formally undertaken to protect the fundamental rights of the individual within the framework of Community legislation.

The European Council too has declared itself in favour of compliance with the principles of parliamentary democracy, the rule of law, social justice and protection of fundamental rights as forming the essential principles of the European identity.

In recent years the Court of Justice, the jurisdictional organ of the Community, has developed its case-law on the basis of the above principles.

59. To ensure a wider protection of fundamental rights at Community level, it has been suggested that the Community should accede to the European Convention on Human Rights. This view was endorsed and reaffirmed by the European Parliament in April 1979.

This accession would undoubtedly help to consolidate the reputation of democracy in the Community Member States and enable the Community to ensure respect for the legal, political and moral values to which it is committed.

In addition, accession will result in the strengthening of the legal status of the citizens of the Community in respect of decisions taken by the Community institutions and which affect them.

60. It cannot be denied that considerable difficulties of a psychological, legal, political, constitutional and technical nature hinder the process towards accession. However, even if this process takes time, it will be possible to complete it provided there exists the political will to do so.

61. The directly elected European Parliament, for its part, must confirm its own political will to support the necessary action in favour of accession and express its confidence in the approach adopted by the Commission, while urging it to submit formal proposals as soon as possible to the Council, after consulting the Court of Justice.

62. As for the incorporation of social, economic and cultural rights into the Convention, it seems advisable to await the completion of the discussions in progress within the Council of Europe, so as to avoid delaying still further the accession of the Community to the Convention currently in force.

The sooner accession is completed, the sooner the Commission will be able to participate as a full member in the relevant activities of the Council of Europe. A further, separate consideration is that the European Parliament should have the opportunity of expressing its opinion on the matter on the basis of the report to be drawn up in accordance with the motion for a resolution referred to in paragraph 57. It should also be able to decide whether to await the outcome of the activities of the Council of Europe or whether the Community should take partially independent action to guarantee human rights.

OPINION OF THE POLITICAL AFFAIRS COMMITTEE

Draftsman: Mr ZAGARI

At its sitting of 8 May 1979, the European Parliament referred the Memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms (Doc. 160/79) to the Political Affairs Committee as the committee responsible and to the Legal Affairs Committee for its opinion.

As a result of an agreement reached on 19 June 1980 between the chairman of the Political Affairs Committee, Mr RUMOR, and the chairman of the Legal Affairs Committee, Mr FERRI, it was decided that the Legal Affairs Committee would be the committee responsible and the Political Affairs Committee would draw up an opinion.

At its meeting of 22 January 1981, the Political Affairs Committee appointed Mr ZAGARI draftsman.

It considered the draft opinion at its meeting of 28 May 1982 and adopted it unanimously.

The following took part in the vote: Mr Haagerup, acting chairman; Mr Radoux (deputizing for Mr Zagari; draftsman); Mr Berkhouwer, Mr Bettiza, Mr Bournias, Mr Deschamps, Mr Ephremidis, Mr Fergusson, Mr Habsburg, Mr Hänsch, Mr Lalor, Mr Normanton (deputizing for Sir James ~~Robertson~~), Mr Plaskovitis, Mr Prag (deputizing for Lady Elles) and Mr Segre.

I. COMMUNITY ACTION AND THE PROTECTION OF FUNDAMENTAL RIGHTS

1. The accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms¹ is certainly desirable from a political point of view in spite of the complex problems to which this gives rise from the legal standpoint. The European Communities, which are kinds of international bodies designed to act within the framework of chiefly economic integration, have, indeed, increasingly been faced in their activities with the need to avoid having adverse effects on the protection of fundamental rights which nowadays, because of the Convention, constitute the irrevocable moral and cultural as well as legal heritage of the Member States and of individuals.
2. The European Communities in fact exercise a whole series of powers which have been transferred to them from the national sphere but the exercise of those powers is subject in the Member States to the limits laid down constitutionally in the interests of individuals. The European Parliament, which is an institution particularly aware of the direct or indirect effects of Community action on the lives of individuals, pointed out this lacuna in its resolution of 4 April 1973 concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted².

In that resolution the Parliament not only requested the Commission 'when drafting regulations, directives and decisions, to prevent conflicts arising with national constitutional law and to examine in particular how the fundamental rights of Member States' citizens may be safeguarded' but formally asked it to submit a report as to how it 'intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States'.

3. The Commission complied with this request by a document entitled 'The Protection of Fundamental Rights in the European Community'³ in which it set out the standard of guarantee of fundamental rights in the Community. Although it took the view that 'it is the duty of those having political authority to weigh up the reasons in favour of a formal catalogue of fundamental rights in the law of the European Communities'⁴, the Commission then rejected the idea of inserting in the Treaties, by use of the revision procedure, a list of the fundamental rights to be protected at Community level. The Commission was in fact of the opinion that the standard of protection of fundamental rights 'as this can be taken from the more recent

¹Signed in Rome on 4.11.1950 and came into force on 3.9.1953. Five protocols have been added to it.

²OJ N° C 26 of 30.4.1973, p. 7 et seq.

³Bulletin of the European Communities, Supplement 5/76

⁴Ibid, p. 68

decisions of the Court of Justice'¹ was satisfactory.

II. POSITION OF PARLIAMENT AS REGARDS ACCESSION

4. The impetus towards the present favourable attitude to the adoption into the Community legal order of the provisions of the European Convention on Human Rights was given by two later resolutions of the European Parliament attributable to the initiative of Mr Scelba.

The first resolution, of 16 November 1977², is directly linked to point 11 of the Final Communiqué of the Summit Conference held in Paris on 9 and 10 December 1974 which advocates the grant of 'special rights' (civil and political rights) to citizens of Member States resident in another Member State. In that resolution the Parliament, in addition to listing the 'special rights' which Community citizens should have, hoped that the European Convention on Human Rights of 4 November 1950 and subsequent protocols would be considered as integral parts of the Treaties establishing the Communities. In fact the 'special rights' listed in paragraph 3 of the resolution are directly derived from the general principles laid down in Section I of the Convention (the right to freedom of thought and of expression, the right to freedom of peaceful assembly and to freedom of association, the right of defence, the right to education and so forth.)

The second resolution, of 27 April 1979³, is specifically 'on the accession of the European Community to the European Convention on Human Rights'. The Parliament, referring also to the progress made by the Round Table on special rights and the Charter of rights of citizens of the European Community arranged by Mr Scelba in Florence from 26 to 28 October 1978 was 'in favour of the accession of the European Community to the European Convention on Human Rights'.

5. This clear viewpoint adopted by the outstandingly political institution of the European Communities is in harmony with the Memorandum from the Commission on the Accession of the Communities to the European Convention

¹Bulletin of the European Communities, Supplement 5/76, pp. 16 and 17

²Resolution on the granting of special rights to the citizens of the European Community in implementation of the decision of the Paris Summit of December 1974 (point 11 of the final communiqué), OJ N° C 299 of 12.12.1977, p. 26 et seq.

³OJ N° C 127 of 21.5.1979, p. 69 et seq.

on Human Rights¹. In that document the Commission, although setting out the legal, institutional and technical obstacles which will have to be overcome, reaches the conclusion that the accession of the Community to the Convention is desirable. The memorandum is at present before the Legal Affairs Committee², as the committee responsible, which is considering the complex problems raised by the accession of the Community to the Convention.

III. OBSERVATIONS AS TO THE DESIRABILITY OF ACCESSION

6. The Political Affairs Committee, in drawing up its opinion, can only confirm the previous viewpoints adopted by the European Parliament in favour of the accession of the European Communities to the Convention, once the problems relating thereto have been satisfactorily resolved.

In its progress towards European Union the Community must in fact bear in mind the fact that individuals are aware of the proper protection of fundamental rights, not only civil and political but also economic and social. The desire of the European Parliament to ensure the protection of those fundamental rights is, moreover, shown in its resolution of 10 February 1977³ which forms the basis of the 'joint declaration' by the European Parliament, the Council and the Commission on the protection of fundamental human rights. In that resolution the Parliament states that 'the idea of a charter of the fundamental rights for Community citizens remains fully valid in the context of the European union, whatever form such union may take'.

7. The opinion of the Political Affairs Committee in favour of the accession of the European Communities to the Convention is based above all on the undeniable fact that the protection of human rights has always been borne in mind by those who wished to put into effect enlightened plans for European political integration based on law and not on force and coercion.

¹Bulletin of the European Communities, Supplement 2/79

²See Working Document drawn up by Mr Gonella, PE 74.231 and PE 74.231/II

³OJ N° C 57 of 7.3.1977, p. 54

8. Article 3 of the Statute of a European Political Community, which was signed on 27 May 1952 by the six governments of the Member States of the ECSC but not ratified because of the suspicions, understandable at the time, as to its military implications, envisaged the adoption in toto of the provisions of Section I of the Convention and Protocol signed in Paris on 20 March 1952¹. The same comment should be made as regards the more recent political initiatives towards European integration.
9. The draft European Act submitted to the European Parliament at its sitting on 19 November 1981 by the Italian Minister for Foreign Affairs, Emilio Colombo, and the Minister for Foreign Affairs of the Federal Republic of Germany, Mr Genscher, is based, as stated in the recitals of the preamble thereto, on 'respect for basic rights as expressed in the laws of the Community and its Member States as well as in the European Convention for the Protection of Human Rights and Fundamental Freedoms'². It is also based upon the determination of the Heads of State and Government 'to work together for democracy, the human and basic rights and notably for the dignity, freedom and equality of man, as well as for social justice'³. Regardless of the outcome of the initiative taken by the two Ministers of Foreign Affairs, it has once more confirmed the value of the protection of fundamental rights within the context of political action towards the achievement of European Union.

CONCLUSION

10. The Political Affairs Committee expresses the belief, which is nowadays becoming increasingly widespread in public opinion, that the protection of fundamental human rights has positive effects on the general requirements of democracy and of the growth of the participation of individuals in actions of common interest. The activities of the Community institutions in observing the principle of the equality of all individuals and regarding it as a positive political and social attribute and not as a mere formal legal acknowledgement are an essential prerequisite for any progress towards European Union. The accession of the European Communities to the European Convention on Human Rights must be examined within the context of the strengthening of individual rights in the growth process of the Communities.

¹Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 2 to 18) and the Protocol set out the fundamental rights and freedoms recognized by the signatory states.

²See Bulletin of the European Parliament No. 50 of 15.12.1981, p. 31

³Ibid, p. 31

