

## Opinion of the European Economic and Social Committee on 'Respect for fundamental rights in European immigration policies and legislation'

(own-initiative opinion)

(2010/C 128/06)

Rapporteur: **Mr PARIZA CASTAÑOS**

On 26 February 2009 the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

*Respect for fundamental rights in European immigration policies and legislation.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 October 2009.

At its 457th plenary session, held on 4 and 5 November 2009 (meeting of 4 November), the European Economic and Social Committee adopted the following opinion unanimously.

### 1. Presentation and background

1.1. The EESC has decided to draw up an own-initiative opinion to propose that EU policies and legislation on immigration and borders should comply fully with human rights and focus principally on the freedom and security of all.

1.2. The EU is equipping itself — with great difficulty at the Council — with a common legislative framework in the field of immigration, providing supranational rights and guarantees that go beyond the changing (and sometimes restrictive) laws of the Member States. The EESC welcomes the progress made: drafting common legislation for 27 Member States is no easy task, especially in an area as sensitive as immigration.

1.3. However, the minimal nature of harmonisation of many of these items of legislation stands in the way of full, appropriate safeguards for human rights. Moreover, the transposition of European directives into national law is not proceeding properly in some Member States where the protection of fundamental rights is concerned.

1.4. Over the years, the EESC has drawn up a number of opinions calling for the common immigration policy to be based on a comprehensive approach, reflecting not only the needs of the EU Member States, but also cooperation with the countries of origin and respect for the human rights of immigrants.

1.5. On 16 October 2008 the European Council reached agreement on the European Pact on Immigration and Asylum, expressing the EU's strong political commitment to making progress on

the common immigration policy. In the course of the Swedish Presidency, the EU is to adopt the Stockholm Programme <sup>(1)</sup>.

1.6. The Lisbon Treaty is also expected to come into force, which could give new impetus to the implementation of immigration policies to be adopted by means of the ordinary legislative procedure, and will give a binding legal character to the Charter of Fundamental Rights.

1.7. Over this period, the EESC has stepped up cooperation with civil society organisations, and a lasting link for participation has been established with the European Integration Forum <sup>(2)</sup>. The Committee has committed itself strongly to ensuring that civil society is involved in implementing integration policies.

1.8. The Committee is concerned at rising intolerance, racism and xenophobia against immigrants, 'the Other', in Europe, and fears that the social effects of the financial crisis will serve to nourish this. Politicians and others with influence in society, together with the media, must act with the utmost responsibility and set a clear political and social example in order to prevent such behaviour. Education in human values, fundamental rights, equality and non-discrimination must be given a more prominent place in primary and secondary school curricula.

### 2. Fundamental human rights and immigration policies

2.1. Among the various international instruments, the Universal Declaration of Human Rights proclaims the universal nature of a common system of principles and values.

<sup>(1)</sup> COM(2009) 262 final, 10.6.2009.

<sup>(2)</sup> European Integration Forum and the EU website on integration.

2.2. The European Convention on Human Rights, signed in Rome in 1950 and to which all the Member States have adhered, and the European Court of Human Rights (ECHR), are the basis and guarantee of compliance everywhere in EU territory.

2.3. The Court of Justice of the European Communities (or 'European Court of Justice', ECJ) has recognised that the European Convention on Human Rights and the ECHR form part of the Community's legal system and constitute general principles within that system.

2.4. This was confirmed by Article 6 of the Treaty on European Union (TEU), which strengthened the guarantee of fundamental rights in the European legal system, and the ECJ's competence to enforce compliance with them in the actions of the European institutions and the Member States in areas subject to Community law.

2.5. Although states have a sovereign entitlement to control entry and grant residence permits to third-country nationals, the EESC recalls that they must comply with their obligations under international and European instruments and conventions on fundamental human rights and their interpretation (and implementation) by the competent courts.

2.6. The Charter of Fundamental Rights of the EU incorporates new rights not included in the European Convention on Human Rights<sup>(3)</sup>. A large number of these rights, moreover, apply regardless of a person's nationality. The Charter will be binding once the Lisbon Treaty has been ratified, and will increase the legal certainty of the protection of fundamental rights. The Charter will be applicable to the European institutions and the Member States especially when they apply Community law, and will strengthen respect for fundamental rights in matters relating to immigration.

2.7. The entry into force of the Lisbon Treaty will give the Union the option of adhering to the European Convention for Human Rights, strengthening the EU's commitment to human rights.

2.8. The Committee also backed<sup>(4)</sup> the creation of the EU Agency for Fundamental Rights. In 2008 the European Council adopted the multi-annual framework for the Agency covering nine thematic areas, among them racism and xenophobia; discrimination; asylum, immigration and integration; and visas and border control. The EESC wishes to be involved in the Agency, in order to strengthen the part played by organised civil society in its work.

2.9. However, in spite of these Community instruments and structures, many civil society organisations and reports from independent and university researchers have shown that some national and European policies and laws do not adequately respect fundamental rights.

2.10. With regard to Community policies, there are also abundant reports pointing to violations of immigrants' human rights in several Member States; on other occasions, European policies legitimise certain national migration practices which are incompatible with human rights and the rule of law.

2.11. In a recent opinion<sup>(5)</sup>, the EESC took the view 'that immigration policy and legislation should fully respect the human rights of all people, equal treatment and non-discrimination. To strengthen this objective, the EESC proposes that two new common principles should be included' for the future European immigration policy as laid out in the Stockholm Programme: 'Fundamental Rights, and the Rule of Law and Fundamental Freedoms'.

2.12. The Fundamental Rights should be granted to all, not only citizens of the Union. Asylum seekers and immigrants are protected by the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. In addition, European immigration and border law and ECJ case-law provide a series of guarantees and rights that go beyond the Member States' margin of discretion.

2.13. The EESC has also proposed<sup>(6)</sup> that, within the framework of external policy, the EU should promote an international legal framework for migration on the basis of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. This framework should incorporate the main ILO conventions and the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which has not yet been ratified by the EU Member States although the EESC had adopted an own-initiative<sup>(7)</sup> opinion calling for its ratification.

2.14. In the Programme for Europe<sup>(8)</sup>, the Committee also proposes that fundamental rights and human rights be respected in the EU, and specifically in immigration and asylum policies.

2.15. The EESC considers that the values and principles of the EU, protection of human rights and freedoms, must be strengthened by means of a visible and robust political authority at European level. It therefore supports President Barroso's proposal to create a post for a European Commissioner responsible for Justice, Fundamental Rights and Civil Liberties. The Committee trusts that this department will be equipped with the political tools and organisational and financial resources needed to discharge such a major responsibility.

2.16. The Committee regrets, however, that immigration and asylum are not included in this portfolio, being classed with internal security matters under the responsibility of another Commissioner. Linking immigration with security, and separating it from the protection of fundamental rights, sends the wrong political message.

<sup>(3)</sup> OJ C 303, 14.12.2007, p. 1.

<sup>(4)</sup> EESC opinion, OJ C 88, 11.4.2006, p. 37.

<sup>(5)</sup> EESC opinion, OJ C 218, 11.9.2009, p. 78.

<sup>(6)</sup> EESC opinion, OJ C 44, 16.2.2008, p. 91.

<sup>(7)</sup> EESC opinion, OJ C 302, 7.12.2004, p. 49.

<sup>(8)</sup> *A Programme for Europe*: <http://www.eesc.europa.eu/documents/publications/pdf/booklets/EESC-2009-10-EN.pdf>.

### 3. The universality of human rights

3.1. Europe today faces a major challenge: ensuring that every person enjoys human rights within the framework of the EU and Member State legal systems, which are based on the traditional concept of citizenship, denying some of these rights to 'non-citizens', and on a legal distinction between citizens and aliens, between legal and irregular immigrants.

3.2. Bodies of law on immigration in Europe do not adequately guarantee immigrants' status as right-holders and as persons entitled to protection. The tight legal link between work and residence permits makes it perfectly clear that immigrants are not viewed as people but as a workforce, a tool at the service of the labour market that foregoes the chance to stay legally once no longer required. As such, they lose many of their rights due to a change in their administrative status: they become 'undocumented'.

3.3. Human rights are universal, irrevocable and protect all, regardless of condition or legal status.

### 4. Human rights and immigration policy: ten operational priorities for Europe to be an area of freedom, security and justice

#### 4.1. A Europe of rights

4.1.1. In recent years, the defence and promotion of human rights has slipped down the EU agenda. State security has been the political priority, and has been seen as incompatible with more freedom and the protection of fundamental rights.

4.1.2. Any security policies that are adopted must safeguard the values of freedom and justice. The EESC considers that these policies should take the protection of the fundamental rights guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights as their starting point.

4.1.3. Strengthening security must not jeopardise the fundamental values (human rights and public freedoms) or democratic principles (the rule of law) that are shared throughout the Union. Personal freedom must not be curtailed under cover of the objective of collective and state security. Some policy proposals repeat a mistake that was made in previous periods: sacrificing freedom to improve security.

4.1.4. In this regard, the EESC welcomes the Commission's June 2009 Communication on *An area of freedom, security and justice serving the citizen*, whose priority is to protect the fundamental rights of European citizens.

4.1.5. The EESC supports the Commission's initiative to 'lock in a culture of fundamental rights' from the earliest stages of the legislative procedure, including immigration policy. Respect for fundamental rights must be a common goal of all the Community

institutions<sup>(9)</sup>. This should be accompanied by a common European system of periodic ex-post evaluation of the application of European policies adopted at national, regional and local level in terms of their compatibility with fundamental rights and their effectiveness<sup>(10)</sup>. The EESC and organised civil society should also play a key role in such evaluations.

#### 4.2. Admission legislation

4.2.1. The EESC has previously argued that the EU must be equipped with a common immigration policy and harmonised legislation. The EU and the Member States need to have open legislation allowing immigration for employment purposes through legal, transparent channels for workers in both highly-qualified and less-qualified jobs. Immigrants' rights will be properly protected in this way.

4.2.2. The Committee has proposed horizontal legislation, but the Member States, the Commission and the Council have decided to draw up specific directives for certain groups of immigrants, a fact which may give rise to instances of discrimination.

4.2.3. In its opinions on the Commission's legislative initiatives, the EESC seeks to ensure overall consistency and the protection of fundamental rights, together with equal treatment and non-discrimination, regardless of immigrant workers' occupational category.

#### 4.3. Rights of immigrant workers and their families

4.3.1. The principle of non-discrimination should be the foundation (Article 21 of the Charter). Immigrant workers, regardless of the period for which they are authorised to reside and work, must have the same economic, labour and social rights as other workers. This is also in keeping with Article 15(3) of the Charter, stating that 'nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union'.

4.3.2. Equal treatment at work concerns working conditions, pay, dismissal, workplace health and safety, and the right to join a trade union and to strike.

4.3.3. The EESC considers that equal treatment should also be promoted in relation to other social and fundamental rights, as it proposed in an earlier opinion: 'In specific terms, the EESC proposes a series of rights that should be granted to third-country nationals temporarily and legally working and residing within the EU'<sup>(11)</sup>, such as:

— the right to social protection, including health care

<sup>(9)</sup> Report from the European Commission – compliance with the Charter of Fundamental Rights, COM(2009) 205 final, 29.4.2009.

<sup>(10)</sup> This would be in keeping with Article 60 of the Treaty of Lisbon.

<sup>(11)</sup> EESC opinion, OJ C 286, 17.11.2005, p. 20.

- access to goods and services, including housing (Articles 34 and 35 of the Charter);
- access to education and vocational training (Article 14 of the Charter);
- the recognition of degrees, certificates and qualifications in the context of Community law;
- the recognition of the social and labour rights of migrant workers who are posted within the EU <sup>(12)</sup>;
- the right to the education of minors, including funding and study grants;
- the right to free legal aid in cases of need (Article 47 of the Charter);
- the right of access to a free placement service (public service);
- the right to be taught the language of the host society;
- respect for cultural, religious and linguistic diversity (Article 22 of the Charter);
- the right to free movement and residence within the Member State.

4.3.4. Being able to exercise fundamental rights depends on public services being endowed with the means of respecting them (resources, staff training) and their representatives being legally bound to treat individuals independently and neutrally. Furthermore, the EESC remains to be convinced, in this period of crisis, that the budgetary resources available to the Member States of the Union and the level of resources that they are prepared to disburse, both nationally and at European level, are sufficient to make the protection of human rights, particularly those of immigrants, a reality.

4.3.5. The Committee does not agree with the proposal for a framework directive, which allows the Member States to restrict the right to equal treatment in relation to certain working conditions (including pay and dismissal, health and safety in the workplace and social protection) and freedom of assembly, association and to strike <sup>(13)</sup> to persons actually in work. These restrictions may also undermine the principle of non-discrimination and Article 12 of the Charter.

4.3.6. The EESC hails the Commission's initiative to present a European Immigration Code, which should encompass the fundamental rights and guarantees of all immigrants to the EU.

<sup>(12)</sup> In connection with the proposal for a directive that the Commission is to adopt in the coming months.

<sup>(13)</sup> COM(2007) 638 final, Article 12(2)(e) and (d). According to the provisions of the proposal, the Member States can also apply restrictions concerning study and vocational training grants, and limit access to public housing to those with residence rights for a minimum of three years.

#### 4.4. Family reunification

4.4.1. The right to family life as one of the human rights that the EU and the Member States must protect and guarantee in their policies and legislation on immigration <sup>(14)</sup>.

4.4.2. The minimalist nature of Council Directive 2003/86/EC on the right to family reunification enables some national laws not to fully guarantee the right to family reunification to third-country nationals. This was confirmed in the Commission report on the application of the directive <sup>(15)</sup> which, raises doubts about the compatibility of applying integration measures as a precondition for admission to the territory under the right to family life (Charter Article 7) and the principle of proportionality.

4.4.3. The Committee believes that the Blue Card Directive takes a less restrictive view of family reunification than does Directive 2003/86. This approach should be extended to all categories of immigrant, regardless of whether they are highly-skilled or otherwise.

4.4.4. Consequently, the Committee proposes that in the course of the 2010, the Commission should draw up a proposal to amend Directive 2003/86.

#### 4.5. Borders and irregular immigration

4.5.1. The EESC wants effective border control that respects the fundamental right to asylum (Article 18 of the Charter) and the principle of 'non-refoulement', which prevents individuals from being returned to countries where their lives or freedom would be in danger (Article 19 of the Charter). Many people requiring international protection arrive at the external borders using clandestine routes. The authorities must ensure that such persons can submit their requests for protection, and that their requests are examined without exception in accordance with international and European conventions and with Community and national legislation.

4.5.2. The EESC proposes that before strengthening the FRONTEX Agency's operational powers, there should be an independent evaluation of the human rights compliance of joint border control operations, and that European and national parliamentary oversight should be stepped up. Compatibility with the guarantees set out in the Schengen Border Code, especially Articles 6 and 13, should also be assessed.

4.5.3. EU control and surveillance measures concerning irregular immigration are also being geographically extended beyond the EU's external border, by means of joint operations in Africa. The UNHCR and several NGOs have warned about the lack of guarantees for respect of human rights when border control operations take place outside EU territory?

<sup>(14)</sup> As confirmed by the ECJ in Case C-540/03 European Parliament v. Council.

<sup>(15)</sup> COM(2008) 610 final, 8.10.2008.

4.5.4. The European border control strategy makes heavy use of security technology; however, databases handling vast quantities of personal data (Schengen Information System (SIS II) and Visa Information System (VIS) have been set up and are used for ethnic and cultural/religious profiling, which presents challenges when it comes to safeguarding the right to non-discrimination under Article 21 of the Charter of Fundamental Rights.

4.5.5. Similarly, the system proposed in the Commission's 2008 border package <sup>(16)</sup> raises doubts regarding the proportionality and reasonableness that are essential for any new EU legislation, and also gives rise to the same serious concerns regarding how the protection of personal data (Article 8 of the Charter) and the principle of non-discrimination enshrined in Article 13 of the EC Treaty will be fully ensured given the use of certain technologies initiatives (e.g. the automatic border control procedures system).

4.5.6. The EESC considers that in order to ensure respect for fundamental rights, EU solidarity with those Member States that, because of their geographical location, have to deal with large numbers of victims of criminal trafficking networks who arrive by irregular means, should be enhanced. The EESC proposes that the European Asylum Support Office begin functioning.

4.5.7. The EU must also promote cooperation with the countries of origin in order to improve respect for human rights, head off irregular immigration, foster legal immigration and combat criminal people-trafficking networks.

#### 4.6. Return and readmission

4.6.1. The Directive on Return <sup>(17)</sup> will provide a European framework of legal and procedural guarantees of protection <sup>(18)</sup>, which the EESC appreciates, such as the effective remedy to appeal against decisions related to return before a competent judicial or administrative authority or a competent independent body, as well as free legal representation and assistance, certain safeguards pending return, conditions of detention, etc.

4.6.2. However, the EESC shares the opinion of many civil society organisations and independent experts of the UN Human Rights Council <sup>(19)</sup> who point to a number of discrepancies between the common system introduced by the Directive and the fundamental rights of immigrants. There will be a need for

detailed monitoring of the transposal and implementation phases at national level regarding expulsion measures, detention, appeal procedures and the treatment of vulnerable people under the Directive.

4.6.3. The Committee proposes that European return policy should be based on a voluntary approach and on the greatest possible regard for humanitarian values. The legitimacy and credibility of European immigration policy elsewhere in the world depends on this. The exceptions contained, for example, in Article 7(4) of the Directive ('risk of absconding' concept) may empty return of its voluntary nature as a result of the discretion granted to the Member States in transposing and interpreting it. Moreover, the Directive fails to ensure proper protection for persons left in a legal limbo pending their expulsion, or with regard to the conditions justifying detention <sup>(20)</sup>, which may last up to six months (and can be extended for a further 12 months) <sup>(21)</sup>.

4.6.4. Article 19 of the Charter expressly prohibits collective expulsions and ensures that no one may be removed, expelled or extradited to a state where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment – the 'non-refoulement' principle (Articles 4 and 19 of the Charter). The Charter reinforces respect for fundamental rights. However, the UNHCR and several NGOs have condemned instances of collective expulsion and expulsion of irregular immigrants and asylum seekers to countries where human rights are violated.

4.6.5. The EESC recalls that Articles 3, 5, 6, 8 and 13 of the European Convention on Human Rights and Articles 3, 4, 19, 24 and 47 of the Charter contain provisions that are applicable to any European policy on irregular immigration – with a special focus on protection in the event of return, expulsion or extradition. Many irregular immigrants find themselves in a difficult humanitarian position, which is why whatever laws and practices are implemented must be drawn up and applied in compliance with strict human rights criteria and in keeping with solidarity-based moral principles.

4.6.6. The rule of law protects the fundamental right of everyone to effective remedy as enshrined in Articles 47 and 48 of the Charter. In addition, Article 6(2) of the Schengen Border Code stipulates that border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation. Similarly, in accordance with Article 13, third country nationals who are refused entry shall have the right to appeal against the decision, and they shall be given a form stating the reasons for the refusal <sup>(22)</sup>.

<sup>(16)</sup> COM(2008) 69 final, 13.2.2008.

<sup>(17)</sup> Directive 2008/115/EC.

<sup>(18)</sup> e.g. Articles 12.1 and 12.2, 13.1 and 13.2, 13.3 and 13.4, 14.1 and 14.2 of the Directive.

<sup>(19)</sup> Press release, *UN experts express concern about proposed EU Return Directive*, 18 July 2008.

<sup>(20)</sup> Article 15(1).

<sup>(21)</sup> Articles 15(5) and 15(6).

<sup>(22)</sup> Regulation 562/2006 (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

4.6.7. The ECHR has interpreted Article 3 of the European Convention on Human Rights <sup>(23)</sup> to mean that persons with serious physical or mental illness may not be detained or expelled, as they are in need of medical care. The situation of minors also requires specific attention and protection. The EESC supports the Commission's initiative regarding the situation of unaccompanied minors.

4.6.8. The EESC considers respect for human rights to be an indispensable precondition for signing readmission agreements with third countries, and is opposed to the EU or the Member States entering into repatriation or border control agreements with countries which have not signed the main international legal instruments to protect human rights, or where there is evidence that such rights have been violated. Special attention must be paid to the fundamental right to effective judicial protection of asylum seekers <sup>(24)</sup>.

#### 4.7. *Detention centres*

4.7.1. The EESC restates its opposition to keeping asylum seekers and irregular immigrants in detention, which must remain an extraordinary measure <sup>(25)</sup>.

4.7.2. The circumstances under which prolonged detention currently takes place in a number of Member States are unacceptable, and should be analysed in detail from the perspective of fundamental rights, including the right to good administration as laid down in Article 41 of the Charter.

4.7.3. The Committee calls for greater transparency concerning detention centres within and outside the EU, for the UNHCR to be kept informed of the situation of persons detained in them, and for such persons to be afforded appropriate assistance by NGOs.

4.7.4. The EESC believes that pregnant women and minors should receive special protection, and should not be detained in these centres.

#### 4.8. *Undocumented persons*

4.8.1. The EESC does not see an undocumented person as a person without rights: consequently, the EU and the Member States should protect their fundamental rights.

4.8.2. The expression 'illegal immigration', when referring to migrants, requires some clarification. Although it is not legal to enter a country without the proper documents and authorisations, people who do so are not criminals. The link made in much

of the media and in political speeches between irregular immigration and crime does not reflect reality, and stirs up fear-driven and xenophobic attitudes among the population of the host country.

4.8.3. The Committee considers that certain Member States need to provide better protection of the fundamental rights of undocumented immigrants, and that the EU should consider them as one of the most vulnerable groups, preventing their labour exploitation and by ensuring their access to health services, other social services and education for minors.

4.8.4. The fight against trafficking in human beings (children, women and men) for sexual and labour exploitation needs to be stepped up, in accordance with Article 5(3) of the Charter. The Member States must provide effective protection for victims, making it easier for them to cooperate the judicial authorities and regularise their situation.

#### 4.9. *Regularisation*

4.9.1. In the Committee's view, governments are acting hypocritically. Return policy is not the only answer to irregular immigration. Many Member States have implemented procedures to put irregular immigrants on a legal footing, seeing regularisation under specific conditions as appropriate in order to guarantee fundamental rights and in the light of their economic and social needs.

4.9.2. The EESC agrees that the flow of information between Member States concerning regularisation should be improved, and that European implementing guidelines should be drawn up, on the basis of the Council's commitment under the European Pact on Immigration and Asylum <sup>(26)</sup>, in which it was agreed to carry out case-by-case regularisations under national law, for humanitarian or economic reasons.

4.9.3. Return by means of an expulsion order should, for persons whose residence permits have expired, be considered as the most extreme measure. Before taking such a step, consideration should be given to whether such persons have expressed an intention to renew their residence.

4.9.4. The EESC considers that in a democratic society, the need for expulsion must be assessed (principle of proportionality) in keeping with the interpretation under ECHR case-law <sup>(27)</sup>. The Committee proposes that the Member States make use of the option to regularise the situation of these persons, as provided by Article 6(4) of the Directive on Return.

4.9.5. The effects (and viability) of expulsion on the fundamental right to private and family life, as set out in Article 7 of the Charter must also be taken into account.

<sup>(23)</sup> Article 19 of the Charter of Fundamental Rights incorporates the case-law of the Strasbourg court, and more specifically the judgment of 17 December 1996, *Ahmed v. Austria*, Reports 1996, VI-2006, and the *Soring* judgment of 7 July 1989.

<sup>(24)</sup> As indicated by the ECJ in Case C-133/06, *European Parliament v Council*.

<sup>(25)</sup> See EESC opinion of 16 July 2009 on *Minimum standards for the reception of asylum seekers*, rapporteur: Ms Le Nouail-Marlière, adopted at the plenary session of 15 and 16 July 2009 (OJ C 317, 23.12.2009, p. 110).

<sup>(26)</sup> EU Council, 1344/08, 24 September 2008.

<sup>(27)</sup> For example, *Boultif v. Switzerland*, no. 54273/00, §§ 39, 41 and 46, 2 November 2001, ECHR 2001-IX. *Üner v. the Netherlands* [GC], no. 46419/99, 18 October 2006, § 58.

#### 4.10. *Integration policies*

4.10.1. The EESC has drawn up several own-initiative opinions calling for proactive integration policies in the EU with a two-way focus, directed towards the host societies and immigrants. Integration is a social process that takes place within a single society, between immigrants and the host society, and between the host society and immigrants.

4.10.2. The EESC is promoting a European approach to integration, reflecting the fact that each Member State has its own legal systems, social institutions and different cultural systems and models.

4.10.3. A common European approach entails very considerable added value for integration policies and processes: the cross-cutting link with other EU policies, (amongst others) the Lisbon strategy, employment policy, the social agenda and cohesion policy. The same can strengthen links between integration and the EU's values and principles, set out in the Charter and the European Convention on Human Rights.

4.10.4. During 2008, the Committee participated actively in the European Year of Intercultural Dialogue, the purpose being to facilitate integration and promote more inclusive European citizenship through dialogue in an environment of diversity in European societies. The EESC has proposed <sup>(28)</sup> that handbooks be prepared.

4.10.5. The EESC proposes a positive approach to integration. However, some governments understand integration from a negative point of view, as a new means of discrimination, and as a further obstacle to equality and access to fundamental rights. The EESC is convinced that such an approach runs counter to the provisions of Articles 21 (right to non-discrimination) and 22 (right to cultural, religious and linguistic diversity) of the Charter.

4.10.6. Examples of best practice include the creation of consultative forums and platforms involving civil society at national,

regional and local level, and the EESC therefore urges all the Member States to set up such structures. The European Integration Forum, recently set up with the cooperation of the Commission and the EESC, is a major tool for strengthening integration from a European perspective.

#### 5. **More inclusive European citizenship**

5.1. Some governments, taking an exclusionist, nationalist stance, define national and European identity in a way that sidelines the present-day diversity of European societies and the diverse aspects of many people on account of their ethnic, national, religious or cultural origins.

5.2. Our democratic societies are plural and enjoy a wealth of diversity. Each European citizen is a melting-pot of different identities. The European democracies are free and open societies, and must be based on the inclusion of all citizens, whatever their reference points for their identities.

5.3. The quality of democracy could be eroded if citizenship rights are restricted by a narrow and exclusive view of identity. Integration policies and immigration legislation must never be used as a political fig leaf for excluding immigrants and minorities from citizenship rights.

5.4. The EESC considers that the foundations of our democracies should be extended to include new citizens, equal in rights and obligations. National and European citizenship rights must embrace all forms of diversity, without discrimination <sup>(29)</sup>.

5.5. The EESC drew up an own-initiative opinion <sup>(30)</sup> addressed to the Convention that drafted the ill-fated Constitutional Treaty, calling for European citizenship to be granted to third-country nationals having long-term resident status. The Committee urges the Commission and the European Parliament to include this proposal as a priority for the new term of office.

Brussels, 4 November 2009.

*The president  
of the European Economic and Social Committee*  
Mario SEPI

<sup>(28)</sup> EESC opinion, OJ C 185, 8.8.2006, p. 42.

<sup>(29)</sup> Article 13 of the Treaty establishing the European Community.

<sup>(30)</sup> Own-initiative opinion, OJ C 208, 3.9.2003, p. 76.