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Ikke-forskelsbehandling og gensidighed i Det europæiske
Fællesskabs ind- og udvandringspolitik

Nicht-Diskriminierung und Gegenseitigkeit in der Politik für
Wanderarbeiter in der Europäischen Gemeinschaft

Non-discrimination and reciprocity in the migration policy of the
European Community

Non discrimination et réciprocité dans la politique de migration de la
Communauté européenne

Non-discriminazione e reciprocità nella politica di immigrazione
nella Comunità europea

Non-discriminatie en wederkerigheid in het migratiebeleid van de
Europese Gemeenschap

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Nærværende studie er udarbejdet af frk. Anne LUCCHESE i forbindelse med hendes Robert Schuman stipendium. Selv om de heri fremsatte synspunkter ikke nødvendigvis udtrykker generaldirektoratet for forskning og dokumentations officielle holdning, har man dog fundet det hensigtsmæssigt at stille studiet til rådighed for Europa-Parlamentets medlemmer. Studiet foreligger på fransk og engelsk, men indeholder desuden indledningsvis et kort resumé på hvert af de andre fællesskabssprog.

Die beigegefügte Studie wurde angefertigt von Fräulein Anne LUCCHESE, die ein Robert-Schuman-Stipendium erhalten hatte. Obwohl die Generaldirektion Wissenschaft und Dokumentation sich von den in dieser Studie entwickelten Thesen nicht gebunden fühlt, möchte sie diesen Text den Mitgliedern des Europäischen Parlaments unterbreiten. Dieser wird nur in Englisch und Französisch mit einer Zusammenfassung in den anderen Gemeinschaftssprachen vorgelegt.

The attached paper was written by Miss Anne LUCCHESE, a Robert Schuman scholarship holder. Although the opinions developed in this paper cannot be regarded as an official standpoint of its services, the Directorate General for Research and Documentation felt it would be useful to make the text available to Members of the European Parliament. The text appears in English and French only, with a summary in each of the other Community languages.

L'étude ci-jointe a été réalisée par Mlle Anne LUCCHESE, qui avait bénéficié d'une bourse Robert Schuman. Bien que les opinions formulées dans ce texte n'engagent pas la Direction générale de la Recherche et de la Documentation, celle-ci a jugé opportun de mettre cette étude à la disposition des membres du Parlement européen. Elle est présentée en anglais et français et est précédée d'un bref résumé dans chacune des langues de la Communauté.

Lo studio allegato è stato effettuato dalla signorina Anne LUCCHESE, che aveva fruito di una borsa di studio Robert Schuman. Sebbene le opinioni formulate nel testo non impegnino la Direzione generale della ricerca e della documentazione, quest'ultima ha ritenuto opportuno mettere questo studio a disposizione dei membri del Parlamento europeo. Detto studio, preceduto da un breve riassunto nelle lingue della Comunità, viene distribuito in inglese e in francese.

Bijgaande studie werd verricht door Mej. Anne LUCCHESE, dank zij een Robert Schuman-studiebeurs. Hoewel de hierin ontwikkelde denkbeelden niet kunnen worden beschouwd als een officiële mening van het Directoraat-generaal Onderzoek en Documentatie, heeft dit het toch nuttig geacht deze studie ter beschikking te stellen van de leden van het Europese Parlement. De tekst wordt voorgelegd in het Engels en het Frans met een korte samenvatting in elk van de andere talen van de Gemeenschap.

Resumé

Forfatteren søger at påvise, hvorledes gensidighedsprincippet har skabt et nyt område for videregående forhandlinger vedrørende iværksættelse af bestemmelsen om ikke-diskriminering for så vidt angår økonomiske og sociale rettigheder for gæstearbejdere fra tredjelande. Disse forhandlinger kunne, og vil givetvis, i visse tilfælde påvirke arbejdstageres status i Fællesskabet og i de berørte tredjelande.

Kunne en sådan udvikling under indtryk af en stigende gensidig økonomisk afhængighed mellem De europæiske Fællesskaber og visse tredjelande føre til skabelsen af en "social-politisk zone" og, måske, til skabelsen af en ekstern social-politik for Fællesskabet? Forfatteren beskriver de indtil videre ret begrænsede resultater af en sådan politik, som er blevet udviklet parallelt med det økonomiske samarbejde med Middelhavslandene og AVS-landene og inden for de politiske rammer af den euro-arabiske dialog.

Forfatteren opsummerer andre elementer af Fællesskabets sociale handlingsprogrammer fra 1974 og 1976 og beskriver situationen vedrørende konsultationer med medlemsstaterne om gæstearbejderpolitik og gæstearbejders repræsentation i lokale organer. Kommissionen oplyste i juli 1979, at den påtænkte at fremsætte forslag vedrørende sidstnævnte før udgangen af 1980.

Zusammenfassung

Die Anwendung des Grundsatzes der Gegenseitigkeit hat zur Schaffung neuer Grundlagen für die Fortsetzung der Verhandlungen über die Verwirklichung der Nichtdiskriminierungsregel im Bereich der wirtschaftlichen und sozialen Rechte der Wanderarbeitnehmer aus bestimmten Drittländern geführt. Diese Verhandlungen können - und werden in manchen Fällen bestimmt - das Statut der Wanderarbeitnehmer in der Gemeinschaft und in den betreffenden Ländern beeinflussen.

Könnte eine solche Entwicklung infolge der zunehmenden wirtschaftlichen Verflechtung zwischen der EWG und einer Reihe von Drittländern zur Entstehung einer "sozialen Zone" in der Europäischen Gemeinschaft und ihren Nachbarländern und vielleicht einer externen Sozialpolitik der Gemeinschaft führen? Der Verfasser zeigt die bisher noch begrenzten Ergebnisse einer derartigen Politik auf, die einhergeht mit der wirtschaftlichen Zusammenarbeit mit den Mittelmeeraanrainerstaaten und den AKP-Ländern und eingebettet ist in den politischen Dialog mit den arabischen Staaten.

Auf der Grundlage anderer Bestandteile der sozialpolitischen Aktionsprogramme der Gemeinschaft von 1974 und 1976 gibt der Verfasser einen Überblick über den Stand der gegenseitigen Abstimmung der Wanderungspolitik zwischen den Mitgliedstaaten und über die Vertretung der lokalen Behörden. Im Juli 1979 erklärte die Kommission, daß sie beabsichtige, bis Ende 1980 einen diesbezüglichen Vorschlag vorzulegen.

Summary

The principle of reciprocity has led to the creation of new grounds for further negotiations on the implementation of the rule of non-discrimination on economic and social rights of migrant workers originating from certain third countries. These negotiations may, and in some cases will, affect the status of people working within the Community and in the third countries concerned.

Could such an evolution lead to the creation, in the European Community and neighbouring countries, of a "social area" under the influence of a growing economic interdependence between the EEC and a certain number of third countries and, perhaps, to an external social policy of the Community? The author describes the as yet limited results of such a policy, developed in parallel with economic cooperation with Mediterranean and ACP countries and in the political framework of the European-Arab Dialogue.

In summing up other elements of the Communities' social action programmes of 1974 and 1976, the author describes the situation regarding consultation of the Member States on their migration policies and representation of migrants in local authorities. The Commission stated in July 1979 that it intended to submit a proposal on the latter subject before the end of 1980.

Résumé

L'auteur cherche à montrer comment le principe de réciprocité a conduit à la création de nouvelles bases pour la poursuite de négociations sur la mise en oeuvre du principe de non-discrimination en matière de droits économiques et sociaux des travailleurs migrants originaires de certains pays tiers. Ces négociations peuvent, et le feront effectivement dans certains cas, affecter le statut des travailleurs de la Communauté et des pays tiers concernés.

Une telle évolution pourrait-elle mener à la création, dans la Communauté européenne et les pays voisins, d'une "zone sociale", en raison de l'interdépendance économique croissante entre la CEE et un certain nombre de pays tiers et, peut-être, à l'élaboration d'une politique sociale extérieure de la Communauté ? L'auteur décrit les résultats encore limités de cette politique, développée parallèlement à la coopération économique avec les pays du bassin méditerranéen et des ACP, et du dialogue politique avec les Etats arabes.

Résumant d'autres éléments des programmes d'action sociale des Communautés de 1974 et 1976, l'auteur décrit l'état de la concertation des Etats membres en matière de politique migratoire et de représentation des travailleurs migrants au niveau des autorités locales. La Commission a déclaré, en juillet 1979, qu'elle entendait soumettre une proposition à ce sujet avant la fin de 1980.

Riassunto

L'autore cerca di dimostrare in che modo il principio di reciprocità ha condotto alla creazione di nuove basi per il proseguimento di negoziati sull'attuazione del principio di non discriminazione in materia di diritti economici e sociali dei lavoratori migranti provenienti dai paesi terzi. Questi negoziati possono, ed in certi casi potranno effettivamente, influire sullo statuto dei lavoratori della Comunità e dei paesi terzi interessati.

Una tale evoluzione potrebbe condurre alla creazione, nella Comunità europea e nei paesi vicini, di una "zona sociale", data l'interdipendenza economica crescente tra la CEE ed un certo numero di paesi terzi, nonché, probabilmente, all'elaborazione di una politica sociale esterna della Comunità ? L'autore descrive i risultati ancora limitati di questa politica, sviluppata parallelamente alla cooperazione economica con i paesi del bacino mediterraneo e degli ACP, nonché del dialogo politico con gli Stati arabi.

Riassumendo altri elementi dei programmi d'azione sociale delle Comunità del 1974 e 1976, l'autore descrive il grado di concertazione tra gli Stati membri in materia di politica dell'emigrazione e di rappresentanza dei lavoratori migranti a livello delle autorità locali. La commissione ha dichiarato, nel luglio 1979, che essa intendeva presentare una proposta in merito entro il 1980.

Samenvatting

De toepassing van het beginsel van wederkerigheid heeft geleid tot het ontstaan van nieuwe onderhandelingskaders voor de tenuitvoerlegging van de regel van non-discriminatie inzake de economische en sociale rechten van migrerende werknemers uit bepaalde derde landen. Deze onderhandelingen kunnen, en in bepaalde gevallen zullen zij dat zeker, gevolgen hebben voor de status van migrerende werknemers in de Gemeenschap en in de betrokken derde landen.

Zou een dergelijke ontwikkeling kunnen leiden tot het ontstaan, in de Europese Gemeenschap en de landen om haar heen, van een "sociale zone", als gevolg van een toenemende economische interdependentie tussen de EEG en een aantal derde landen en, misschien, van een extern sociaal beleid van de Gemeenschap ? De auteur beschrijft de alsnog beperkte resultaten van een dergelijk beleid dat parallel loopt aan de economische samenwerking met de landen van het Middellandse Zeebekken en de ACS en zich invoegt in de politieke dialoog met de Arabische staten.

Aan de hand van andere onderdelen van de sociale actieprogramma's van de Gemeenschap van 1974 en 1976 geeft de auteur de stand van zaken met betrekking tot de onderlinge afstemming van het migratiebeleid van de lid-staten en de vertegenwoordiging van de migranten op gemeentelijk en provinciaal niveau. In juli 1979 verklaarde de Commissie dat zij voornemens was vóór eind 1980 een voorstel terzake in te dienen.

SUMMARY

	<u>Page</u>
1. Discrimination and the functioning of the Common Market	1
2. Social and economic rights: negotiations and conventions with third countries	4
3. Towards the creation of a 'social area'?	8
4. Consultations on migration policies of the Member States	15
5. Representation of migrants in local elections	17

NON-DISCRIMINATION AND RECIPROCITY IN THE MIGRATION POLICY
OF THE EUROPEAN COMMUNITY

1. Discrimination and the functioning of the Common Market

Of the several debates which have taken place on the problem of the status of migrant workers, the one held at the European Parliament in September 1977 (following a question presented by several Members to the Commission (1)), at least enabled the Commission to express its determination to support and to pursue equality of treatment ("to be assured by compulsory provisions") between third country nationals and Community nationals (2).

The fundamental problem in this debate is nevertheless still unsolved, as different opinions exist on the scope of the status of migrant workers : whether it should cover both Community and third country nationals circulating on the territory of the Member States or whether it should be conferred only on third country nationals, as Community nationals could already be considered Community citizens.

During one such debate, the EEC Commission supported the thesis that the problem of the status of migrant workers from third countries could not be solved by way of Community regulations or directives, though it should be solved at the EEC level.

The issue seems to be more complex than that, as it could be argued that under Art. 7 of the Treaty of Rome, which prohibits "any discrimination on the grounds of nationality", "the Council may, on a proposal from the Commission and after consulting the Assembly, adopt, by a qualified majority, rules designed to prohibit such discrimination".

There seems to be no reason why Art. 7 should not be applicable to third country migrants : it is a general rule, under the principles of the Treaty, limited only by "the scope of application of the Treaty" and "any special provision contained therein". Discriminations against third country migrants would - just as much as those against Community migrants - directly affect the functioning of the Common Market ; in these cases action could also be taken on the basis of Art. 100, which provides for unanimous action on the part of the Council, or even Art. 101, which could lead to any appropriate measure being taken by qualified majority.

(1) Doc. 259/77, Debate n. 220

(2) See the intervention of Mr Vredeling, p. 243

Even the Draft Directive on the approximation of legislation in the field of illegal immigration and illegal work (3) of third country migrants was tabled by the Commission on the basis of Art. 100. It could also have been based on the principle laid down in Art. 7 of the Rome Treaty, as this is not limited to discrimination on a national level.

In this light, the rule of non-discrimination on the grounds of nationality as formulated within Art. 7 would be parallel to the rule on non-discrimination in pay between men and women, as laid down in Art. 119 of the Treaty of Rome. In this field the Council did adopt, on the basis of Art. 100, Directive 75/117 on the approximation of legislation in the field of equal pay between men and women (4).

The Draft Directive on illegal immigration has stimulated a great deal of discussion in the phases of its elaboration (5). It came in fact at the same moment as national measures taken by Member States, or at least by some of them, in order to place a complete bar on new entries of third country immigrants, and also in the majority of cases in order to reduce the number of those already working in their territory (6).

As a consequence, the net figures for migration in the individual Member States - and also in the Community as a whole - have been decreasing rapidly, the migration balances tending to become negative (7). On the other hand, recognition should be given to the pertinent remark made by Mr Albers in his report on the conclusions of the Tripartite Conference in November 1978 (8) : that it is contrary to the social and political tasks of the Community to overcome economic difficulties by allowing third countries to pay for them.

The action taken by the Council in the Directive on the approximation of legislations in the field of equal pay between men and women on the basis of Art. 100 has been continued with two Directives adopted by the Council since 1976 : Directive 76/207 on the application of the principle of equality of treatment between men and women as far as access to employment, vocational training and working conditions are concerned (9) ; and the most recent one,

(3) See the amended proposal from the Commission to the Council in O.J. C 97 of 22.4.78, p. 9

(4) O.J. L 45 of 19.2.75, p. 19

(5) See mainly the Reports of the Committee of Social Affairs, Employment and Education of the European Parliament : Doc 352/77 and Doc. 238/78.

(6) See the Pisoni Report on the Proposal of Directive, in Doc 238/78, and the Cifarelli Question in Doc 124/79, on the measures taken by the French Government against the entries of workers' families in its territory. On the Stoleru project of law, see the number of Le MONDE of 15.6.79.

(7) See the data of the EEC Commission for 1978 in EUROSTAT News 1979

(8) Doc. 31/79, p. 7

(9) O.J. L 39 of 14.2.76

the Directive of December 1978 (10), on the progressive implementation of the principle of equality of treatment between men and women in the field of social security.

Those last Directives were both adopted on the basis of Art. 235 of the Treaty of Rome, and in execution of one of the priority actions provided for in the Social Action Programme of 1974, with reference to Arts. 117 and 118 of the Rome Treaty (11).

The referral to Art. 235 is due to the non-direct applicability of the two articles whose provisions are being implemented ; while, for the previous Directive on equal pay, Art. 119 is to be directly applicable in the juridical systems of the Member States (12).

The question could be asked why, in the case of the implementation of the principle of non-discrimination on grounds of nationality, the "harmonization" directive proposed by the Commission limited itself to the problem of illegal immigration and working illegally in a Member State, as there exist evidently more far-reaching cases of discrimination as to workers originating from third countries. Given the fact that such a Directive as the one proposed by the Commission to the Council on the basis of Art. 100 is aimed at the elimination of a kind of discrimination, as the one considered within Art. 7 of the Treaty, the permanence of which directly affects the functioning of the Common Market, the action of the Council in this sense could be more radical than that of declaring war on illegal immigration.

As a consequence, the Commission could propose measures aimed at the elimination of discrimination based on the grounds of nationality of all the migrant workers within the EEC Member States.

Considering also the direct applicability of Art. 7 of the Treaty of Rome, no other articles seem to have to be called into question in order to establish a legal basis for such a measure than Art. 100, as in the case of Directive 75/117, which facilitates the implementation of the directly applicable provisions of Art. 119 of the Treaty.

(10) Directive 79/7/CEE of 19.12.1978, in O.J. L 6 of 10.1.1979

(11) See the Conclusions of the Advocate General Mr Capotorti in the last Defrenne case (149/77, 1978 ECR, 1387 ff.)

(12) As stressed also by the Court in its ruling in the last Defrenne case, quoted.

2. Social and economic rights : negotiations and conventions with third countries

The Draft Directive on illegal immigration deals with the status of illegal third country migrants - a sector where discrimination could flagrantly affect the functioning of the Common Market.

The competence of the Community in the implementation of the principle of non-discrimination for legal immigrants from third countries has been used till now in opening and in concluding negotiations with a number of third countries whose exchanges of manpower with Europe are most relevant.

The Agreements concluded at Community level with third countries in order to establish, on a basis of reciprocity, the conditions for equality of treatment for migrant workers are, most of the time, part of more complex agreements, containing a social chapter on the conditions of immigrants and on the rights granted to them within the Member States.

a) Cooperation Agreements

The principle of non-discrimination seems to be established in matters related with working conditions and equality of treatment, as far as remunerations are concerned, in the agreements concluded with the countries of the Western Mediterranean area (13). These Agreements do not provide for the extension to migrants from those countries of the principle of free circulation, but only of the principle of non-discrimination, on the basis of reciprocity and without prejudice to more favourable bilateral agreements, with respect to wages and working conditions, the totalisation of insurance periods for workers and their families residing in the territory of the Community, and the transferral of benefits (this last to be implemented in agreements to be concluded by October of this year in the EEC-Maghreb Cooperation Councils and the EEC-Portugal Joint Committee).

Negotiations are at present being held at EEC level with Yugoslavia, for an extended cooperation agreement. The Yugoslav authorities seem to be interested in having recognized for their nationals the right to non-discrimination as far as wages and working conditions are concerned, but also in matters related to vocational training for their workers, and with the problem of special education facilities for their children, besides the social security rights for the workers and their families residing in the host country.

(13) See the additional Protocol of 20 September 1976 to the Agreement EEC Portugal, the Cooperation Agreements of 25 April 1975 with Tunisia, of 26 April of the same year with Algeria, and of the 27 April with Morocco.

b) Association Agreements

The Association Agreements with Greece and Turkey provide for the extension of the principle of free circulation to workers coming from these countries.

For workers from Turkey, the extension should be gradually implemented between February 1976 (date of the last Treaty of Association) (14) and 1986, "on the basis of Arts. 48-50 of the Treaty of Rome" ; while for Greece, whose workers could have claimed - under the Association Agreement - to be entitled to free circulation, the complete implementation of the principle will take place - under its Treaty of Accession to the EEC - during a transitional period of six years from January 1981.

In the meantime, by 1981, Greek workers will enjoy the same complete social security rights as other European citizens.

Although for the Eastern Mediterranean countries no social chapter has been included so far in the respective cooperation treaties, Greece's accession to EEC might lead to the insertion of such a chapter in the cooperation agreement with Egypt.

As a matter of fact, such an evolution seems highly desirable as it could prove practically necessary to take into account the interests of the relevant number of Egyptian workers currently employed in Greece.

c) ACP countries

ACP immigrants in Europe number about 330,000. The majority of them are in possession of the passport of countries such as the Netherlands and Great Britain. Only some 70,000 of them possess only the nationality of a ACP country. For this reason, the Convention recently renewed - Lomé II - will not contain a social chapter, but an annexed Joint Declaration on the social and economic status of migrants, under condition of reciprocity.

It was in fact not possible to reach an agreement on a "volet social" during the negotiations, though both European and ACP Parliamentarians had insisted on a closer cooperation among representatives of the social partners of ACP and EEC countries (15).

(14) Art. 36 of the Additional Protocol

(15) On the practical problems of such a desired cooperation, see the Mathé Report, Doc ACP/EEC/9/78.

To that effect, the deputies of both EEC and ACP countries have taken the habit of organising hearings of the social partners by the Joint Committee of the Consultative Assembly of the ACP-EEC Convention. Two of them have already taken place, dealing mainly with economic matters.

At the meeting of the Joint Committee at Bordeaux, from the 29th of January to the 1st February 1979, the issue of social topics has been brought up by the Parliamentary representatives of the European Parliament.

The Joint Committee then adopted a Declaration on the "respect for and protection of the rights of citizens, students, trainees and migrant workers originating in the ACP countries and regularly resident in the countries which are signatories to the Convention", on the basis of the Dewulf Report (16) and of the Resolution of the Council's Action Programme for Migrant Workers and their Families of 1976 (17).

In the Declaration adopted in Bordeaux, the need is stressed to ensure respect for the rights of migrant workers and improvements in their living and working conditions. It insists on an agreement on the protection of rights of workers from ACP countries to be contained within the ACP Convention itself, and the opinion is expressed that such an agreement, to be adopted on the basis of the Dewulf Report, should include the reciprocity clause (18).

The Joint Declaration that will be annexed to the Final Act of the new Lomé Convention "on workers, nationals of one of the contracting parties and legally resident on the territory of one of the Member States or of an ACP State" (19) gives to workers coming from an ACP country and legally working as a employee in the territory of a Member State the right to non-discrimination on the basis of

(16) Doc. CA/CP/96

(17) O.J. C 34 of 14.2.76

(18) Doc CA/CP/96/Ann/Fin.

(19) DECLARATION COMMUNE RELATIVE AUX TRAVAILLEURS RESSORTISSANTS
DE L'UNE DES PARTIES CONTRACTANTES RESIDANT LEGALEMENT SUR
LE TERRITOIRE D'UN ETAT MEMBRE OU D'UN ETAT ACP
(to be annexed to the final act of the new Lomé Convention)

1. Chaque Etat membre accorde aux travailleurs de nationalité d'un Etat ACP exerçant légalement une activité salariée sur son territoire un régime caractérisé par l'absence de toute discrimination fondée sur la nationalité par rapport à ses propres ressortissants, en ce qui concerne les conditions de travail et de rémunération.

Chaque Etat ACP accorde ce même régime aux travailleurs ressortissants des Etats membres exerçant une activité légale salariée sur son territoire.

(continues on page 7)

nationality as far as working conditions and wages are concerned, and also with regard to the social security benefits strictly connected with their job and for the members of the family who reside with them.

Like the Cooperation Agreements with the Maghreb countries and Portugal, the Joint Declaration stresses the condition of reciprocity and the fact that this Declaration does not prejudice bilateral agreements between Member States and specific ACP countries, in case they establish a more favourable system for ACP and EEC workers.

At its 4th point, the Declaration provides that the problems arising from it will be solved by way of negotiations, both at Community level and at a bilateral level, in order to reach adequate solutions.

(continues footnote 19)

Les travailleurs de nationalité d'un Etat ACP exerçant légalement une activité salariée sur le territoire d'un Etat membre, et les membres de leur famille résidant avec eux bénéficient, dans cet Etat membre, en ce qui concerne les prestations de sécurité sociale liées à l'emploi, d'un régime caractérisé par l'absence de toute discrimination fondée sur la nationalité par rapport aux propres ressortissants de cet Etat membre.

Chaque Etat ACP accorde aux travailleurs ressortissants des Etats membres exerçant une activité salariée sur son territoire, ainsi qu'aux membres de leur famille, un régime analogue à celui prévu au paragraphe précédent.

3. Ces dispositions ne portent pas atteinte aux droits et obligations découlant des accords bilatéraux liant les Etats ACP et les Etats membres, dans la mesure où ceux-ci prévoient en faveur des ressortissants des Etats ACP ou des ressortissants des Etats membres un régime plus favorable.
4. Les Parties à cette déclaration sont d'accord pour dire que les questions découlant de celle-ci seront résolues de façon satisfaisante, et si nécessaire par le moyen de négociations bilatérales, pour parvenir à un accord adéquat.

3. Towards the creation of a "social area" ?

In a tentative summing up of the present situation, one could say that the necessity to implement the principle of non-discrimination is generally accepted, at least as to social and economic rights.

It is evident, moreover, that a framework for further negotiations in this field has been prepared, affecting, on a basis of reciprocity, the status of people working within the Community and in a certain number of third countries.

This could lead to the creation of a "social area" around the EEC, a first contribution to the establishment of a "new social order", parallel to the economic cooperation with mediterranean and ACP countries (20).

In fact, as stressed by the Commission (21), "the objectives of the Community's development cooperation policy must be to promote social progress in the developing countries as much as economic growth".

In order to promote such a progress, the Commission introduced, during the Lomé negotiations, the issue of the observance of certain international standards governing working conditions chosen "from among the vast body of standards covered by the 151 ILO conventions" (22), which "should not be restricted solely to the developing countries but should also apply to all countries with which the EEC has concluded trade agreements" (23).

This issue has been the object of a communication of the Commission to the Council, in November 1978, containing four Articles, as it takes four labour standards that are considered fundamental (24) :

(20) The Preamble of the ACP-EEC Convention of 1975 (Doc. 212/75) proclaims the intention of the contracting parties "to establish a new model for relations between developed and developing States, compatible with the aspirations of the international community towards a more just and more balanced economic order" and "to intensify their efforts together for the economic development and social progress of the ACP States".

(21) In its Communication to the Council of 10 November 1978 (Doc(78) 492 final) on Development Cooperation and the observance of certain international standards governing working conditions, p. 2

(22) Communication of the Commission to the Council of Nov. 1978, quoted, p. 2

(23) In Point 2 of the Motion for a Resolution on the Commission's Communication submitted by the Committee on Development and Cooperation of the European Parliament (Doc. 111/79, Rapporteur Mr Nyborg), approved by the Commission (Mr Giolitti) at the sitting of 10 May 1979 (O.J. Annex N. 243) and adopted by the European Parliament at the sitting of the 11th of May (ibidem).

(24) See Annex I to the Commission's Communication, quoted.

The first Article considers general principles and the way of implementing the whole proposition, the second contains the principle of non-discrimination, as far as access to employment and working conditions are concerned, on the basis of nationality, sex, race, etc.

Art. 3 is related to the standards on working time established, with a flexibility clause, at 48 hours per week (25). Art. 4 deals with the minimum age at which children may take up employment or work, again accompanied by a flexibility clause and with health and safety standards for working adolescents (26).

The intention of the Commission, while negotiating with the ACP countries the renewal of the Lomé Convention, was therefore to attach to the commercial, financial and technical assistance that it gives to ACP countries "certain conditions designed to promote the social ends of development" (27).

The Commission envisaged an active role of the ILO, in the implementation of the principles contained in the Communication. It intended in fact to request the ILO to use its own monitoring machinery and procedures which would enable it to exert moral pressure on the States for the implementation of the measures provided for in its Conventions. However the ILO expressed its disagreement with the Commission's proposals, especially with regard to the choice of standards, which they believe should be the subject of mutual agreements.

A comparison between the document on the minimum standards annexed to the Commission's Communication to the Council and the actual Joint Declaration to be annexed to the Lomé Convention (28) shows the limits of the results attained

(25) See the Text of art. 3 in the Annex I to the Communication "States will take measures to ensure that a limit is set to the number of hours worked ; this should not exceed 48 hours per week, except in the case of the necessary derogations, a full list of which should be established".

(26) The flexibility clause is expressed in these terms : "These measures do not affect artisanal undertakings ; nor do they affect agricultural, family or small-scale undertakings producing for the local market which do not employ paid workers on a regular basis" (annex I to the Commission's Communication).

(27) On this issue see the Report of the Committee on Development and Cooperation of the European Parliament, the NYBORG Report, Doc 111/79, p. 8 ff.

(28) See the Comments and the text of the Joint Declaration at pp. 6-7

so far by the Commission's policy : within this last document no mention is made of ILO minimum standards nor of working hours, or of any kind of protection in favour of workers in general (29).

Only migrants who, nationals of an ACP country, work legally on the territory of one of the Member States and, on the basis of reciprocity, European nationals working in ACP countries, are entitled to a treatment exempt from discrimination, as far as remuneration and working conditions are concerned.

This means that social cooperation with the ACP countries will be focussed during the coming years, on non-discrimination of legal immigrants as regards social and economic rights and some other fields, such as education and housing, already mentioned in early conventions and that the other means of promoting a more or less coordinated social progress in third countries are still to be hammered out in dialogues between the partners.

Up to now the ACP countries were, as to social cooperation, in a position comparable to the Mashrek countries in the East Mediterranean. By virtue of the Joint Declaration the latter have now been bypassed : social cooperation has now been projected in terms comparable to those of the West Mediterranean countries, Portugal and the Maghreb.

(29) Those and other considerations have brought up the argument that the idea behind the proposals of the Commission was a protectionist one. The Commission has, on the contrary, stressed the fact that its main concern was the social progress in the countries involved in the negotiations (See the remarks by Mr Giolitti at the Parliamentary debate at the sitting of 10 May, O.J. Annex N. 243).

Arab Countries

For the Arab countries, however, a new framework for social cooperation was created in the so-called Euro-Arab Dialogue by means of the Joint Declaration on the principles governing the living and working conditions of migrant workers in the two regions. This Declaration was adopted by the Euro-Arab Dialogue's General Committee at the meeting held from 9 - 11 December 1978 in Damascus (30).

(30) Joint Declaration on the Principles governing the living and working conditions of migrant workers in the two regions :

'The Arab and European Delegations of the Euro-Arab Dialogue,

Conscious of the magnitude of the problems facing foreign workers and their families who are nationals of the States participating in the Dialogue and are resident in the territories of these States,

Hereby adopt this declaration,

With a view to reaffirming the principles by which their policies in this field are guided:

A migrant worker and the members of his family shall, in the country where they legally reside and work, enjoy equality of treatment as to living and working conditions, wages, economic rights, rights of association and the exercise of the basic public freedoms.

This equality of treatment shall operate within the limitations imposed by considerations of public policy, public security and public health and according to the provisions in force in the States participating in the Dialogue. Subject to these conditions, equality of treatment shall comprise the principles specified in the following paragraphs:

1. Equality of treatment as to working conditions, wages and economic rights shall imply the following principles in particular:

- as regards employment-related social security benefits, granting to migrant workers and members of their families living with them of treatment free from any discrimination based on nationality as compared with nationals of the States in which they are employed;
- the extension of these benefits to members of families who remain in the country of origin in so far as provided for in bilateral agreements;
- entitlement to the same employment-related social advantages as those enjoyed by a national worker;
- under the rules governing the labour market:
 - (i) assistance from employment exchanges in finding jobs,
 - (ii) access to vocational guidance;

This Declaration provides i.a. for equal treatment of the migrant worker and the members of his family, in the country where they legally reside and work, as to living and working conditions, wages, economic rights and rights of association, but also as to the exercise of the basic public freedoms. As such, a migrant worker and the members of his family have 'the right to exercise the freedoms of speech, association and assembly'.

(iii) access to apprenticeship schemes, to basic and advanced vocational training, to re-adaptation and to re-training and eligibility for redeployment measures,

(iv) access to activities organised for the unemployed.

Information on the various schemes open to the migrant worker shall be made available to him;

- freedom to choose a job in a given country following a period of paid employment laid down by the provisions in force in that country, which could be about five years;
- protection equal to that enjoyed by a national worker as regards industrial hygiene and safety.

2. Language courses and basic vocational training shall be organised in accordance with the possibilities so that a migrant worker taking a vocational training course can do so with the same chances of success as a national worker.

3. A migrant worker shall enjoy treatment no less favourable than a national worker as regards taxes and contributions relating to his occupation.

4. Equality of treatment in the exercise of rights of association shall imply:

- the freedom to join trade union organisations;
- the right to vote and the right to stand for and be appointed to office both in trade union organisations and in bodies governing industrial relations within an undertaking between workers and employers.

5. It must be possible for a migrant worker to be joined by his spouse and any dependent children who are minors.

6. A migrant worker may leave the territory of the country of employment without losing his rights, in particular as regards his residence permit, provided that his absence does not exceed his statutory or contractual annual holiday entitlement, plus necessary travelling time, which should not exceed one month.

The granting of special facilities to a migrant worker to enable him to take his annual holidays in his country of origin may be encouraged.

The Declaration tends to guarantee to the migrant worker a status characterised by the absence of any discrimination based on nationality compared with nationals of the States in which they are employed, stipulating i.a. that he will enjoy treatment no less favourable than a national worker as regards taxes and contributions relating to his occupation.

His family shall be allowed to enter and reside temporarily in the country of employment.

7. A migrant worker shall enjoy all the rights and benefits granted to a national worker as regards accommodation, including the right to home ownership.

8. Equality of treatment as regards living conditions shall in particular imply:

- for the children of a migrant worker
 - (i) access to general and vocational education:
 - (ii) promotion of a reception system, including intensive courses in the language or languages of the host country;
- access to welfare and medical services.

9. A migrant worker and the members of his family shall have the right to exercise the freedoms of speech, association and assembly.

A migrant worker and the members of his family shall have the same rights as nationals to assert their rights before the competent bodies, particularly by going to law.

10. A migrant worker and the members of his family shall enjoy the same legal protection of their person and possessions, as do nationals.

11. A migrant worker and the members of his family shall also be granted the same legal aid arrangements as nationals. They may be granted special facilities to enable them to assert their rights on an equal footing with nationals.

12. To help and encourage the efforts of migrant workers and members of their families to protect their national identity and their attachment to the cultural values of their country of origin:

- a migrant worker and the members of his family may receive regular information in their own language about both their country of origin and the host country;
- the children of migrant workers shall have access, as far as possible, to the teaching of their mother tongue and culture; the general conditions applicable to such teaching, including those relating to coordination with standard teaching, shall be laid down by the host country in cooperation with the country of origin.

It seems as yet too early to assess the practical consequences of this Declaration, that could prove to be a qualitative leap forward in international relations of the Community in social matters, made possible by the combined approach by the Community and its Member States in the framework of political cooperation.

13. The social integration of migrant workers and of the members of their families in a host country shall be facilitated by:

- making the general public in the host country more aware of the problems of migrant workers and members of their families;
- promoting cultural activities for migrant workers and nationals with a view to better mutual understanding.

14. The voluntary return of migrant workers and members of their families to their country of origin may be facilitated, in particular under cooperation agreements or programmes.

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The Arab and European delegations of the Euro-Arab Dialogue, in adopting the present declaration on the principles governing the living and working conditions of migrant workers who are nationals of the States participating in the Dialogue,

- reaffirm the principle of the need for close cooperation between States of immigration and emigration concerned with the problems of migrant workers and recall the bilateral and multilateral agreements in which such cooperation is already being implemented,
- believe it is important to seek, within a bilateral and multilateral framework, appropriate solutions in the future to the problems which the States concerned consider still remain to be solved.'

4. Consultations on migration policies of the Member States

The Council Resolution adopting the Social Action Programme of 1974 (31), while envisaging the necessity of establishing an action programme for migrants, stressed the aim of promoting "consultation on immigration policies vis-à-vis third countries".

The Council Resolution on the Action Programme for Migrant Workers and their Families (32) insisted on the necessity of promoting "consultations on migration policies vis-à-vis third countries and to examine, where appropriate, problems facing workers who are nationals of the Member States residing in third countries". It also envisaged measures encouraging "the achievement of equality of workers who are nationals of third countries and members of their families who are legally resident in the Member States, with regard to living and working conditions, wages and economic rights" (33).

Having practiced the latter of the two strategies by way of negotiation of agreements "à volet social" with third countries, and by proposing a number of directives on non-discrimination, the Commission took no action to implement the issue of consultations on migration policies (34) until March 1979.

On the 29th of March of this year, the Commission presented a Communication to the Council on the Consultation on Migration Policies vis-à-vis Third Countries (35). This was meant to explore the prospects of a formal proposal to set up consultations at Community level with and between the Member States on migration policies vis-à-vis third countries.

(31) Supplement of the EC BULLETIN N. 2/74, p. 8

(32) Supplement of the EC BULLETIN N. 3/76, pp. 7-8

(33) See also the evaluation by Mr Hillery on the proportion of workers from third countries compared with Community workers, in the Parliamentary debate held during the Sitting of 24.9.1975 (Annex O.J. N. 194 of September 1975, pp. 193 ff.). Statistical data on the consistency of the population from third countries actually working in Europe can be found in the number of July-August 1979 of the EEC-ACP Courier, pp. 48-51.

(34) On the delay that the action of the Commission has entailed in this matter, see the intervention by Mr Scarascia-Mugnozza at the sitting of of the European Parliament of 9.2.1976, in O.J. Annex N. 199, February 1976, stressing the fact that the Community, by not acting at the time of the economic boom, practically missed the boat for an effective intervention on this matter (p. 29 ff.).

(35) COM(79) 115 Final

In the opinion of Mr Vredeling, who sponsored the Communication, future immigration policy should be the fruit of close cooperation among Member States, especially now that "immigration policy has taken a central place in the preparations for the accession of the new Member States" (36).

As "a sizeable migrant population from third countries, including many from new Member States, remains in the Community, and becomes increasingly long-resident", the Commission considered it necessary to avoid inequality of treatment between third country nationals and Community nationals, mainly in view of the fact that bilateral agreements already contain similar provisions on topics such as recruitment procedures, equality of treatment in regard to working conditions, etc. In the long term, an effort should be made to include "Community" conditions in bilateral agreements with third countries. Eventually, it should only be possible to conclude agreements at Community level, so as to deal with the situation of all legal workers in Europe (36).

The Commission also wishes to discuss in these consultations the policy on Community migrants who live and work in third countries, particularly those employed in development programmes in third countries.

In its Communication, the Commission - in effect - "invites the Council to have an exchange of views, in depth, on the points made" in the Communication. "The Council is invited to conclude that, in the light of their exchange of views, the Commission will organize, within the existing Community institutions, strengthened as necessary, consultations with and between the Member States" (37).

(36) Information P-32 of March 1979, on Consultation on Migration policy, p. 1 ff.

(37) The consultations on migrant policy in the Community proposed by the Commission should cover the following points :

- entry to a Member State (conditions relating to the issue of work and residence permits, medical examinations, job opportunities) ;
- stay in Member State (duration of a work or residence permit, conditions for extension thereof, change of employer or employment, position of the family) ;
- departure from a Member State (state of health, public order and safety assistance in the event of return to the country of origin) ;
- equal treatment as regards living and working conditions (social security provisions, vocational training, adult education and, especially, the education of migrant workers' children, matters concerning health and accommodation) ;
- the social problems arising for nationals of Member States working in third countries and for members of their families. Some of these subjects are also covered by the Joint Declaration (footnote p. 6). Here, consultations could facilitate the negotiation of bilateral agreements mentioned under Point 4 of the Declaration.

5. Representation of migrants in local elections

The Commission included in the Action Programme in favour of Migrant Workers and their Families moving within the Community of 1976 a special Chapter on Civic and Political Rights, with mention of the fact that the particular situation of Member States' nationals was at the time under consideration by the Council (38). In this Chapter, the Commission stressed the necessity of attaining, "at the latest by 1980", the objective of granting "to migrants (in general) full participation in local elections, according to conditions to be defined relating in particular to the qualifying period of residence" (39), this mainly because "decisions at municipal level have a decidedly direct impact on the living conditions of migrants", and "representation of their interests at the local level should therefore be established" (40).

Such a conclusion is an extremely valid one. In fact, the interests of some 10 million migrants - about the number of inhabitants of a medium sized Member State - happen to be represented, at the local level, by nationals who cannot be expected to know the problems and the necessities of large numbers of migrants living and working in their municipalities.

Moreover, migrants pay, just like other residents, the municipal and other taxes connected with the public services to which they are theoretically entitled.

If on the national level migrants may be considered to be represented through their participation in national elections of their own country, the exclusion of so many residents from participation in local elections in their host countries seems contrary to the fundamental rule of 'no taxation without representation'.

Participation in local elections seems therefore indicated to guarantee the interests of migrants as to housing, public transports, roads, sewerage, education, religious and cultural centres, etc.

Although it could, in some cases, fundamentally change the political equilibrium in some local administrations - as it has already happened in towns with a considerable influx of workers from other regions - it could also facilitate integration of migrants in the local communities and stimulate the interest of local parties in mobilising the migrants' votes.

(38) In July 1975, the Commission had presented to the Council two Reports : on a passport union and on the granting of special rights (Suppl. of the EC Bull. N. 7/74).

(39) Action Programme for Migrant..., quoted, p. 21

(40) Ibidem p. 20.

However, such a participation would certainly raise problems of a legal nature, as it would be necessary for the Member States either to remove one's nationality as a condition for the right of voting for local representative bodies or to decide to consider legally resident immigrants as nationals under certain conditions, instituting a kind of limited nationality related to residency.

Although such a solution could eventually be found for Community migrants, on the basis of Art. 235 of the EEC Treaty, this would leave the problem unsolved for non-Community migrants, who represent about 85 % of the entire migrant population.

One of the main difficulties seems to be found in Art. 55 of the French Constitution, that insists on reciprocity in any limitation on national sovereignty conceded by way of international agreement.

This would imply opening a series of international negotiations with the emigration countries to deal with this matter, on the basis of reciprocity, parallel to those that have been held on the principle of non-discrimination.

In this context, the highly interesting example should be mentioned of Sweden, that unilaterally decided to give foreign workers the right to vote in its local elections.

In 1975 a study was submitted by the Commission to the Council on the granting of special rights to European citizens (41), in implementation of Point 11 of the Final Communiqué issued at the European Summit held in Paris on 9 and 10 December 1974.

As regards political rights as voting rights at national and regional level, eligibility for election at regional level and the right of access to public office dependent on election at regional level or subordinate to elective office, the working group that issued the study in question examined a list of amendments and additions to be made to national laws. It concluded that in six of the nine Member States the right to vote and eligibility for election are dependent on fulfilment of a condition as to nationality which is contained in the Constitution. As a political option, in view of the cumbersome procedures for revising the Constitution, "it might be possible simply to amend the legislation governing the conferment of nationality" (42).

(41) Towards European Citizenship, Suppl. to the Bulletin of the EEC, N. 7/75, pp. 25 ff.

(42) Ibidem, p. 29

The European Parliament examined the issue of the "special rights" and a Report was submitted by the Political Affairs Committee in 1977 (43). The Scelba Report, referring also to the Tindemans Report on European Union (44), stressed that "the most important of these rights is the right to vote. The Community citizen must be allowed to participate actively in political decision-making processes outside his country of origin" (45).

Since then, no progress was made, neither for Community nor for non-Community migrants, as to participation in local elections. Some Member States have tried to set up consultative bodies to facilitate, at the local level, the communication with migrants' groups.

Belgium has been a pioneer in this field : the experience of the Conseils Consultatifs Communaux pour les Immigrés dates there from 1968, and 27 of them operate at present in the country, though they are not provided for in the national legislation.

They do not interfere with the constitutional institutions at the local level, but exist a latere of them, accomplishing their consultative function.

Two different procedures have been followed for their implementation : the designation by the Municipal authorities on a transitory basis and the subsequent renewal of their mandate by general elections, all immigrants fulfilling the age and residence requirements being entitled to vote.

In the Netherlands, the most important experiment has been the one of the Migrantenraad in Utrecht, created in 1973, when three other similar bodies already existed in the country. Migrants can elect and be elected as delegates. This Council provides a forum for discussion and acts as a pressure group.

In West Germany, three different patterns of consultative bodies exist : the one of Nüremberg, a Committee elected by general elections and controlled by the Municipal authorities ; the Munich example, where the Enterprise Committee designates the representatives of foreign workers and the so-called

(43) Scelba Report, Doc. 346/77

(44) Where the consideration was made that not only the acknowledgement of Community citizens' basic rights, but also protection of those rights by the Community are "essential" for the development of the Community. Doc. 481/75.

(45) Scelba Report, p. 15
Art. 8 of Regulation 1612/68, as amended by Reg. 312/76, concedes to EEC workers the right "to be eligible for the administration or management posts of a trade union" (O.J. L 39 of 14.2.1976).

"Foreigners' Parliaments", elected by the whole immigrant population, in which the representatives have taken their function as an essentially political one, leaving apart their original function of consultative body, and calling for reform of the same.

No official bodies of this kind exist in France, but some informal groups have been created there, at the local level, in order to investigate the living conditions of foreign workers, but without them being represented. There exist commissions of experts, competent in particular fields, which meet with migrants and sometimes with labour organisations (46).

Such kind of bodies exist also in West Germany, the so-called Koordinierungsausschüsse für Ausländarbeitnehmer, at the level of the Länder and of the Municipal Administration. They are composed of representatives of the public authorities, of the social organisations and of the labour and employers' organisations, and of migrants' representatives.

In Luxembourg, three Consultative Municipal Councils exist, in Luxembourg, Ettelbruck and Petange, with representatives of the Municipal administration and of the workers' associations, delegates designated and not elected, in equal number as the representatives of the Municipal Councils.

There has also been created in Luxembourg an organism which does not exist in other European Countries : the National Council for Immigration, created in 1977 by law (47) and composed by representatives of the interested Ministries (5 plus 5 substitutes), a representative of the Employment Administration, a representative of the Association of Towns and Municipalities, three representatives of the most important Unions, three representatives of the Employers' Organisation, three of the Italian workers, two of the Portuguese, one of the Spanish, one of the Yugoslav, and one of the Capo-Verde Islands. All of the 21 members have substitutes already designate, as they are, by the Minister of Family and Social Solidarity. The President of the Council is the National Commissary to Immigration. The Secretary, who is an official of the Ministry of Family and Social Solidarity, can also be a member of the Council.

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- (46) These commissions have taken various forms, from the Commissions of experts without representation of migrants, to extra-municipal commissions where the representativeness is obtained through private organisations, to Commissions to which some foreign representatives are coopted. The tendency is to consider the outcome of these experiences as negative ; See WENDEN C., La représentation des immigrés en Europe, in Rev. Franç. des Affaires sociales, Avril-Juin 1978, Numéro Spécial, p. 160 ff.
- (47) Loi du 29 juillet 1977 modifiant les Art. 5 et 6 de la Loi du 24.7.1972 concernant l'action sociale en faveur des immigrants et Règlement Grand-Ducal du 29.7.1977 portant fixation des attributions du Conseil national de l'immigration.

This body is a consultative organ, charged by the Ministry, or by itself, with studying immigration problems ; it is consulted by the Government on any law, regulation, or administrative measures regarding immigration.

It has the right to present to the Ministry any proposition it judges useful for the social, juridical, economic and cultural promotion of the migrant workers and their families.

The experience of the National Council for Immigration in Luxembourg could be the first pattern for other Member States to follow in order to establish strict contacts between the governmental bodies working on the improvement of the situation of migrants and their families and the migrant population itself. Some doubts exist as to the possibility of obtaining the direct election by the migrants of their representatives, now designated by the migrants' associations and by the Unions and nominated by the Ministry, but in the long run such a possibility could be envisaged, depending, most of the time, on the action of the migrants themselves.

The experimental institution of consultative bodies in the different Member States, at the Municipal level, seems not to have been a full success to solve specific migrants' problems, mainly because of the way the representatives are chosen, and also because of the lack of mobilisation of the migrant population. Will the "guest-worker", in the end, be at home in his new surroundings, finding there adequate structures of social and political life to defend himself against exploitation and intimidation ?

The recent speech of Mr Kok, President of the European Unions Federation (48), revives the idea of granting certain civil and political rights to migrants and could provide the necessary impetus for the Commission to take action. He said, in May of this year, that "Migrant workers cannot constitute a reserve army arbitrarily recruited and discharged. Foreign workers are entitled to political and civil rights. Those who do not like the idea are conservative people, and those who find it difficult to let them enjoy their rights because of technical and legal obstacles are now obliged to find the necessary solutions".

(48) In EUROPA VAN MORGEN, N. 18 of 16.5.1979, pp. 209-210.